

PERSONNEL: SECTION 0300

This section includes policies related to the intent of the board for personnel management practices to be used for professional and classified employees of the school district.

First Approval June 11, 1984

Final Approval July 9, 1984

PERSONNEL: SECTION 0300

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0300 **Principles of the Personnel Function**

The board intends to employ, assign, transfer, and reclassify school personnel and to adopt policies and approve regulations governing their employment in such a manner as to provide the highest possible degree of both efficiency and effectiveness in the operation of the school and in providing quality instruction and services to the pupils of the district.

The board, upon the recommendation of the superintendent and within the boundaries specified by law, shall employ, assign, transfer, reclassify, or terminate employees.

The board shall adopt policies and approve regulations governing employment and the duties of employees.

The board shall retain, as an exclusive prerogative, the recruitment, selection, employment, assignment, supervision, evaluation, and retention or dismissal of a superintendent of schools for the district.

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Legal Reference: 79-1229 et.seq. Certificates.

79-1248 et.seq. Employment.

79-1280 et.seq. Professional Practices Commission.

79-1287 et.seq. Teachers Professional Negotiation Act.

79-12107 et. seq. Tenure.

0301 **Rights and Responsibilities of Professional Personnel**

The board of education shall protect all civil and legal rights and responsibilities of its professional employees which are provided by federal or State statute, by the decrees of courts with jurisdiction, by policies of the board, and by rules and regulations as stated in the personnel handbooks provided to professional employees. Such rights shall include freedom from discrimination on the basis of age, sex, race, religion, or country of national origin and freedom of speech.

All professional employees are expected to act in accordance with professional codes of conduct and ethics as specified by law or by the rules and regulations of the Nebraska Department of education and the Professional Practices Commission of the State of Nebraska.

All professional employees are encouraged to act in accordance with codes of behavior and ethics as stated by professional organizations in which they are members, except in those instances where such codes would be in direct violation of statute, rules and regulations of regulatory agencies, or policies adopted by the board of education.

Duties of the professional employees of the district shall be as specified by contract and shall be stated in written job descriptions for each position or type of position.

Within the guidelines of this policy, except as otherwise stated in law, policy, or contract, professional employees are vested with academic freedom.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 79-443 district board; schools; supervision and control.
79-1280 et.seq. Professional Practices Commission.

0301.1 **Certification of Professional Employees**

All professional employees shall hold valid certification issued by the State of Nebraska and appropriate to the positions for which they are employed.

Except in an emergency, no teacher shall be employed as a professional employee of the district unless the teacher has completed the requirements for a bachelors degree and has been awarded such a degree from an accredited four-year institution.

Individuals employed as teachers or professional supervisory and administrative personnel shall register a valid professional certificate issued by the State of Nebraska with the office of the county superintendent of schools prior to October 15th of the school year and also shall file an official transcript of college credits earned with the office of the superintendent of the district. Individuals who are employed as substitute teachers shall hold a valid Nebraska certificate as a teacher; these certificates shall be registered with the office of the county superintendent of schools.

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Final Approval July 9, 1984

Legal Reference: 79-1233 Nebraska certificate; special teachers permit; prerequisite to teaching.

79-1240 Teachers or administrators without certificates; employment prohibited; effect.

79-1247.05 Teachers certificates; State Board of education; adoption, rules and regulations and procedures; basis earned college credits.

79-1250 Schools, contract of employment; content.

0301.2 **Publication or Creation of Educational Materials**

When employees engage in the preparation, creation, or publication of materials, as part of assigned job responsibilities, the board reserves the right to copyright or to patent such materials. If the employee wishes to seek a copyright or patent for materials which are published or created as a result of use of district time or other resources of the district, the board shall be consulted to determine whether or not it wishes to waive part or all of its rights to materials created by its employees in the discharge of their professional duties as employees of the district.

First Approval June 11, 1984 Final Approval July 9, 1984

Legal Reference: 79-441 District property; custody and care; duty of the board.

0301.3 **Tutoring**

Professional employees are prohibited from serving as tutors, on a paid basis, for students who are assigned to them within a course of study or instruction during the contract year.

Professional employees are prohibited from using school facilities and resources for tutoring, on a paid basis, unless permission for use of school facilities has been granted to the professional employee in his or her role as a private citizen.

Use of school facilities or resources for purposes of tutoring students may, at the discretion of the superintendent and the board, require payment of fees for use of school facilities.

Professional employees who engage in tutoring of students during a contract period are expected to inform their immediate supervisor of arrangements which have been made for employment as a tutor when the person being tutored is a student enrolled in the school district.

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0301.4 **Soliciting and Selling**

Certified employees of the district shall not engage in solicitation or sale of goods or services to other employees or to students except when administrative approval has been given for the sale of periodicals, paperback books, and other instructional materials for student use in regular class work. No student, however, shall be required to purchase such materials and the sale of materials by classroom teachers shall be subject to regulations established by the administration with regard to procedures followed in ordering and maintaining accounts of the sales of such materials.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 79-1272 Teachers; solicitation by agents prohibited; exceptions.
79-1273 Teachers; solicitations by agents; violation; penalty.

0301.5 **Receipt of Gifts**

School personnel shall not encourage the offering of gifts from pupils, patrons, salesmen, or other individuals when such gifts might constitute a conflict of interest with regard to the employees discharge of professional duties.

If gifts are offered to, and received by, school personnel, the school employee should minimize such act on the part of the donor insofar as publicity or public recognition of the gift is concerned.

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0301.6 **Non-School Employment**

No teachers or other school employees may accept any other employment or carry on any business or activity for profit which may conflict with performance of their duties as employees of the school district.

In the event that an employee has accepted non-school employment and such employment is judged to be detrimental to the effective discharge of the employees duties within the school district, the superintendent, or designated administrative and supervisory personnel, shall notify the employee, in writing, and shall request the employee to limit or terminate non-school employment which interferes with the performance of duties as a district employee.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 79-443 District board; schools; supervision and control.

0301.7 **Receiving Agents or Salesmen**

No school employee shall meet with or discuss business matters of a personal nature with any representative during the hours the employee is on duty in the school, except by permission of the superintendent.

Any agent or business representative who wishes to meet with school personnel about business matters related to the operations of the school district , such as textbooks, publications of the school, class insignia, athletic equipment, furnishings and equipment, school, supplies, building and custodial supplies, and the like, shall first obtain the permission of the employees immediate supervisor or the superintendent. School employees shall be responsible for ascertaining that agents or business representatives who visit with them have such permission.

A teacher shall not interrupt scheduled class sessions to meet with agents or business representatives, without the express permission of his or her immediate supervisor or the permission of the superintendent of schools.

Any employee who orders any supplies, equipment, furnishings, or other items on behalf of the school without the express authorization to do so by either the immediate supervisor or the superintendent may be held personally liable for payment of amounts billed for such supplies, equipment, furnishings, or other items.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 79-1272 Teachers; solicitation by agents prohibited; exceptions.
79-1273 Teachers; solicitation by agents; violation; penalty.

Employee Fundraising

0301.8 Employee Fundraising

Any employee who directly or indirectly seeks to use their position as a District employee to fundraise (such as through a crowd funding initiative) must obtain prior approval from the Superintendent or Superintendent's designee before taking any action to fundraise.

An employee who receives permission to fundraise shall abide by the following requirements:

- a. The employee shall inform the Superintendent or Superintendent's designee of any content (including online messages or requests) that the employee intends to publish.
- b. The employee shall not violate any District policy, rule or law in any fundraising efforts and shall keep all student information confidential.
- c. The employee must account for any money raised through the approved fundraising effort and shall provide evidence to the Superintendent or Superintendent's designee as to how the money was spent.

District employees who engage in fundraising efforts in their private capacities need not abide by this policy.

First Approval June 12, 2017

Final Approval July 10, 2017

Professional Boundaries Between Employee and Students

0301.9 Professional Boundaries Between Employees and Students

Definitions:

Grooming means building trust with a student and individuals close to the student in an effort to gain access to and time alone with the student, with the ultimate goal of engaging in sexual contact or sexual penetration with the student, regardless of when in the student's life the sexual contact or sexual penetration would take place;

Personal communication system means a device or software that provides for communication between two or more parties and is capable of receiving, displaying, or transmitting communication. Personal communication system includes, but is not limited to, a mobile or cellular telephone, an email service, or a social media platform;

School employee means a person nineteen years of age or older who is employed by a public, private, denominations, or parochial school approved or accredited by the State Department of Education. Neb. Rev. Stat. § 28-720. School employee also includes any person who is contracted with, or otherwise paid by the district and who has access to or interaction with students including all student teachers or interns.

Sexual contact has the same meaning as in section 28-318;

Sexual penetration has the same meaning as in section 28-318; and

Student teacher or intern has the same meaning as in section 79-875.

All employees are expected to observe and maintain professional boundaries between themselves and students. A violation of this policy or any violation of professional boundaries is misconduct and will likely result in disciplinary action.

In addition, a violation of employee and student boundaries is also a violation of standards of professional conduct which could result in the revocation of a certificated educator's certificate or permit. 92 Nebraska Administrative Code Chapter 27.

Such violations could also result in a referral to the Nebraska Department of Health and Human Services and law enforcement.

All employees are expected to observe and maintain professional boundaries between themselves and students. A violation of professional boundaries will be regarded as a form of misconduct and may result in disciplinary action.

Professional Boundaries Between Employee and Students

Prohibited Activity:

Engaging in any relationship that involves sexual contact or sexual penetration with a student while the student attends the school where the employee works and for one year after the student graduates or otherwise ceases enrollment.

The following is a non-exclusive list of actions that will be regarded as a violation of the professional boundaries that all employees are expected to maintain with all students. In addition, repeatedly engaging in any of these activities or a combination of these activities are examples of grooming as defined in this policy.

1. Communication with students through any method not approved or not designated by the school district including social networking apps or websites and texting, or other instant messaging, one-on-one with any students.
2. Communication with students on any matters or subjects that do not pertain to school or school-related activities. School or school related activities include student homework, in class activities, school sponsored sports or clubs or any other school-sponsored activity.
3. Engaging in any kind of behavior or communication that could be reasonably construed as a sexual advance or respond in any positive manner to a student's sexual advance.
4. Being alone with a student anywhere where all doors to such room are closed.
5. Showing a student any inappropriate or sexually suggestive material that is not part of classroom lesson or curriculum known to appropriate school authorities.
6. Telling jokes with sexual themes or subject matter.
7. Invading a student's physical privacy. One example would be walking in on a student changing in a locker room or bathroom when the employee has no duty to be there.
8. Intruding on a student's personal physical space in any manner that makes a student uncomfortable.
9. Initiating unwanted physical contact.
10. Treating one student differently from other students either by providing privileges or failing to enforce school policy or other disciplinary action.
11. Discussing an educator's private personal matters with a student and inquiring about a student's private personal matters when no basis for concern about the student's health or safety.
12. Providing rides to a student in an employee's personal vehicle without the express written

Professional Boundaries Between Employee and Students

permission of a student's parent or guardian and permission from an administrator unless another school employee is in the vehicle.

13. Meeting with a student outside of school for any reason other than a school sponsored activity or event.

14. Having a student in an employee's home without a student's parent or appropriate chaperone.

15. Giving or receiving gifts to or from one student. A gift to a class or the same gift to a group of students is not prohibited.

16. Consuming alcohol in the presence of any student when the student's parent or guardian is not present or consuming illegal drugs in the presence of students at any time.

17. Providing alcohol or illegal or unauthorized drugs or medications to a student under any circumstances.

18. Any other behavior with could exploit the unique position of trust and authority between a student and employee.

Exceptions to these prohibitions may include:

1. Communicating with your own child or another student with whom there is personal relationship that exists independent of that child being a student at the same school where the employee works such as when the student is a relative, neighbor or fellow member of a group or organization outside of the school or school sponsored setting when such communications pertain to such a group or organization.

2. An emergency or concern for that student's immediate health or safety.

3. A singular chance encounter at a public place provided the encounter provided there is no additional violation of this policy

Except in the case of a true emergency, or an unplanned chance encounter, employees must obtain permission in writing from his or her administrator prior to engaging in such communication.

Permissible methods to communicate with students outside of school:

The Superintendent or Superintendent's designee will circulate to staff the District-approved apps or social media sites that employees may use to communicate with student regarding educationally related topics.

Professional Boundaries Between Employee and Students

In addition, employees may utilize:

1. Text messages that include at least one other adult and a student. The adult may either be the student's parent or guardian or another school employee.
2. Use of social media through a district approved social media account as a coach or supervisor of a school sponsored club or activity. However, even approved social media communication must abide by the standards of professional conduct and must be professional in nature and in the best interest of the school district.
3. Use of the school district email system.

Allowing students to view an educator's social media postings is not a preferred method of communication. Educators are responsible for any social media postings that is viewed by students when such posting violates the standards of professional conduct.

Permissible ways to engage with students when the employee has concerns about the student's well-being:

1. Contact the guidance counselor and ensure the student's parent or guardian is aware of your concerns.
2. Contact the student's parents or guardian if the concern is not with the parent or guardian.
3. If you believe the student is in immediate danger, contact the Nebraska Department of Health and Human Services child abuse hotline or contact law enforcement.

Reporting Violations:

If any school employee violates this policy or has reason to believe another employee has violated this policy, the employee is required to make a report to the superintendent within 24 hours. The school employee also has an obligation to report to the Nebraska Health and Human Services and the Nebraska Department of Education.

The most serious violations shall be reported immediately. The Superintendent shall also ensure a report is made to the Nebraska Department of Education, the Nebraska child abuse and neglect hotline and law enforcement authorities as required by law and notify the school Board President. If the superintendent is the alleged violator or fails to take appropriate steps, the School Board President shall be notified by the school employee.

Professional Boundaries Between Employee and Students

Students who feel his or her boundaries have been violated or know of another student whose boundaries have been violated may report to any school employee he or she is comfortable to confide in. That school employee will then have an obligation to report as identified above.

Reprisal or retaliation for good faith reports made by students or school employees is itself a violation and is prohibited.

Records retention:

School employees are required to maintain copies of any communication exchanged with students via a personal communications system. Such copies must be maintained pursuant to district records retention policies and schedules. The records may be kept electronically or in hard copy or any format easily retrievable by the employee upon request. Any employee who is unable to produce copies of such communications for any reason will be in violation of this policy.

FERPA and Confidentiality:

School employees are encouraged to consult their school's policy on confidentiality of personally identifiable student information before posting any information regarding student or student activities online.

First Approval June 14, 2021

Final Approval July 12, 2021

Legal Reference: Neb. Rev. Stat. Sec. 79-879

Suggestions for School Improvement

0302 Suggestions for School Improvement

School employees are encouraged to make suggestions which may improve the school system and its operations. All suggestions should be referred through the employees immediate supervisor to the office of the superintendent. The superintendent shall receive all suggestions for improvement and, as appropriate, may bring these to the attention of the board for consideration and action.

The superintendent shall direct the development of rules and procedures for the implementation of suggestions for school improvement, submit such rules and procedures to the board for its review and approval, and disseminate those rules and procedures approved by the board to all employees of the district.

First Approval June 11, 1984

Final Approval July 9, 1984

0303 **Personnel Records**

Individual personnel files shall be maintained for all professional employees. Any employee, upon request, shall have access to his or her personnel file and shall have the right to attach a written response to any item included in such file. Any employee may, in writing, authorize any other person to have access to said employees personnel file and such authorization will be honored. These rights shall apply equally to those files kept in the office of the employees immediate supervisor as well as files maintained in the offices of the school district.

The right of access to ones individual personnel file and the right to attach a written response to any item included in such file shall not be granted with respect to any letters of recommendation which were solicited by the employee and which may appear in said personnel file.

No other person, except school officials while engaged in performance of professional duties, shall be granted access to said file nor shall the contents thereof be divulged in any manner to any unauthorized person.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 79-4156 Teacher, administrator, full-time employee; personnel file; access; written response; attach.

79-4158 School board; board of education; official policy respecting personnel files and student records; rules and regulations; adopt; publish; restrictions.

0303.1 **Shredding Consumer Reports**

It is the policy of Bancroft-Rosalie Community Schools to take reasonable measures to protect against unauthorized access to consumer information from consumer reports.¹ A consumer report includes criminal background checks performed on applicants or employees by a third party. It does not include criminal checks performed by school staff.

Reasonable measures to protect against unauthorized access to or use of consumer information in connection with its disposal include the following examples. These examples are illustrative only and are not exclusive or exhaustive methods for complying with this directive:

- (1) Shredding of papers containing consumer information so that the information cannot practicably be read or reconstructed. Burning or pulverizing such papers are also options where appropriate.
- (2) Destruction or erasure of electronic media containing consumer information so that the information cannot practicably be read or reconstructed.
- (3) After due diligence,² entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of material in a manner consistent with this directive.

This policy does not require that the consumer reports information be disposed of; rather, it specifies the action to be taken whenever such disposal occurs. Questions regarding the disposal of consumer reports information should be directed to the Superintendent or the Superintendent's designee.

First Approval October 10, 2005 Final Approval November 14, 2005

Legal Reference: FTC Rule on Disposal of Consumer Report Information and Records, 16 CFR Part 682

¹ “The term ‘consumer report’ means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for . . . (B) employment purposes.” Fair Credit Reporting Act, 15 U.S.C. § 1681a(3).

¹ The FTC rule states: “In this context, due diligence could include reviewing an independent audit of the disposal company's operations and/or its compliance with this rule, obtaining information about the disposal company from several references or other reliable sources, requiring that the disposal company be certified by a recognized trade association or similar third party, reviewing and evaluating the disposal company's information security policies or procedures, or taking other appropriate measures to determine the competency and integrity of the potential disposal company.”

0304 Official Records_and Reports

All school employees shall furnish the superintendent or principal, promptly and by any due date, any information related to professional training, experience, activities, or work which is required for reports to county or State officials or for official school records. Data of a personal nature shall be treated as confidential information.

First Approval June 11, 1984

Final Approval July 9, 1984

0305 Drug Testing

Bancroft-Rosalie Community School, Cuming County School District No. 20 is committed to providing an employment environment that is safe and provides appropriate motivation to ensure a creative and productive work force. To this end, the District unequivocally endorses the philosophy that the workplace should be free from the detrimental effects of illicit drugs and alcohol.

It is unlawful and, therefore, absolutely prohibited for any employee of the District to engage in the unlawful possession, use, or distribution of illicit drugs and alcohol on school premises or as a part of any of the school's activities.

DEFINITIONS

As used in this policy, prohibition against the unlawful possession, use, or distribution of illicit drugs and alcohol on school premises or as a part of any of the school's activities shall mean, but not be limited to the following:

1. The possession, use, or distribution of any substance which is declared by the State of Nebraska or any other applicable law to be an illicit substance.
2. The possession, use, or distribution of alcohol on school premises or as a part of any of the school's activities.

As used herein, the term "school premises" shall mean any property whether owned, leased, or in other manner under the control of the Board of Education of the District.

As used herein, the phrase "as a part of any of the school's activities" shall mean any activity or enterprise carried out in whole or in part under the auspices of the District in which students are involved.

PROCEDURES

1. All employees and each new employee will receive a copy of this policy.
2. Each employee will acknowledge receipt of this policy and will sign such form acknowledging receipt and acknowledging the District's policy of absolutely prohibiting conduct as set forth in this policy, and further acknowledging that serious sanctions can and will be taken against an employee, including termination of employment and referral for prosecution for any failure to comply with the above-stated standards of conduct further acknowledging that such compliance is mandatory, and further acknowledging that this policy is adopted pursuant to P.L. 101-226, 34 C.F.R., Para 86, and other applicable statutes, and

will further acknowledge that failure to comply with such federal requirements may put the District's receipt of federal funds in jeopardy.

3. In the event the employee does not understand the terms and conditions of this policy, it shall be the duty of the employee to ask for such points of clarification of the Superintendent of Schools or his designee at the time this policy is distributed to the employee. If no question is directed by an employee the Superintendent of Schools or his designee it shall be the legal position of the District to presume that the employee has understood and will abide by this policy.

4. In the event of any non-compliance by any employee with this policy, it shall be the duty of the Superintendent of Schools or his designee to inform any employee not in compliance about any drug and alcohol counseling and rehabilitation and reentry programs that are available to employees within fifty (50) miles of the administrative offices of the District. If no such programs are available within 50 miles, then such other programs as may exist in the State of Nebraska shall be made known to such employee. The Superintendent or his designee shall maintain a list of such available services and shall from time to time update such list.

5. Sanctions which may be taken against an employee for non-compliance with this policy may be any one or more of the following:

- a. An oral reprimand.
- b. A written reprimand.
- c. Suspension without pay.
- d. Suspension without pay.
- e. Termination of employment.
- f. Cancellation of employment.
- g. Non-renewal of employment.
- h. Referral to appropriate authorities for criminal prosecution
- i. Mandatory enrollment in in-patient care or otherwise as a term and condition to any continuing employment by the District.
- j. Mandatory enrollment in any training programs that are or may be provided by the District or others relating to any of the activities prohibited by this policy.

6. Disciplinary action sought to be imposed by the Superintendent or his or her designee shall be carried out in accordance with the established policies of the District. However, nothing in this policy shall be construed to vest any right in any employee beyond that required by law and the manner in which each case shall be handled shall be in the sole discretion of the Superintendent or his designee subject to the Superintendent's approval, provided only that such action shall be carried out within the bounds of applicable law.

7. Conviction of an employee of the District of any criminal statute relating to the unlawful use, possession, or distribution, of any controlled substance or alcohol, may result in disciplinary action being taken against such employee. When such conviction shall come to the attention of the Superintendent or other official of the District, any employee convicted as above described may be disciplined in any manner provided by statute, the contract of the employee, any existing policy of the District or any other applicable body of law. As used herein "applicable body of law" shall mean, but shall not be limited to, state and federal statutes, state and federal regulations, and any applicable case law.

8. As an alternative to discipline or as a concurrent requirement to the disciplinary action less severe than the maximum disciplinary action that may be carried out against an employee as referred to in the immediately preceding paragraph, the District, by and through its Superintendent or his designee may require the employee to successfully finish a drug abuse program. As used herein, the term "drug abuse program" shall mean a drug abuse program sponsored by an approved private or governmental institution. The Superintendent or his designee may require the documentation satisfactory to the superintendent or his designee after care is recommended by such institution, then the Superintendent or his designee in his sole discretion may require the employee to enroll such after care program and to participate in a manner satisfactory to the provider of such after care program. The superintendent or his designee may require an employee to participate in after care in the same manner and under the same terms as may be required by the Superintendent or his designee. The Superintendent or his designee may require ongoing reporting of such participation as a term and condition of continuing employment by such employee at the District.

9. It shall be the policy of the District to require an employee who has been charged or convicted of a violation of any statute as hereinabove referred to in this policy to report such charge or conviction to the Superintendent or his designee. Any information received pursuant to this policy may be used in any lawful manner. Any employee having concerns about an admission hereunder constituting self-incrimination shall bear the burden of seeking his or her own legal advice regarding any such potential self-incrimination.

First Approval July 9, 1990

Final Approval August 13, 1990

0306 **Sexual Harassment**

It shall be the policy of Bancroft-Rosalie Community Schools to prohibit sexual harassment of employees, applicants for employment, and students on any work premises where the District has total control of the premises or can otherwise lawfully exert its jurisdiction. If proscribed acts as are set forth in this policy occur on such premises, the superintendent or his/her designee (hereinafter "Superintendent") shall undertake immediate and appropriate action within the bounds of the law to punish as appropriate any violations of this policy or of applicable law pertaining to sexual harassment and shall undertake immediate and appropriate action to prevent any such conduct in the future.

As used in this policy the word "employee" shall mean any person who is an employee, or any former employee who alleges to have quit, to have been fired, or to have been constructively terminated as a result of sexual harassment as that term is defined in this policy or by other applicable law.

As used in this policy the word "student" shall mean any resident student of the district, any student being served by contract with another educational agency, or any other person of school age attending the district for educational reasons.

The following acts may be deemed to constitute "sexual harassment" and are specifically prohibited by this policy:

1. Unwelcome advances, requests for sexual favors, verbal or physical conduct of a sexual nature, based upon gender, submission to which is demanded by any employee of the District against any other person as a term or condition of obtaining employment.

2. Unwelcome advances, requests for sexual favors, verbal or physical conduct of a sexual nature, based upon gender, submission to which or rejection of which by any employee is used as a basis for any employment decision such as, but not limited to, rate of pay, promotion, favorable evaluations, whether formal or informal, or the conferring of job responsibility.

3. Conduct of a sexual nature by an employee or employees directed against another employee, based upon gender, which has the purpose or effect of unreasonably interfering with that individual's work performance or creating an intimidating, hostile, or offensive working environment.

4. Unwelcome advances, a request for sexual favors, verbal or physical conduct of a sexual nature, based upon gender, submission to which or rejection of which by any employee of the District is used as a basis for any educative decision pertaining to a student such as, but not limited to conferring of a grade, credit, favor, or honor.

Sexual Harassment

Because of the disparity of authority between student and employee, any claim of perceived consent by any employee shall be disregarded as a defense in an employee to student sexual harassment complaint.

5. Conduct of a sexual nature by an employee or employees directed against a student, based upon gender, which has the purpose or effect of interfering with academic performance of the student, or creating an intimidating, hostile, offensive, or pervasive and severely discriminatory educational environment.

6. Conduct of a sexual nature by a student directed against another student, based upon gender, when such conduct is unwelcome, or when such conduct has the purpose or effect of unreasonable interfering with that student's academic performance, or creating an intimidating, hostile, offensive, or unsafe or unwholesome educational environment.

The District, by this policy, prohibits sexual harassment toward any persons regardless of gender or status of the victim.

It shall be the policy of the District that this policy, in its entirety, shall be distributed to all employees of the District at the commencement of their employment or as soon thereafter as is reasonable or within a reasonable time following the operative date of this policy, whichever date is applicable, as well as at the commencement of each school year thereafter. The District shall also distribute this policy to all students of the District and their parent(s) or legal guardian(s) as part of the student handbook at the commencement of the school year or within a reasonable time following the operative date of this policy, whichever date is applicable, as well as the commencement of each school year thereafter.

It shall also be the policy of the District to receive information from any person, employee or student, concerning allegations of conduct prohibited by this policy on a complaint form which shall be distributed to all employees of the District at the commencement of their employment or as soon thereafter as is reasonable or within a reasonable time following the operative date of this policy, whichever date is applicable, as well as at the commencement of each school year thereafter. An adequate number of copies of the complaint form shall be maintained within the superintendent's control and shall be available to any person protected by this policy. The effective date of this policy shall be August 1, 1999.

Upon receipt of any complaint upon the form prescribed by this policy, the superintendent shall undertake an investigation subject to any limitations placed upon the investigation by the complaining party as indicated on the complaint form. After the investigation is completed, the superintendent shall confer with the person or persons against

Sexual Harassment

to present his or her version of the facts involved in the complaint, as well as to be informed of the name of the complaining party, the allegations of the complaining party, the names of all corroborating or refuting witnesses, as well as any statements or allegations made by any such witnesses which are known to the superintendent.

Upon the conclusion of such investigation, the superintendent shall take such immediate and appropriate action as is required in his/her discretion within the bounds of the law. Nothing in this policy shall be construed to require the superintendent to take disciplinary action not within his or her legal authority. In the event action is required, which by law would require Board action, the superintendent shall undertake such proceedings as may be required by law to bring before the Board such matters of proposed discipline involving the person against whom the complaint was lodged.

The Board by this policy also recognizes a desire to protect its employees and students against non-employees at the work place as well as to protect non-employees from employees and students at the work place. At the commencement of each school year, as well as from time to time as deemed appropriate the superintendent shall address the subject of sexual harassment with the employees of the District by way of in-service training, memorandum, administrative regulation, or any other method selected by the superintendent to make known the contents and application of this policy. At the commencement of each school year the Superintendent shall address the subject of sexual harassment with the students of the District by the way of school assembly, individual classroom visits, or in such other reasonable manner as the Superintendent may direct, to make known the contents and application of this policy.

Nothing in this policy, nor any of the terms and conditions attendant to the complaint form used by the District, nor terms or conditions of the consent form used by the complaining party shall be construed to prevent the superintendent from taking action against any person engaging in conduct prohibited by this policy as to authorities other than the administration or Board of Education of the District when such action is required or permitted by law. Such actions may be, but are not limited to, providing information to any appropriate prosecuting authority, filing a report concerning any incident complained of with appropriate agencies, including, but not limited to, the Professional Practices Commission, the Nebraska Department of Education, the U.S. Office of Education, and any appropriate departmental office of civil rights. Notwithstanding the duty placed on the superintendent to accommodate the right of privacy of any complaining party, the superintendent shall be permitted by this policy to make such disclosure to witnesses, agencies, prosecutorial personnel, the Board of Education, and any other person entitled or obligated to be informed of any complaint brought under this policy when any state or federal statute, applicable case law, applicable agency law or any other appropriate body of law mandates such reporting.

Sexual Harassment

It shall further be the policy of the District to strictly prohibit use of any electronic medium including but not limited to the Internet, telephones, electronic mail, fax machines or any other means of communicating electronically in such a manner as to create a hostile working or educational environment. It shall be contrary to this policy to use any electronic medium for such purposes as but not limited to uttering profane messages, uttering sexually explicit or sexually innuendo oriented materials, soliciting romantic involvement, uttering obscene or offensive materials of a sexual nature in any manner.

It shall be the policy of the District that this prohibition shall run as to all interpersonal communications whether originated or received by members of the board, employees or students of the District and this prohibition shall run to such persons whether or not prohibited communications as described in this paragraph arise to the legal standard of sexual harassment of not.

Nothing in this policy shall be construed to prevent the superintendent from taking any remedial action as is in the best interest of the District toward the goal of preventing sexual harassment of employees and students of the District in its working or educational environment.

First Approval Dec. 9, 1996
First Amended Jan. 11, 1999

Final Approval Jan.13, 1997
Final Amended Feb. 8, 1999

0307 **Employee Indemnification for Anaphylaxis Emergency Protocol**

The Board understands that employees may be reluctant to undertake the task of administering the Anaphylaxis Emergency Protocol due to the potential threat of personal liability. Accordingly, it shall be the policy of this District to indemnify and hold harmless those employees who take actions in accordance with and pursuant to the Anaphylaxis Emergency Protocol. This indemnification shall be secondary to and not replace any insurance coverage applicable to any claim against the employee. To receive such indemnification, the Board of Education shall by majority vote of a quorum of the Board determine that the employee had completed the training to administer the Emergency Protocol, did not intentionally fail to follow the Emergency Protocol, and acted in good faith and in a manner which the employee reasonably believed to be in and not opposed to the best interests of the school district.

First Approval June 14, 2004

Final Approval July 12, 2004

Legal Reference: Title 92, Nebraska Administrative Code, Chapter 59. LB79-516.

0308 Anti-discrimination, Anti-harassment, and Anti-retaliation

A. Elimination of Discrimination.

The Bancroft-Rosalie Community School District hereby gives this statement of compliance and intends to comply with all state and federal laws prohibiting discrimination. This school district intends to take any necessary measures to assure compliance with such laws against any prohibited form of discrimination.

The Bancroft-Rosalie Community School District does not discriminate on the basis of sex, disability, race (including skin color, hair texture and protective hairstyles), color, religion, veteran status, national or ethnic origin, marital status, pregnancy, childbirth or related medical condition, or other protected status in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following persons have been designated to handle inquiries regarding the non-discrimination policies:

Superintendent of Schools, 708 Main Street, Bancroft, NE 68004 (402) 648-3336

Complaints or concerns involving discrimination or needs for accommodation or access should be addressed to the Superintendent. Complaints or concerns involving discrimination or needs for accommodation or access should be addressed to the appropriate Coordinator. For further information about anti-discrimination laws and regulations, or to file a complaint of discrimination with the Office for Civil Rights in the U.S. Department of Education (OCR), please contact OCR at 8930 Ward Parkway, Suite 2037, Kansas City, Missouri 64114, (816) 268-0550 (voice), or (877) 521-2172 (telecommunications device for the deaf), or ocr.kansascity@ed.gov.

B. Prohibited Harassment, Discrimination, and Retaliation of Employees, Students and Others.

1. Purpose:

The Bancroft-Rosalie Community School District is committed to offering employment and educational opportunity to its employees and students in a climate free of discrimination. Accordingly, unlawful discrimination, harassment and retaliation of any kind by District employees, including, co-workers, non-employees (such as volunteers), third parties, and others is strictly prohibited and will not be tolerated.

Harassment is a form of discrimination and includes verbal, non-verbal, written, graphic, or physical conduct relating to a person's sex, disability, race (including skin color, hair texture and protective hairstyles), color, religion, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status, that is sufficiently serious to deny, interfere with, or limit a person's ability to

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participate in or benefit from an educational or work program or activity, including, but not limited to:

- a. Conduct that is sufficiently severe or pervasive to create an intimidating, hostile, or abusive educational or work environment, or
- b. Requiring an individual to endure the offensive conduct as a condition of continued employment or educational programs or activities, including the receipt of aids, benefits, and services.

Educational programs and activities include all academic, educational, extracurricular, athletic, and other programs of the school, whether those programs take place in a school's facilities, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere.

Discriminatory harassment because of a person's sex, disability, race (including skin color, hair texture and protective hairstyles), color, religion, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status, but is not limited to:

- a. Name-calling,
- b. Teasing or taunting,
- c. Insults, slurs, or derogatory names or remarks,
- d. Demeaning jokes,
- e. Inappropriate gestures,
- f. Graffiti or inappropriate written or electronic material,
- g. Visual displays, such as cartoons, posters, or electronic images,
- h. Threats or intimidating or hostile conduct,
- i. Physical acts of aggression, assault, or violence, or
- j. Criminal offenses

The following examples are additional or more specific examples of conduct that may constitute sexual harassment:

- a. Unwelcome sexual advances or propositions,
- b. Requests or pressure for sexual favors,
- c. Comments about an individual's body, sexual activity, or sexual attractiveness,
- d. Physical contact or touching of a sexual nature, including touching intimate body parts and inappropriate patting, pinching, rubbing, or brushing against another's body,
- e. Physical sexual acts of aggression, assault, or violence, including criminal offenses (such as rape, sexual assault or battery, and sexually motivated stalking), against a person's will or where a person is incapable of giving consent due to the victim's age, intellectual disability, or use of drugs or alcohol,
- f. Requiring sexual favors or contact in exchange for aids, benefits, or services, such as grades, awards, privileges, promotions, etc., or

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- g. Gender-based harassment; acts of verbal, nonverbal, written, graphic, or physical conduct based on sex or sex-stereotyping, but not involving conduct of a sexual nature.

If the District knows or reasonably should know about possible harassment, including violence, the District will conduct a prompt, adequate, reliable, thorough, and impartial investigation to determine whether unlawful harassment occurred (see section entitled “Grievance Procedures,” below), and take appropriate interim measures, if necessary. If the District determines that unlawful harassment occurred, the District will take prompt and effective action to eliminate the harassment, prevent its recurrence, and remedy its effects, if appropriate. If harassment or violence that occurs off school property creates a hostile environment at school, the District will follow this policy and grievance procedure, within the scope of its authority.

All District employees are expected to take prompt and appropriate actions to report and prevent discrimination, harassment, and retaliation by others. Employees who witness or become aware of possible discrimination, including harassment and retaliation, must immediately report the conduct to his or her supervisor or the compliance coordinator designated to handle complaints of discrimination (designated compliance coordinator).

2. Anti-retaliation:

The District prohibits retaliation, intimidation, threats, coercion, or discrimination against any person for opposing discrimination, including harassment, or for participating in the District's discrimination complaint process or making a complaint, testifying, assisting, or participating in any manner, in an investigation, proceeding, or hearing. Retaliation is a form of discrimination.

The District will take immediate steps to stop retaliation and prevent its recurrence against the alleged victim and any person associated with the alleged victim. These steps will include, but are not limited to, notifying students, employees, and others, that they are protected from retaliation, ensuring that they know how to report future complaints, and initiating follow-up contact with the complainant to determine if any additional acts of discrimination, harassment, or retaliation have occurred. If retaliation occurs, the District will take prompt and strong responsive action, including possible discipline, including expulsion or termination, if applicable.

3. Grievance (or Complaint) Procedures:

Employees or students should initially report all instances of discrimination, harassment or retaliation to their immediate supervisor or teacher or to the compliance coordinator designated to handle complaints of discrimination (designated coordinator). If the employee or student is uncomfortable in presenting the problem to the supervisor or teacher, or if the supervisor or teacher is the problem, the employee or student may report the alleged discrimination, harassment or retaliation (“discrimination”) to the

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designated coordinator, or in the case of students, to another staff person (such as a counselor or principal).

Other individuals may report alleged discrimination to the designated coordinator. If the designated coordinator is the person alleged to have committed the discriminatory act, then the complaint should be submitted to the Superintendent for assignment. A discrimination complaint form is attached to this grievance procedure and is available in the office of each District building, on the District's website, and from the designated coordinators.

District employees, supervisors and administrators must immediately report any complaints, reports, observations, or other information of alleged discrimination to the designated coordinator, even if that District employee is investigating the alleged discrimination as part of the District's student or employee disciplinary process, and provide the complainant with information for filing a complaint of discrimination, including a complaint form if requested, and contact information for the District's designated coordinator. If the District uses its disciplinary procedures to investigate and resolve an alleged discrimination complaint, those disciplinary procedures will comply with the District's standards for a prompt and equitable grievance procedure outlined in section B.2., below.

Under no circumstances will a person filing a complaint or grievance involving discrimination be retaliated against for filing the complaint or grievance.

***i.* Level 1 (Investigation and Findings):**

Once the District receives a grievance, complaint or report alleging discrimination, harassment, or retaliation, or becomes aware of possible discriminatory conduct, the District will conduct a prompt, adequate, reliable, thorough, and impartial investigation to determine whether unlawful harassment occurred. If necessary, the District will take immediate, interim action or measures to protect the alleged victim and prevent further potential discrimination, harassment, or retaliation during the pending investigation. The alleged victim will be notified of his or her options to avoid contact with the alleged harasser, such as changing a class or prohibiting the alleged harasser from having any contact with the alleged victim pending the result of the District's investigation. The District will minimize any burden on the alleged victim when taking interim measures to protect the alleged victim.

The District will promptly investigate all complaints of discrimination, even if an outside entity or law enforcement agency is investigating a complaint involving the same facts and allegations. The District will not wait for the conclusion or outcome of a criminal investigation or proceeding to begin an investigation required by this grievance procedure. If the allegation(s) involve possible criminal conduct, the District will notify the complainant of his or her right to file a criminal complaint, and District employees will not

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dissuade the complainant from filing a criminal complaint either during or after the District's investigation.

The District will aim to complete its investigation within **ten (10) working days** after receiving a complaint or report, unless extenuating circumstances exist. Extenuating circumstances may include the unavailability of witnesses due to illness or incapacitation, or additional time needed because of the complexity of the investigation, the need for outside experts to evaluate the evidence (such as forensic evidence), or multiple complainants or victims. If extenuating circumstances exist, the extended timeframe to complete the investigation will **not exceed ten (10) additional working days without the consent of the complainant, unless the alleged victim agrees to a longer timeline.** Periodic status updates will be given to the parties, when appropriate.

The District's investigation will include, but is not limited to:

- a. Providing the parties with the opportunity to present witnesses and provide evidence.
- b. An evaluation of all relevant information and documentation relating to the alleged discriminatory conduct.
- c. For allegations involving harassment, some of the factors the District will consider include: 1) the nature of the conduct and whether the conduct was unwelcome, 2) the surrounding circumstances, expectations, and relationships, 3) the degree to which the conduct affected one or more students' education, 4) the type, frequency, and duration of the conduct, 5) the identity of and relationship between the alleged harasser and the suspect or suspects of the harassment, 6) the number of individuals involved, 7) the age (and sex, if applicable) of the alleged harasser and the alleged victim(s) of the harassment, 8) the location of the incidents and the context in which they occurred, 9) the totality of the circumstances, and 10) other relevant evidence.
- d. A review of the evidence using a "preponderance of the evidence" standard (based on the evidence, is it more likely than not that discrimination, harassment, or retaliation occurred?)

The designated compliance coordinator (or designated investigator) will complete an investigative report, which will include:

- a. A summary of the facts,
- b. Findings regarding whether discrimination harassment, or other inappropriate conduct occurred, and
- c. If a finding is made that discrimination occurred, the recommended remedy or remedies necessary to eliminate such discrimination, harassment, or other inappropriate conduct.

If someone other than the designated compliance coordinator conducted the investigation, the compliance coordinator will review, approve, and sign the investigative

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report. The District will ensure that prompt, appropriate, and effective remedies are provided if a finding of discrimination, harassment, or retaliation is made. The District will maintain relevant documentation obtained during the investigation and documentation supportive of the findings and any subsequent determinations, including the investigative report, witness statements, interview summaries, and any transcripts or audio recordings, pertaining to the investigative and appeal proceedings.

The District will send concurrently to the parties written notification of the decision (findings and any remedy) regarding the complaint within **one (1) working day** after the investigation is completed. The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 11232g; 34 C.F.R. Part 99, permits the District to disclose relevant information to a student who was discriminated against or harassed.

ii. Level 2 (Appeal to the Superintendent):

If a party is not satisfied with the findings or remedies (or both) set forth in the decision, he or she may file an appeal in writing with the Superintendent within **five (5) working days** after receiving the decision. The Superintendent will review the appeal and the investigative documentation and decision, conduct additional investigation, if necessary, and issue a written determination about the appeal **within ten (10) working days** after receiving the appeal. The party who filed the appeal will be sent the Superintendent's determination at the time it is issued, and a copy will be sent to the designated compliance coordinator. [If the Superintendent is the subject of the complaint, the party will file the appeal directly with the Board.]

iii. Level 3 (Appeal to the Board):

If the party is not satisfied with the Superintendent's determination, he or she may file an appeal in writing with the Board of Education **within five (5) working days** after receiving the Superintendent's determination. The Board of Education will review the appeal, the Superintendent's determination, the investigative documentation and decision, and allow the party to address the Board at a Board meeting to present his or her appeal. The party will be allowed to address the Board at the Board's next regularly scheduled Board meeting (unless the Board receives the appeal within one week of the next regularly scheduled Board meeting) or at a time and date agreed to by the Board, designated compliance officer and the party. The Board will issue a written determination about the appeal **within thirty (30) working days** after the party addresses the Board. The party who filed the appeal will be sent the Board's determination at the time it is issued, and a copy will be sent to the designated compliance coordinator. The Board's determination, and any actions taken, will be final on behalf of the District.

4. Confidentiality:

The identity of the complainant will be kept confidential to the extent permitted by state and federal law. The District will notify the complainant of the anti-retaliation provisions of applicable laws and that the District will take steps to prevent retaliation and will take prompt and strong responsive actions if retaliation occurs.

If a complainant requests confidentiality or asks that the complaint not be pursued, the District will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or the request not to pursue an investigation, as long as doing so does not prevent the District from responding effectively to the harassment and preventing harassment of other students. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the District will inform the complainant that its ability to respond may be limited. Even if the District cannot take disciplinary action against the alleged harasser, the District will pursue other steps to limit the effects of the alleged harassment and prevent its recurrence, if warranted,

5. Training:

The District will ensure that relevant District employees are adequately trained so they understand and know how to identify acts of discrimination, harassment, and retaliation, and how to report it to appropriate District officials or employees.

In addition, the District shall ensure that employees designated to address or investigate discrimination, harassment, and retaliation, including designated compliance coordinators, receive additional specific training to promptly and effectively investigate and respond to complaints and reports of discrimination, and to know the District's grievance procedures and the applicable confidentiality requirements.

6. Designated Compliance Coordinators:

Designated compliance coordinators will be responsible for:

- a. Coordinating efforts to comply with anti-discrimination, anti-harassment, and anti-retaliation laws and regulations.
- b. Coordinating and implementing training for students and employees pertaining to anti-discrimination, anti-harassment and anti-retaliation laws and regulations, including the training areas listed above.
- c. Investigating complaints of discrimination (unless the coordinator designates other trained individuals to investigate).
- d. Monitoring substantiated complaints or reports of discrimination, as needed (and with the assistance of other District employees, if necessary), to ensure discrimination or harassment does not recur, and that retaliation conduct does not occur or recur.
- e. Overseeing discrimination complaints, including identifying and addressing any patterns or systemic problems, and reporting such

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- patterns or systemic problems to the Superintendent and the Board of Education.
- f. Communicating regularly with the District's law enforcement unit investigating cases and providing current information to them pertaining to anti-discrimination, anti-harassment, and anti-retaliation standards and compliance requirements.
 - g. Reviewing all evidence in harassment or violence cases brought before the District's disciplinary committee or administrator to determine whether the complainants are entitled to a remedy under anti-discrimination laws and regulations that was not available in the disciplinary process.
 - h. Ensuring that investigations address whether other students or employees may have been subjected to discrimination, including harassment and retaliation.
 - i. Determining whether District employees with knowledge of allegations of discrimination, including harassment and retaliation, failed to carry out their duties in reporting the allegations to the designated compliance coordinator and responding to the allegations.
 - j. Recommending changes to this policy and grievance procedure.
 - k. Performing other duties as assigned.

The designated compliance coordinators will not have other job responsibilities that may create a conflict of interest with their coordinator responsibilities.

7. Preventive Measures:

The District will publish and widely distribute on an ongoing basis a notice of nondiscrimination (notice) in electronic and printed formats, including prominently displaying the notice on the District's website and posting the notice at each building in the District. The District also will designate an employee to coordinate compliance with anti-discrimination laws (see Designated Compliance Coordinator section, above, for further information on compliance coordinator), and widely publish and disseminate this grievance procedure, including prominently posting it on the District's website, at each building in the District, reprinting it in District publications, such as handbooks, and sending it electronically to members of the school community. The District will provide training to employees and students at the beginning of each academic year in the areas (B.6.a-g) identified in the Training section, above.

The District also may distribute specific harassment and violence materials (such as sexual violence), including a summary of the District's anti-discrimination, anti-harassment, and anti-retaliation policy and grievance procedure, and a list of victim resources, during events such as school assemblies and back to school nights, if recent incidents or allegations warrant additional education to the school community.

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Amended June 11, 2018

Final Approval July 9, 2018

Amended July 13, 2015

Final Approval August 10, 2015

First Approval July 11, 2011

Final Approval August 8, 2011

Legal Reference: Title VI, 42 U.S.C. Sec. 2000d, Title VII, 42 U.S.C. Sec. 2000e, Title IX; 20 U.S.C. Sec. 1681, and the Nebraska Fair Employment Practices Act, Neb. Rev. Stat. Sec. 48-1101 et seq.

Age Discrimination in Employment Act (ADEA), the Older Workers Benefit Protection Act (OWBPA), 29 U.S.C. Sec. 621 et seq., and the Nebraska Age Discrimination in Employment Act, Neb. Rev. Stat. Sec. 48-1001 et seq.;

Americans with Disabilities Act (ADA), 42 U.S.C. Sec. 12101 et seq.

Section 504 of the Rehabilitation Act of 1973 (Section 504)

Pregnancy Discrimination Act, 42 U.S.C. Sec. 2000e(k)

Uniform Service Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Sec. 4301 et seq.

Neb. Rev. Stat. Sec. 79-2,115, et seq

Prohibition on Aiding and Abetting Sexual Abuse

0309 Prohibition on Aiding and Abetting Sexual Abuse

A school employee, contractor, or agent of the school district is prohibited from assisting another school employee, contractor or agent in obtaining a new job if the individual knows or has probable cause to believe, that such other employee, contractor, or agent engaged in sexual misconduct with a minor or student in violation of the law.

“Assisting” does not include the routine transmission of administrative and personnel files.

Exceptions to giving such assistance may only be made where the exception is authorized by the Every Student Succeeds Act (for example, where the matter has been investigated by law enforcement and the person has been exonerated and approved by the Superintendent or designee.)

First Approval July 11, 2016

Final Approval August 8, 2016

Prohibition on Aiding and Abetting Sexual Abuse

Manpower Planning

0310 Manpower Planning

The board of education shall provide general direction to the continuous and effective staffing of administrative, teaching, and classified positions within the school district with personnel having the skills, knowledge, experience, and related qualifications required for such positions.

First Approval June 11, 1984

Final Approval July 9, 1984

0311 **Job Descriptions**

The superintendent shall develop for the boards review and approval a job description for each position or class of position within the district. The job description for each position or class of position may include, but is not limited to, factors such as: qualifications for the position, to whom the position holder reports, supervisory responsibilities, job goals, performance responsibilities, and other factors which the superintendent , with the approval of the board, chooses to include in said job description.

The job description for each position shall serve the supervisor and the position holder as a guide in the execution of the duties of the position. The superintendent of schools shall conduct an annual review of each job description and shall submit any proposed revisions to the board for its review and action. Supervisors shall use a position holders job description for performance appraisal.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 79-1229 et.seq. Certificates.

79-1248 et.seq. Employment.

79-12107 et.seq. Tenure.

Staffing Plans

0312 Staffing Plans

The superintendent of schools shall be responsible for identification of the personnel needs of the district and shall prepare both long-range and annual staffing plans and shall specify, in writing, the procedures used for the development of such staffing plans.

The superintendent may include, but is not limited to, consideration of such factors as: district goals, work activities needed to accomplish district goals, nature and scope of the educational program of the district, how instruction is to be organized, the size of instructional groupings, the need for service and support personnel, staff balance, and other factors deemed to have an effect upon said staffing plans.

First Approval June 11, 1984

Final Approval July 9, 1984

Recruitment of Personnel

0320 **Recruitment of Personnel**

The superintendent shall be responsible for development of the recruitment plans of the district and shall specify, in writing, the procedures to be used for recruitment of personnel. Rules and regulations for the recruitment of personnel shall be in accord with any requirements or limitations established by law or by the policies and actions of the board. Rules, regulations, and procedures established for recruitment of personnel shall be submitted to the board for annual review and approval.

First Approval June 11, 1984

Final Approval July 9, 1984

0321 **Compliance with Public Employment**

The board of education affirms its intent to recruit and to employ personnel on the basis of their ability and qualifications, without regard to race, color, age, religion, sex, or national origin.

The board of education shall maintain its status as an equal opportunity employer and shall follow the principles of non-discrimination in practices used for recruitment and employment.

The board requires its employees to avoid abuses of individual employment rights.

First Approval June 11,1984

Final Approval July 9, 1984

Equal Opportunity Employment

0322 Equal Opportunity Employment

It is the policy of Bancroft-Rosalie Community Schools to employ the best qualified applicant for each position without regard to sex, disability, race, color, religion, veteran status, national or ethnic origin, marital status, pregnancy, childbirth or related medical condition, or other protected status, and to not fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's sex, disability, race, color, religion, veteran status, national or ethnic origin, marital status, pregnancy, childbirth or related medical condition, or other protected status.

There shall be no discrimination by school officials against any employee because of membership or activity in an employee organization or because of protected free speech activities.

Amended	July 13, 2015	Final	Approval August 10, 2015
First Approval	June 11, 1984	Final	Approval July 9, 1984

Selection of Personnel

0330 **Selection of Personnel**

The superintendent of schools shall be responsible for development of plans and procedures to be used in the selection of personnel; these plans and procedures shall be specified in writing and submitted to the board for review and action. Rules and regulations for the selection of personnel shall be in accord with any requirements or limitations established by law or by the policies and actions of the board. Rules, regulations, and procedures established for selection of personnel shall be submitted to the board for annual review and approval.

First Approval June 11, 1984 Final Approval July 9, 1984

Legal reference: 79-441 District property; custody and care; duty of board.

Employment of Personnel

0331 **Employment of Personnel**

All employees of the district shall be hired by the board through official action taken at any regular or special meeting of the board.

The superintendent shall nominate or recommend all persons considered by the board for employment in the district; the board will act to employ only upon the recommendation of the superintendent. Should the board choose to reject a nomination for employment made by the superintendent, the superintendent shall have the duty to nominate another qualified person for the board's consideration.

Members of the immediate family (spouse and children) of the members of the board or of the superintendent shall be employed only in those instances where the person to be employed is fully qualified or certified and when statutory provisions relative to conflict of interest and prohibitions regarding nepotism have been considered and compliance with such provisions and prohibitions has occurred (0126.1).

No member of the board may cast a vote in favor of the employment of any person when the member is related by blood or marriage to the applicant seeking employment in the district.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 79-1249 Teachers; qualifications; contracts; how executed.
79-1250 Schools; contract of employment; contents.

Contracts

0331.1 Contracts

The execution, renewal, amendment, or termination by the district of contracts of professional employees shall be governed by the laws of the State of Nebraska, as amended from time to time, and where there is no controlling law, then by the policies, rules, resolutions, and dictates of the board of education and the provisions of any agreement negotiated with professional employees or their recognized bargaining agents.

The terms and conditions of all contracts for the employment of professional personnel shall be specified in writing.

First Approval June 11, 1984 Final Approval July 9, 1984

Legal Reference 79-1248 et.seq. Employment.

79-1287 et.seq. Teachers Professional Negotiation Act.

79-12107 et.seq. Tenure.

Term of Employment

0331.2 Term of Employment

All professional employees shall be on duty as specified by the terms of the employment contract.

The board reserves the right to extend the adopted school calendar to compensate for days lost due to any factor which is beyond the control of the district; such extensions shall be without additional compensation for professional employees contracted for the period covered by an adopted school calendar.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal reference: 79-1248 et.seq. Employment.

79-1253 Epidemic; teacher salaries; duty to pay.

Oaths

0331.3 Oaths

All persons engaged in teaching in the public schools of the State of Nebraska and all other employees paid from public school funds shall sign the pledge and oath as prescribed by law.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal reference: 11-101.01 Oath of office; State and political subdivision; employees; form.
79-4148 Teachers and employees; pledge; form.

Social Security Numbers

0331.4 **Social Security Numbers**

Employee social security numbers shall be kept confidential to the extent required by law. Use of use more than the last four digits of an employee's social security number shall be made by the District only for:

1. Legal Mandates. Compliance with state or federal laws, rules, or regulations.
2. Internal Administration. Internal administrative purposes, including provision of employee social security numbers to third parties for such purposes as administration of personnel benefits and employment screening and staffing. However, the internal administrative uses shall not permit use of employee social security numbers:
 - a. As an identification number for occupational licensing.
 - b. As an identification number for drug-testing purposes except when required by state or federal law.
 - c. As an identification number for District meetings.
 - d. In files with unrestricted access within the District.
 - e. In files accessible by any temporary employee unless the temporary employee is bonded or insured under a blanket corporate surety bond or equivalent commercial insurance.
 - f. For posting any type of District information.
3. Voluntary Transactions. Commercial transactions freely and voluntarily entered into by the employee with the District for the purchase of goods or services.

The District will not use or require an employee to use more than the last four digits of an employee's social security number District for:

1. Public Posting or Display. Any public posting or display available to the general public or to an employee's coworkers.
2. Internet Transmission. Transmission over the Internet unless the connection is secure or the information is encrypted.
3. Internet Access. To access an Internet web site unless a password, unique personal identification number, or other authentication device is also required to access the Internet web site.
4. Identifier. As an employee number for any type of employment-related activity.

Full implementation of this Policy shall occur by September 1, 2008.

First Approval August 13, 2007

Final Approval Sept. 10, 2007

Legal Reference: Laws 2007, LB 674; 5 USCS § 552a (note) (Privacy Act of 1974)

Classified

0332

Classified

The board, upon recommendation of the superintendent, shall employ, assign, transfer, reclassify, and terminate the services of classified personnel and approve contracts and regulations governing their employment and duties.

The superintendent shall prepare a personnel handbook for classified employees which specifies the conditions of employment, the activities of classified employees, the compensation and benefits of classified employees, and provisions for absences, leaves and vacations of classified employees.

The personnel handbook for classified employees shall be reviewed on annual basis by the board and shall be adopted for a period of time identical with the fiscal year of the district.

The personnel handbook for classified employees shall include job descriptions for all classified employees; the job description for an employee shall specify the conditions of employment and compensation within the general guidelines provided by the personnel handbook for classified employees.

Classified employees shall have the same rights and privileges as professional employees except when such rights are prohibited by law, by board policy, or by conditions specified in the personnel handbook for classified employees as approved by the board.

First Approval June 11, 1984 Final Approval July 9, 1984

Legal Reference: 79-401 School District; body corporate; powers.
79-441 District property; custody and care; duty of board.

Full Time Employment

0332.1 Full Time Employment

On an annual basis, the board, with the advice of the superintendent, shall specify the conditions which shall be considered minimal for classification of hourly employees as full time employees. Such conditions may include, but are not limited to: minimum number of hours of employment scheduled on a weekly basis, minimum number of hours of employment scheduled on a monthly basis, minimum number of hours of employment scheduled on an annual basis, minimum age for full time employment, maximum age for full time employment, and such other factors as may be deemed, from time to time, as appropriate.

First Approval June 11, 1984

Final Approval July 9, 1984

Temporary and Part-Time Personnel

0333 Temporary and Part-Time Personnel

The superintendent is granted the authority to appoint temporary and part-time personnel as necessary for the personnel needs of the district. This authority shall include appointment of: replacement teachers, selected to fill a vacancy occurring during the school year; substitute teachers, employed to provide instruction during the temporary absence of a permanent employee; teachers employed on a part-time basis or for additional duties during the school year or during summer school programs offered by the district; student teachers placed within the school district.

Temporary and part-time professional personnel shall be selected in accordance with requirements which are and may be stated by law or included in policies adopted by the board or in negotiated agreements between the board and its professional employees.

When temporary or part-time personnel are employed by the superintendent, the board shall be informed; the right of review of such employment is a power reserved by the board.

First Approval June 11, 1984 Final Approval July 9, 1984

Legal Reference: 79-441 District property; custody and care; duty of the board.

0334 **Fair Labor Standards Act: Minimum Wage and Overtime**

Work week: The work week for overtime purposes shall be 12:00 am Sunday until 11:59 pm Saturday. The administration may establish a different 7-day period workweek from time to time for specified employees or employee groups.

Overtime: Overtime will be paid to non-exempt employees as required by law. Compensatory pay in-lieu of overtime may be implemented in accordance with law. A non-exempt employee shall not work overtime without the express approval of the administration.

Salaried Basis: The District's policy is to not permit improper deductions from the salary of exempt employees who are required to meet a "salaried basis" test for the exemption to be applicable. (Teaching professionals are not subject to the "salaried basis" test). An employee who feels an improper deduction affecting exemption status has occurred may submit a complaint to the Superintendent or the Superintendent's designee, who shall promptly investigate the complaint. Reimbursement shall be made and a good faith commitment to comply in the future will be given in the event it is determined that an improper deduction affecting overtime exemption has been made.

The District's policy is to authorize unpaid disciplinary suspensions of a full day or more for infractions of workplace conduct rules and to apply such policy uniformly to all similarly situated employees, including exempt employees who are required to meet a "salaried basis" test for the exemption to be applicable. Unpaid disciplinary suspensions of a partial day or of a full day or more may be implemented for infractions of safety rules of major significance. Deductions of pay of a partial day or of a full day or more may be made for FMLA leaves and in the first and last weeks of employment. In addition, based on principles of public accountancy, deductions from pay of a partial day or of a full day or more will be made for absences for illness, injury or personal reasons when accrued leave is not used or not available, and for absences due to any budget-required furlough.

First Approval June 14, 2004 Final Approval July 8, 2004

Legal Reference: Fair Labor Standards Act, 29 USC 201; 29 CFR 541.303; 541.602; 541.603; 541.710; 553.20-28; and 771.105

Volunteers

0335 Volunteers

The use of volunteers within the school program enhances the educational process both for students and for the community. Volunteers may provide additional support in the classroom, promote community-school cooperation in facilitating the learning process and provide resource persons for the district who have expertise in various areas.

The Superintendent and/or the Board of Education shall make final determination whether an interested community member will serve as a volunteer. The safety and well being of the students, staff and volunteers of the district is the chief concern. Therefore, the district may conduct criminal background checks on all volunteers who work directly with and/or have access to students. Background checks, if completed, will be conducted prior to the first time the individual volunteers work with the students and the district reserves the right to conduct additional background checks periodically thereafter.

School volunteers shall be expected to abide by all applicable laws, district policies and administrative procedures when performing their responsibilities. All district employees working directly with a volunteer are responsible for directing and supervising the activities of the volunteer with broad supervision provided by the building principal/administrators.

It shall be the responsibility of the superintendent to promulgate regulations to ensure proper oversight, selection and orientation of volunteers for the district.

First Approval June 12, 2006

Final Approval July 10, 2006

Development of Personnel

0340 **Development of Personnel**

The superintendent of schools shall be responsible for determining the plans for the district relative to orientation, induction, in-service, and staff development of personnel. The superintendent shall specify, in writing, rules, regulations, and procedures to be used for the orientation, induction, in-service, and staff development of personnel. Rules and regulations for the development of personnel shall be in accordance with any requirements or limitations established by law, by board policy, or by the conditions of any negotiated agreement between the board and its employees. Rules, regulations, and procedures established by the superintendent for the development of personnel shall be submitted, in writing, to the board of education for its annual review and approval.

First Approval June 11, 1984

Final Approval July 9, 1984

Orientation

0341 Orientation

The superintendent of schools, or persons designated by the superintendent, shall provide either or both individual and group activities for the purpose of providing employees who are newly employed or reassigned to new duties with orientation to duties of their new positions and conditions which pertain to their employment and performance appraisal.

First Approval June 11, 1984

Final Approval July 9, 1984

Professional Growth

0342 Professional Growth

All professional employees of the district are expected to engage in activities which maintain and improve their professional skills during the period of their employment by the district.

Professional growth activities include exchange teaching, contributions to the local school district through participation in in-service programs and in activities designed to develop plans or materials for district use, study in colleges or universities or through participation in workshops offered by public and private agencies, community service, and occupational experience.

The superintendent is charged with responsibility for development, implementation, and evaluation of professional development and in-service opportunities for school employees.

The superintendent shall establish a system for maintenance of records of the professional growth of each employee; this system, and requirements for employee notification of professional growth experiences which may be completed, shall be described in the employee handbooks of the district.

Any professional growth points approved for advancement on the salary schedule shall be derived from programs which could be reasonably expected to improve the employees performance of assigned duties.

The superintendent shall conduct an annual review of the professional growth activities and accomplishments, and an annual review of employee handbook provisions related to professional growth and shall submit a report to the board with any proposed recommendations or revisions for board review and action.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 79-12113 Permanent certificated employee, evidence of professional growth required.

Performance Appraisal

0350 Performance Appraisal

The superintendent shall be responsible for development of the performance appraisal plans of the district and shall specify, in writing, the rules, regulations, and procedures to be used in performance appraisal of employees. Rules, regulations, and procedures prepared by the superintendent for performance appraisal of personnel shall be submitted, in writing, to the board of education for annual review and approval.

A description of the performance appraisal system in effect for a contract period, as approved by the board of education, shall be provided to each employee.

The performance appraisal system of the district shall be a data source for decisions about any or all of the following: identification of district in-service and professional growth needs; determination of merit, retention, transfer, promotion, or dismissal of employees.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 79-12111 Probationary certificated employee; probationary period; evaluation; contract amendment or non-renewal; procedure.

79-12113 Permanent certificated employee, evidence of professional growth required.

0350.1 **Evaluation of Certificated Employees**

All certificated employees to be evaluated shall be notified annually in writing. A certified administrator, with the exception of the local board of education when it is evaluating the superintendent, will observe and evaluate each probationary certified employee for a full instructional period once each semester and each permanent certificated employee for a full instructional period once each school year. If the probationary certificated employee is a superintendent, he or she shall be evaluated twice during the first year of employment and at least once annually thereafter. The evaluation will include, but not be limited to evaluating the employee's instructional performance, classroom organization and management, personal conduct, and professional conduct. Evaluation of instructional performance and classroom organization and management is applicable to teachers only. The administrator will provide the employee with a written list of deficiencies, suggestions and a timeline for correcting the deficiencies and improving performance, and sufficient time to improve. The evaluation form will include notice that the employee may respond to the evaluation in writing.

The school district will train administrators in evaluation annually through meetings with the superintendent or other administrator, attendance at regional, state or national workshops, or any other method approved by the superintendent.

For the purposes of this policy, the terms "actual classroom observation" and "entire instructional period" are defined as follows:

Entire Instructional Period. For certificated employees whose classes are held during defined periods of time (e.g., senior high classes), an entire instructional period consists of one such time period. For those whose time periods are not so defined (e.g., elementary classroom teachers), an entire instructional period consists of 40 minutes. The instructional period for those whose work does not necessarily involve continuous instruction for 40-minute periods (e.g., librarians or speech therapists) consists of no less than 40 minutes total during the semester. The entire instructional period for administrators cannot be defined in terms of an instructional period and shall be satisfied by the actual observation of an administrator's work during the semester for no less than 40 minutes.

Evaluation of Certificated Employees

Actual Classroom Observation. Actual classroom observation consists of observing the certificated employee in any activities in a classroom setting. When a certificated employee does not have classroom responsibility (e.g., administrators or librarians), the requirement of "actual classroom observation" will be satisfied by observing the certificated employee performing activities that are typical of his or her position.

This policy and the evaluation instrument shall be included in the teacher handbook which will be distributed to staff members upon their employment and annually thereafter.

First Approval August 13, 2012 Final Approval September 10, 2012

0350.2

Evaluation of Probationary Certificated Employees

A certificated administrator will observe and evaluate each probationary certified employee for a full instructional period once each semester. The administrator will provide each employee with a written list of deficiencies, concrete suggestions for improvement, and sufficient time to improve.

For the purposes of this policy, the terms "actual classroom observation" and "entire instructional period" are defined as follows:

Entire Instructional Period. For certified employees whose classes are held during defined periods of time (e.g., senior high classes), an entire instructional period consists of one such time period. For those whose time periods are not so defined (e.g., elementary classroom teachers), an entire instructional period consists of 40 minutes. The instructional period for those whose work does not necessarily involve continuous instruction for 40-minute periods (e.g., librarians or speech therapists) consists of no less than 40 minutes total during the semester. The entire instructional period for administrators cannot be defined in terms of an instructional period and shall be satisfied by the actual observation of an administrator's work during the semester for no less than 40 minutes.

Actual Classroom Observation. Actual classroom observation consists of observing the certified employee in any activities in a classroom setting. When a certified employee does not have classroom responsibility (e.g., administrators or librarians), the requirement of "actual classroom observation" will be satisfied by observing the certified employee performing activities that are typical of his or her position.

First Approval June 10, 2019

Final Approval July 8, 2019

Compensation of Personnel

0360 Compensation of Personnel

Compensation of district employees shall be in accordance with provisions of law and contracts established between the board and either individual employees or employee bargaining units. The specifics of compensation and related benefits shall be stated in such contracts or agreements or shall be as provided by statute.

First Approval June 11, 1984 Final Approval July 9, 1984

Legal Reference: 79-1248 et.seq. Employment.
79-1287 et. seq. Teachers Professional Negotiation Act

Salary Guides

0361 Salary Guides

Salaries of administrative and supervisory personnel shall be established through negotiation between individual employees and the board. The board may request the superintendent to provide salary recommendations for administrative and supervisory personnel.

Teachers shall be paid according to a salary schedule negotiated between the board and the organization or organizations recognized by the board as representative organizations for purposes of negotiation of professional and employment relations between teachers and the district.

As provided by law, no certified employee shall be compelled to join a representative organization for purposes of negotiation of professional and employment relations and individual employees, not members of a bargaining group, shall have the right to represent themselves individually in their employment relations with the board.

The board shall not pay any employee less than the salary which the employee would receive as provided by the salary schedule negotiated between the board and a representative organization; the board reserves the right, however, to pay an employee at a rate higher than the rate provided in the salary schedule when such an increase would, in the judgment of the board, serve the best interests of the district.

First Approval June 11, 1984 Final Approval July 9, 1984

Legal Reference: 79-1287 et.seq. Teachers Professional Negotiation Act.

Classified Personnel

0361.1 Classified Personnel

The superintendent, on an annual basis, shall recommend job placement and hourly wage rates for classified employees. The board, after review of the superintendent's recommendations, shall adopt hourly wage rates to be paid to classified employees.

The superintendent's recommendations for hourly wage rates and salary adjustments for classified personnel shall be presented to the board by or before the regular meeting of the board in April of each year. After board action on hourly wage rates and salary adjustments, all classified employees will receive notice of salary adjustments and hourly wage rates; such notices shall be provided by April 30 of each year.

Changes in salary and hourly wage rates shall take effect on July 1 of each year and shall continue without change, except by board action at a regular meeting of the board, until June 30 of the next year.

Employees must have been employed full time for at least four (4) months to be eligible for salary adjustments, except as otherwise may be decided, from time to time, by the board.

Salary adjustments must be recommended by the employees immediate supervisor and the superintendent, and approved by the board, before salary adjustments will take effect.

First Approval June 11, 1984

Final Approval July 9, 1984

Nurse

0361.2 Nurse

School nurses shall be entitled to the same fringe benefits as certified employees, but shall not be placed upon the teacher salary schedule. The salary of school nurses shall be determined on an annual basis by the board, acting upon the superintendent's recommendation.

First Approval June 11, 984

Final Approval July 9, 1984

Salary Checks and Deductions

0362 Salary Checks and Deductions

All school employees shall be paid in accordance with provisions of employment contracts and salary agreements or hourly wage rates as negotiated between the board and either individual employees or representative bargaining groups. All deductions shall be made in accordance with law, when authorized in writing by the employee, and as approved by the district.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 79-460 Treasurer; district funds; receipt and disbursement.

79-461 Treasurer; records and reports required; delivery upon expiration of office.

79-12101 Teacher or administrator; professional or labor organization; deductions from wages.

79-12102 Deduction from wages; authorization; form.

Pay Days

0362.1 Pay Days

All employees will be paid on a monthly basis, as specified in board action establishing an annual schedule of dates for payment of wages and salaries.

First Approval June 11, 1984

Approval July 9, 1984

Wage and Deduction Information

0362.2 Wage and Deduction Information

Within ten working days after a written request is made by an employee, the Superintendent or designee shall furnish the employee with an itemized statement listing the wages earned and the deductions made from the employee's wages for each pay period that earnings and deductions were made. The statement may be in print or electronic format.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: Neb. Rev. Stat. 48-1230

Fringe Benefits

0363 Fringe Benefits

Fringe benefits, in addition to the employee's basic salary or wages, are recognized as an integral part of the employee's compensation. All fringe benefits required by law shall be provided to all employees, e.g. social security contributions, retirement benefits, and so forth.

In addition to fringe benefits required by law, the superintendent shall review fringe benefits provided by the district and, as appropriate, recommend for board consideration other fringe benefits. All personnel shall receive any fringe benefits which are granted through negotiation between the board and any individual or representative bargaining group.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 79-12101 Teacher or administrator; professional or labor organization; deduction wages.

79-12102 Deduction from wages, authorization; form.

Activity Passes

0363.1 Activity Passes

The superintendent shall develop rules and regulations, for board review and action, governing the distribution of activity passes, including activity passes provided to employees as a fringe benefit.

First Approval June 11, 1984

Final Approval July 9, 1984

0364 **Extra Pay for Extra Work**

Employees shall be paid extra pay for extra work in accordance with law and with provisions established by negotiation between the board and either individual employees or representative associations. in cases where provisions are not covered by statute, by negotiated agreements, by contract, or in hourly wage rates established by the district, the superintendent shall have the responsibility to develop recommendations for extra pay for extra work for the boards review and action.

First Approval June 11, 1984

Approval July 9, 1984

79-460 Treasurer; district funds; receipt and disbursement.

79-461 Treasurer; records and reports required; delivery upon expiration of office.

79-12101 Teacher or administrator; professional or labor organization; deduction from wages.

79-12102 Deduction from wages, authorization; form.

0365 Section 125 Cafeteria Plan

ARTICLE I – DEFINITIONS

As used in this Plan, the following terms shall have the following meanings unless the context clearly indicates otherwise:

- 1.1 “Administrator” means the individual(s) or entity appointed by the Employer in the Adoption Agreement to carry out the administration of the Plan or the Employer if no such individual(s) or entities are appointed.
- 1.2 “Adoption Agreement” means the provisions of the Plan set forth in Article VII.
- 1.3 “Benefits” mean cash and the various qualified benefits under Section 125(f) of the Code sponsored by the Employer and available under this Plan as set forth in the Adoption Agreement.
- 1.4 “Benefits Enrollment Form” means the form or forms, including a Salary Reduction Agreement, evidencing an eligible Employee’s selections from among the various Benefits and the amount to be contributed towards various Benefits for a Plan Year or portion of a Plan Year.
- 1.5 “Code” means the Internal Revenue Code of 1986, as amended from time to time.
- 1.6 “Compensation” means all the earned income, salary, wages and other earnings paid by the Employer to a Participant during a Plan Year, including any amounts contributed by the Employer pursuant to a Salary Reduction Agreement which are not includible in gross income under Sections 125, 132(f), 402(g)(3), 402(h), 403(b) or 457(b) of the Code.
- 1.7 “Dependent” means an individual who qualifies as a dependent under the terms of the applicable benefit plans offered under this Plan.
- 1.8 “Dependent Care Assistance Plan” means the Dependent Care Assistance Plan adopted by the Employer, if any.
- 1.9 “Effective Date” means the date specified in the Adoption Agreement on which the Plan is effective and applicable to the Employees.

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1.10 “Employee” means any individual whom the Employer treats as its common-law employee, who is performing services for the Employer for wages, salary, or other remuneration as evidenced by the Employer’s withholding taxes from such compensation. Unless otherwise provided in the Adoption Agreement, an independent contractor, a contractor’s employee and a leased employee shall not be considered an Employee hereunder. An independent contractor, a contractor’s employee and a leased employee (or other individual) who is reclassified as a common-law employee on a retroactive basis will not be treated as having been an Employee for purposes of the Plan for any period prior to the date that he or she is so reclassified.

1.11 “Employer” means the Employer named in the Adoption Agreement and any affiliate or subsidiary that, with the consent of the Employer, becomes an Employer by adopting the Plan, or any successor business organization that assumes the obligations of the Employer.

1.12 “Entry Date” means the date(s) specified by the Employer in the Adoption Agreement as of which eligible Employees may become Participants.

1.13 “Highly Compensated Employee” means an individual who is a highly compensated employee as defined in Code Section 125(e).

1.14 “Key Employee” means an Employee described in Code Section 416(i)(1) and the Treasury regulations thereunder.

1.15 “Medical Reimbursement Plan” means the Medical Reimbursement Plan adopted by the Employer, if any.

1.16 “Plan” means this instrument, including all amendments hereto.

1.17 “Plan Year” means the 12-consecutive month period specified in the Adoption Agreement.

1.18 “Salary Reduction Agreement” means the agreement between an Employee and the Employer authorizing the Employer to reduce the Employee’s Compensation while a Participant during the Plan Year for purposes of making contributions toward Benefits under the Plan.

1.19 “Spouse” means an individual who is legally married to a Participant but shall not include an individual separated from a Participant under a decree of legal separation.

ARTICLE II - ELIGIBILITY AND PARTICIPATION

2.1 Commencement of Participation. An Employee shall become a Participant in the Plan after providing the Plan Administrator with an executed Benefits Enrollment Form setting forth the Benefits to be made available to the Employee for the immediately following Plan Year or remaining portion of the Plan Year, provided the Employee satisfies the eligibility conditions set forth in the Adoption Agreement. As part of the Benefits Enrollment Form, the Participant shall also execute a Salary Reduction Agreement, which authorizes the Employer to withhold from the Participant's Compensation an amount the Participant elects to have contributed to the Plan.

2.2 Term of Participation. Each Participant shall be a Participant in the Plan for the entire Plan Year or the portion of the Plan Year remaining after the Participant's Entry Date, if later than the first day of the Plan Year. A Participant shall cease to be a Participant in the Plan on the earliest of:

(a) the date the Participant dies, resigns or terminates employment with the Employer, subject to the provisions of Section 2.3 and any continuation coverage rights under Federal or state law;

(b) the date the Participant fails to make required contributions under the Plan;

(c) the date the Participant ceases to be an eligible Employee; or

(d) the date the Plan terminates.

2.3 Participation by Rehired Employees. If a terminated Employee should later be rehired by the Employer in the same Plan Year as the Plan Year in which he or she separated from service, such Employee may elect to resume participation in the Plan under the terms of the Benefits Enrollment Form in force on the date of termination of employment.

2.4 HIPAA Portability. Notwithstanding any other provisions in this Article, any Employee who becomes eligible under the Health Portability and Accountability Act of 1996 ("HIPAA") for coverage by an accident or health plan offered as a Benefit under this Plan shall be allowed to participate in the Plan, so long as such Employee complies with the provisions set out in HIPAA.

2.5 Family Medical Leave Act. If a Participant (an "FMLA Participant") is on a leave described in the Family and Medical Leave Act ("FMLA Leave"), the rules in this Section apply. The FMLA Participant may continue his or her coverage under the Benefit plans during the leave, or revoke his or her election for coverage under the Benefit plans which are group health plans and under a Medical Reimbursement Plan as hereinafter provided. Upon return from the leave, the FMLA Participant may elect to reinstate his or her coverage under the group health plans and Medical Reimbursement Plan on the terms provided herein. If the FMLA Leave spans two Plan Years, the FMLA Participant may make his or her election either during the same enrollment period as do other Plan Participants, or if not during that period, within the two-week period immediately following the FMLA Participant's return from the leave. The FMLA Participant's elections will apply to the coverages which are in effect on the date the coverage is reinstated. The FMLA Participant also has the same rights as a non-FMLA Participant to make elections, including those relating to an event detailed in Section 4.5.

(a) Benefit Plans. If the FMLA Leave is a paid leave, the FMLA Participant may continue to pay the same portion of the premiums on the Benefit plans as he or she was previously. If the employee cost of those plans is raised or lowered for employees not on FMLA Leave, the FMLA Participant's cost will be similarly adjusted. If the FMLA Leave is unpaid, the FMLA Participant may elect to revoke his or her election of coverage for the balance of the Plan Year, or the FMLA Participant may continue to pay for the employee cost of the coverage in the same manner as other Members who have elected coverage under the Benefit plans. A Participant and his or her Employer shall agree to one of the following payment options for coverage under any group health plans while the Participant is on unpaid FMLA Leave:

(1) Pre-pay. An Employee may pre-pay premiums before commencement of leave through pre-tax or after-tax Salary Reduction Agreement from any taxable compensation, including cashing out of unused sick or vacation days, provided all other plan requirements are met.

(2) Pay-as-you-go. Employees may pay their share of premium payments on the same schedule as payments would be made if the employee were not on leave, or under another schedule permitted under Department of Labor regulations. The Employer shall not be required to continue the health coverage of an Employee who fails to make required premium payments while on FMLA leave. However, if the Employer chooses to continue the health

coverage of an Employee who fails to make required premium payment while on FMLA leave, the Employer is entitled to recoup those payments after the Employee returns from FMLA leave.

(3) **Catch-up-option.** The Employer shall advance the Employee's share of group health premiums while the Employee is on FMLA leave and thereafter shall be entitled to recover such advanced amounts when the Employee returns from FMLA leave. If the FMLA Leave spans two Plan Years, the FMLA Participant only may prepay by salary reduction the cost of coverage for the remainder of the Plan Year in which the FMLA Leave begins. If the FMLA Participant fails to make a payment, coverage under the Benefit plans may be discontinued so long as the FMLA Participant may be restored to his or her coverage under the plans and this Plan upon return from the FMLA Leave. If the terms of the plans would preclude the FMLA Participant from being restored to the coverage the FMLA Participant had prior to the commencement of the FMLA Leave, the Employer will continue to pay the FMLA Participant's cost of the coverage during the period of the leave, but the FMLA Participant must repay the amounts paid by the Employer to maintain the coverage. If the FMLA Participant fails to return to employment following an unpaid FMLA Leave, the FMLA Participant must reimburse the Employer for the amounts the Employer paid during the FMLA Leave.

(b) **Medical Reimbursement Plan.** An FMLA Participant in any Medical Reimbursement Plan of the Employer may continue or revoke his or her coverage under such Plan upon the occurrence of an FMLA Leave. An FMLA Participant may only revoke his or her coverage under such Plan during the period of FMLA Leave if the FMLA Leave is for a period of one month or less. An FMLA Participant may revoke his or her coverage under such Plan for the balance of the Plan Year if the duration of the FMLA Leave exceeds one month. If he or she revokes the coverage, upon return to employment following the FMLA Leave, he or she will be reinstated to coverage under the Medical Reimbursement Plan, but the maximum amount of reimbursements from such Plan following the leave will be limited to the amount elected for the Plan Year, minus amounts previously reimbursed during the Plan Year, minus amounts which the FMLA Participant would have contributed by salary reduction during the time of the leave had the leave not occurred. Salary reduction contributions will resume following the return from the leave at the same level as was in effect prior to the commencement of the leave, subject to adjustments as the result of any event detailed in Section 4.5. The FMLA Participant may continue his or her coverage under the Employer's Medical Reimbursement Plan so long as he or she continues to pay to the Employer an amount equal to the amount of the periodic salary reductions that would have been made

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absent the occurrence of the leave. Coverage will terminate upon the failure to make any such payment, subject to reinstatement as described in the preceding paragraph. The FMLA Participant may not be reimbursed for expenses incurred during a period in which the coverage was not in effect. In addition to allowing the FMLA Participant to continue to make the payments during the leave, either by salary reduction if the FMLA Participant is receiving Compensation during the leave, or by after-tax payment, the Plan Administrator may allow prepayments of required amounts in accordance with any procedures that have been established pursuant to subsection (a) above.

(c) Dependent Care Assistance Plan. The FMLA Participant may continue to receive reimbursements for expenses during the leave if the expenses qualify for reimbursement under the Employer's Dependent Care Assistance Plan. The FMLA Participant may also continue salary reduction contributions applicable to such plans if the leave is paid, or may make after-tax contributions if it is unpaid. If the FMLA Participant elected to revoke his or her election to contribute to the Cafeteria Plan during the leave, he or she may resume salary reduction contributions to these plans upon return to employment at the same level as was the case immediately prior to the commencement of the leave, subject to adjustment as a result of an event detailed in Section 4.5.

ARTICLE III – CONTRIBUTIONS

3.1 Source of Contributions. The Employer shall contribute to the Plan amounts deemed necessary to meet its obligations under the Plan. Contributions to the Plan for the Plan Year shall be limited to the amounts determined by the Benefits Enrollment Forms entered into by Participants for the Plan Year. Employer contributions shall be made, if any, for each Participant in an amount set forth in the Adoption Agreement. Any Employer Contributions shall be deemed credited first to benefits other than the Medical Reimbursement Plan. Employer contributions shall be available for taxable as well as nontaxable benefits under the Plan. Contributions to the Plan shall be made to, and all Plan assets shall be held in, such accounts or funds as the Employer deems appropriate.

3.2 Maximum Contribution. The maximum contribution any individual can make under this Plan is an amount equal to the sum of the costs for each of the highest cost premium-type Benefit Options offered under the Plan in each Benefit Category plus the sum of the deferrals made to reimbursement-type benefit programs under this Plan. The term "Benefit Option" refers to any category of Benefits offered under this Plan in which the Participant has the opportunity to choose one benefit from several different options in that category. The term "Benefit Category" refers to any category of Benefits offered under this Plan and may include (but is not limited to) health insurance, group term life insurance or disability insurance.

ARTICLE IV - BENEFITS

4.1 Benefit Options. A Participant may elect under this Plan to receive his or her full compensation for any Plan Year in cash or may agree with the Employer to have his or her compensation reduced and have such reduction applied by the Employer toward one or more Benefits available under the Plan as set forth in the Adoption Agreement.

4.2 Benefits Other than Cash. A Participant's election to receive cash or one of the Benefits described in the Adoption Agreement must be made under this Plan. However, benefits, other than cash, will not be provided by this Plan but will be provided by the Benefit plans, contracts, policies or other documents, as applicable. The types and amounts of Benefits described in the Adoption Agreement, the requirements for participating in such Benefit plans and the terms of coverage and benefits under such Benefit plans are set forth from time to time in such Benefit plans, contracts, policies or other documents, as applicable, that constitute (or are incorporated by reference in) such plans. Such plan documents and the descriptions thereof are incorporated by reference into this Plan.

4.3 Election Procedure. The Plan Administrator shall provide written election forms to each Employee who is expected to become a Participant prior to such Participant's date of participation and to other Participants prior to the commencement of a Plan Year. A Participant's election form is effective as of the beginning of the first pay period coincident with the commencement of participation in the case of a new Participant or as of the beginning of a Plan Year for other Participants. A Participant's election form must be completed and returned to the Plan Administrator on or before such date as the Plan Administrator specifies. The Plan Administrator may implement procedures providing for electronic elections provided that such procedures are approved in advance by the Employer and are in compliance with applicable law.

4.4 Failure to Elect. A Participant failing to return a completed election form to the Administrator on or before the specified due date for any Plan Year of the Plan shall be deemed to have elected to receive his or her full Compensation in cash.

4.5 Irrevocability of Election. A Participant may revoke his or her election for the balance of a Plan Year and file a new election only if the revocation and new election are on account of and consistent with an event described in this Section or FMLA leave rights. New elections will be effective not earlier than the first pay period beginning after the election form is returned to the Plan Administrator. A Participant's revocation of an election during a period of coverage and new election for the remaining portion of the period (referred to below as an "election change") is consistent with an event described

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in this Section if, and only if (a) such event results in the Participant, Spouse, or Dependent gaining or losing eligibility for accident or health coverage under either a cafeteria plan or an accident or health plan of the Spouse's or Dependent's employer, and (b) the election change corresponds with that gain or loss of coverage. An event described in this Section results in a Participant, Spouse, or Dependent gaining (or losing) eligibility for coverage under a plan only if the individual becomes eligible (or ineligible) to participate in the plan. An individual will be treated as gaining (or losing) eligibility for coverage if the individual becomes eligible (or ineligible) for a particular benefit package option under a plan (e.g., such an event results in an individual becoming eligible for a managed care option or an indemnity option).

If the event is the Participant's divorce, annulment or legal separation from a Spouse, the death of a Spouse or Dependent, or a Dependent ceasing to satisfy the eligibility requirements for coverage, the Participant's election under this Plan to cancel coverage under a benefit plan for any individual other than the Spouse involved in the divorce, annulment or legal separation, the deceased Spouse or Dependent, or the Dependent that ceases to satisfy the eligibility requirements for coverage, respectively, fails to correspond with that event. Thus, if a Dependent dies, or ceases to satisfy the eligibility requirements for coverage, the Participant's election to cancel coverage for any other Dependent, for the Participant, or for the Participant's Spouse fails to correspond with that event.

If a Participant, Spouse, or Dependent becomes eligible for coverage under a cafeteria plan or other qualified benefit plan sponsored by the employer of the Participant's spouse or dependent ("Family Participant Plan") as a result of a change in marital status or a change in employment status, a Participant's election under the cafeteria plan or other qualified benefit plan to cease or decrease coverage for that individual under the Plan corresponds with that event only if coverage for that individual becomes applicable or is increased under the Family Participant Plan.

If a Participant, Spouse or Dependent becomes eligible for continuation coverage under any group health plan of the Employer under COBRA or any similar state law, a Participant may alter his or her election to pay for the increased cost of continuation coverage.

No Participant in the Plan shall be allowed to alter or discontinue the Participant's elections under his or her Benefits Enrollment Form during a Plan Year except under any of the circumstances:

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(a) Change in Status, which means:

1) A change in the Participant's legal marital status, including marriage, death of a Spouse, divorce, legal separation or annulment;

(2) A change in the Participant's number of Dependents, including birth, adoption, placement for adoption (as defined in regulations under Code Section 9801) or death of a Dependent;

(3) A change in the employment status of the Participant, Spouse or Dependent, including a termination or commencement of employment, a strike or lockout, a commencement of or return from an unpaid leave of absence and a change in worksite. In addition, if the eligibility conditions of the cafeteria plan or other benefit plan of the employer of the Participant, Spouse or Dependent depend on the employment status of that individual and there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the plan, then that change constitutes a change in employment under this section (e.g., a switch between salaried and hourly-paid, a switch between full-time and part-time).

4) An event that causes a Participant's Dependent to satisfy or cease to satisfy the coverage requirements for a particular benefit due to attainment of age, student status or any similar circumstance; and

(5) A change in the place of residence of the Participant, Spouse or Dependent.

(b) HIPAA Special Enrollment Rights. If a Participant, Spouse or Dependent is entitled to special enrollment rights under a group health plan pursuant to Code Section 9801(f) because he or she previously declined coverage due to the existence of other coverage or acquires a new dependent due to marriage, birth, adoption or placement for adoption, the Participant may revoke his or her election under the Participant's Benefits Enrollment Form and make a new election with respect to the health plan provided the new election is consistent with the event causing the special enrollment rights.

(c) Various Judgments, Decrees or Orders. If a Participant is a party to a judgment, decree or order resulting from a divorce, legal separation, annulment or change in legal custody that requires accident or health coverage for the Participant's child, the Participant may change his or her election to provide such coverage for the child if the judgment, decree or order requires accident or health

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coverage for the child or the Participant may change his or her election to cancel coverage for the child if the judgment, decree or order requires another individual (including the former spouse) to provide coverage for the child and the Participant demonstrates that other coverage is, in fact, provided for the child.

The Plan will enroll any alternate recipient in the Employer's accident or health plan upon receipt of any court order or other document (collectively "order") which the Employer determines to be a Qualified Medical Child Support Order pursuant to the Employer's procedures for determining the qualified status of such orders. The Plan will enroll the alternate recipient in such plan in accordance with the benefit option specified in the order. If a benefit option is specified in the order, but the Employee to whom the order relates is not enrolled in such plan, the Employer will enroll both the Employee and the alternate recipient in the such plan under the option specified in the order and will reduce the Employee's Compensation each Plan Year pursuant to this Plan and use the amount of the reduction to pay for the coverage specified in the order.

If no benefit option is specified in the order, but the Employee to whom the order relates is already enrolled in the accident or health plan, the Employer will enroll the alternate recipient under the same option as that of the Employee and will automatically change the Participant's Benefits Enrollment Form to reflect such change. If there is a change in the cost, the Employer will automatically change the Participant's Benefits Enrollment Form to reflect such change.

If no benefit option is specified in the order and the Employee to whom the order relates is not enrolled in the accident or health plan, the Employer will not consider the order to be a qualified order. If the Employer determines that the order is not a qualified order, it will notify the parties to the order, including the agency issuing the order if applicable, that the order is not qualified and therefore, such plan will not enroll the alternate recipient in the plan until it receives further instructions from the issuing agency or court as to the appropriate benefit option for the alternate recipient.

(d) Medicare or Medicaid. If the Employee, Spouse or Dependent who is enrolled in a health or accident plan offered as a Benefit under this Plan becomes or ceases to be enrolled under Medicare or Medicaid, other than coverage consisting solely of benefits under the program for distribution of pediatric vaccines, the Participant may prospectively cancel, commence, decrease or increase coverage, as applicable, of the Employee, Spouse or Dependent, as applicable, under the health or accident plan of the Employer.

(e) Change in Coverage. *This subsection (e) does not apply to any Medical Reimbursement Plan.*

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(1) If during a period of coverage, a benefit plan or policy offered as a Benefit under this Plan adds a new benefit package option or other coverage option or significantly improves a benefits package option or other coverage option, an Employee may change his or her election to elect the newly-added or newly-improved option, or an eligible Employee may elect to commence participation in the Plan and elect the newly-added or newly-improved option if the Employee was not previously participating in the Plan. If such a benefit plan or policy eliminates an existing benefit package option or other coverage option, a Participant may change his or her election to elect another benefit package option or other coverage option under such plan or policy which provides similar coverage.

(2) If coverage under a benefit plan or policy offered as a benefit under this Plan is significantly curtailed resulting in a complete loss of coverage during a period of coverage, a Participant may change his or her election to prospectively elect coverage under another benefit package option which provides similar coverage, or if no similar benefit package option is available, revoke his or her election for coverage under the benefit plan or policy. A loss of coverage includes a substantial decrease in medical care providers available under the option of accident or health coverage (such as a major hospital ceasing to be a Participant of a preferred provider network), a reduction in benefits for a specific type of medical condition or the treatment with respect to which the Participant, Spouse or Dependent is currently in a course of treatment or any other similar fundamental loss of coverage. If coverage under a benefit plan or policy offered as a benefit under this Plan is significantly curtailed but without resulting in a complete loss of coverage during a period of coverage, a Participant may change his or her election to prospectively receive coverage under another benefit package option under such benefit plan or policy providing similar coverage. Coverage under an accident or health plan is significantly curtailed only if there is an overall reduction in coverage provided to Employees under such plan so as to constitute reduced coverage to Employees generally.

(3) A Participant may prospectively change his or her election on account of and corresponding with a change made under another employer cafeteria plan other than this Plan (including a plan of the Employer), if the other cafeteria plan permits its participants to make an election change for a reason permitted under this Section or as a result of FMLA rights, or this Plan has a period of coverage that is different from the period of coverage under another employer cafeteria plan or qualified benefits plan.

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(4) If during a period of coverage, a Participant, Spouse or Dependent loses coverage under any group health plan sponsored by a governmental or educational institution, including any state's children's health insurance program under Title XXI of the Social Security Act; a medical care program of an Indian tribal government (as defined in Code Section 7701(a)(40)), the Indian Health Service or a tribal organization; a state health benefits risk pool; or a foreign government group health plan, a Participant may change his or her election to elect coverage under the Plan for the affected Participant, Spouse or Dependent.

(f) **Change in Cost.** *This subsection (f) does not apply to any Medical Reimbursement Plan.*

(1) If the cost of a Benefit increases or decreases during a period of coverage, the Employer may prospectively increase or decrease, as applicable, the elections of affected Participants.

(2) If there is a significant increase or decrease in the cost of a benefit package option offered by the Employer during a period of coverage, a Participant may change his or her election to prospectively receive coverage under another benefit package option which provides similar coverage. If there is a significant increase in the cost of a benefit package option and no other benefit package option provides similar coverage, a Participant may revoke his or her election for coverage under the benefit package option. If there is a significant decrease in the cost of a benefit package option offered by the Employer during a period of coverage, an eligible Employee may elect to commence coverage under the Plan and elect the benefit package option that has significantly decreased in cost if the Employee was not participating in the Plan.

(3) This subsection (f) applies in the case of a Dependent Care Assistance Plan only if the cost change is imposed by a dependent care provider who is not an individual with respect to whom a deduction is allowable to the Employee or his or her Spouse under Code Section 151(c) (relating to personal exemptions for dependents) or who is a child of the Employee within the meaning of Code Section 152(f)(1) under the age of 19 years at the close of the taxable year.

(g) **Other Events.** If any subsequent changes are made to Code Section 125 or the Treasury regulations thereunder, the Plan Administrator, in its sole discretion, may recognize the other events specified in such guidance on a uniform and consistent basis.

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4.6 Nondiscrimination. Notwithstanding any provisions of insurance coverage provided for under this Plan and any other provisions of this Plan, this Plan shall not discriminate as to eligibility, contributions, or benefits in favor of Participants who are Highly Compensated Employees or Key Employees. If the Plan Administrator determines, before or during any Plan Year, that this Plan or any Benefit of a plan available hereunder may fail to satisfy any nondiscrimination requirement imposed by the Code or other applicable authority, the Plan Administrator may take such action as it deems appropriate, under rules uniformly applied to similarly situated Participants, to assure compliance with such requirements. Such action may include, without limitation, a modification of elections of Highly Compensated Employees or Key Employees with or without the consent of such employees.

ARTICLE V - PLAN ADMINISTRATION

5.1 Plan Administrator. The Plan Administrator shall be responsible for the administration of the Plan.

5.2 Plan Administrator's Duties Generally. The Plan Administrator shall administer the Plan and shall have the authority to exercise the powers and discretion conferred on it by the Plan and shall have such other powers and authority necessary or proper for the administration of the Plan as shall be determined from time to time by the Employer. For this purpose, the administrative powers will include, but will not be limited to, the following authority, in addition to all other powers provided by this Plan.

(a) to make and enforce such rules and regulations as the Plan Administrator deems necessary or proper for the efficient administration of the Plan, including the establishment of a claims procedure;

(b) to interpret the Plan, the Plan Administrator's interpretations thereof in good faith to be final and conclusive of all persons claiming benefits under the Plan;

(c) to decide all questions concerning the Plan and the eligibility of any person to participate in the Plan and to receive benefits provided under the Plan;

(d) to compute the amount of benefits which will be payable to any Participant in accordance with the provisions of the Plan;

(e) to approve and authorize the payment of benefits;

(f) to appoint such agents, counsel, accountants, consultants and actuaries as may be required to assist in administering the Plan; and

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(g) to prepare and file such documents as the Plan Administrator deems necessary to comply with the Code or other legislation.

Notwithstanding the foregoing, claims which arise under the Benefit plans will be reviewed and adjusted under the terms of such plans and shall not be subject to review under the terms of this Plan. The Plan Administrator's authority pursuant thereto shall not extend to any matter as to which another administrator is empowered under the terms of any other such plan to make determinations under such plan.

5.3 Information to be Provided to Plan Administrator. The Employer, or any of its agents, shall provide to the Plan Administrator any employment records of any employee eligible to participate under the Plan. Such records shall include, but will not be limited to, any information regarding period of employment, leaves of absence, salary history, termination of employment, or any other information the Plan Administrator may need for the proper administration of the Plan. Any Participant, Spouse or Dependent or any other person entitled to benefits under the Plan shall furnish to the Plan Administrator his correct post office address, his date of birth, the names, correct addresses and dates of birth of any designated beneficiaries, with proper proof thereof, or any other data the Plan Administrator might reasonably request to insure the proper and efficient administration of the Plan.

5.4 Rules to Apply Uniformly. The Plan Administrator shall perform his duties in a reasonable manner and on a nondiscriminatory basis and shall apply uniform rules to all Participants similarly situated under the Plan.

5.5 Indemnity. The Employer does hereby agree to indemnify and hold harmless, to the extent allowed by law and over and above any liability coverage contracts or directors and officers insurance, any officer or director of the Employer, designated by the Employer or the Plan Administrator who has been employed, hired or contracted to assist in the fulfillment of the administration of this Plan. In addition, the Employer agrees to pay any costs of defense or other legal fees incurred by any of the above parties over and above those paid by any liability or insurance contract.

ARTICLE VI - GENERAL PROVISIONS

6.1 Amendment and Termination. The Employer expects the Plan to be maintained indefinitely, but since future conditions affecting the Employer cannot be anticipated or foreseen, the Employer must necessarily and does hereby reserve the right to amend, modify, or terminate the Plan at any time. The Employer may make any modifications or amendments to the Plan that are necessary or appropriate to qualify or maintain the Plan as a plan meeting the requirements of the applicable sections of the Code. The

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Plan shall not be used for purposes other than for the exclusive benefit of Participants or their dependents, and no amendment shall divest any person of his interest therein, except as may be required by the Internal Revenue Service or other governmental authority, or give any person any assignable or exchangeable interest or any right or thing of exchangeable value.

6.2 Nonassignability. Any benefits to any Participants under this Plan shall be nonassignable and for the exclusive benefit of Participants, Spouses, Dependents and beneficiaries. No benefit shall be voluntarily or involuntarily assigned, sold or transferred.

6.3 Not an Employment Contract. By creating this Plan and providing benefits under the Plan, the Employer in no way guarantees employment for any employee or Participant under this Plan. Participation in this Plan shall in no way assure continued employment with the Employer.

6.4 No Guarantee of Tax Consequences. Neither the Plan Administrator nor the Employer makes any commitment or guarantee that any benefits described in this Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether said benefit is excludable from the Participant's gross income for federal or state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such benefit is not so excludable.

6.5 Rights Against Employer. Neither the establishment of the Plan, nor any modification thereof, nor any distributions hereunder, shall be construed as giving to any Participant or any other person any legal or equitable rights against the Employer or its board, officers, partners, or members, as applicable.

6.6 Severability. In any case where any provision of this Plan is held to be illegal or invalid, such illegality or invalidity shall apply only to that part of the Plan and shall not apply to any remaining provisions of the Plan, and the Plan shall be construed as if such illegal or invalid provision had never existed under the Plan.

ARTICLE VII - ADOPTION AGREEMENT

7.1 Establishment of Plan. The Employer has adopted this cafeteria plan as a means to allow employees to select among cash compensation and certain nontaxable benefits, namely coverage under one or more benefit programs sponsored by the Employer. The Employer intends that the Plan qualify as a cafeteria plan under Section 125 of the Internal Revenue Code of 1986, as amended, and that the benefits provided

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under the Plan, other than cash compensation, be eligible for exclusion from Federal income tax to the extent permitted by the Code.

7.2 Employer Information.

Employer: Cuming County School District 20-0020, Bancroft-Rosalie Community School District

Address: 708 Main Street, P.O. Box 129, Bancroft, Nebraska 68004

Telephone: (402) 648-3336

Employer Tax ID: 47- 6005722

7.3 Plan Information.

Initial Effective Date: September 1, 2008.

Amendment & Restatement Date: September 1, 2009.

Plan Year: September 1, 2008 through August 31, 2009.

Plan Name: Bancroft-Rosalie Community Schools Section 125 Plan Document.

Plan Number: 365

Entry Date(s): September 1, 2008.

7.4 Eligible Benefits. The Employer elects to provide the benefits elected in this section under this Plan. Only the benefits elected in this section are provided, notwithstanding any other provision of the Plan to the contrary. *(Mark benefits to be provided.)*

☒ Premium Conversion with respect to the following plans:

☒ Group Health and Dental Plan *(specify available coverages, i.e., single, employee/spouse, etc.)*

7.4.1 Level of Coverage:

7.4.1.1. Educators Health Alliance (EHA) Blue Cross/Blue Shield \$550 Deductible Plan with A, B and 50% C Dental Coverage effective for the period September 1, 2008 through August 31, 2009, as follows:

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7.4.1.1.1. Employee, Spouse, and Children Health and Single Dental = \$1,170.75 per month

7.4.1.1.2. Employee and Spouse Health and Single Dental = \$916.34 per month

7.4.1.1.3. Employee and Children Health and Single Dental = \$809.72 per month

7.4.1.1.4. Employee Health and Single Dental = \$447.19 per month.

7.4.1.1.5. Cash Payment = \$447.19 cash per month.

7.4.2 Benefit Options:

7.4.2.1. Employee with No Dependents. Where an Employee has no dependents, said Employee may make the following benefit election:

7.4.2.1.1 Employee Health and Single Dental insurance coverage; or,

7.4.2.1.2 Cash Payment.

7.4.2.2. Employee with Dependent(s). Where an Employee has dependents, said Employee may make following benefit election:

7.4.2.2.1. Dependent health insurance and single dental coverage;

7.4.2.2.2 Single health and dental insurance coverage; or,

7.4.2.2.3 Cash Payment.

☒ Medical Reimbursement Plan

The annual limit on amounts to be allocated to this plan is **\$2,200.00**. *(Note: The entire amount of this account is available for reimbursement of expenses from the first day of coverage, even though salary reductions occur throughout the Plan Year.)*

☒ Dependent Care Assistance Plan

7.5 Eligibility Requirements.

Only those Employees meeting the following requirements are eligible to participate in this Plan:

A certificated employee that has a full time equivalency of **.5** or more Eligible Employees participate on the following date: First day of the month next following the first day of service.

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(Examples: First day of service, First day of the month following specified number of months of service, First day of the Plan Year following first day of service. If different entry dates apply to different options, set forth these terms on an attachment to this adoption agreement and indicate "See Attachment")

7.6 Employer Contributions. The only contributions to be made to this Plan are Salary Reduction Contributions unless the Employer elects below:

X The Employer will make contributions in addition to Salary Reduction Contributions in the manner and amount described as follows: *(for example, describe any contributions to be made if Participant does not elect certain insurance coverages)*: See Section 7.4 above.

7.7 The Employer *(mark one)* ____ does X does not elect to allow reimbursements during a grace period following the end of the Plan Year.

7.8 Plan Administrator. The Employer is the Plan Administrator unless the Employer identifies a Plan Administrator below.

Plan Administrator: _____

Address: _____

Telephone: _____

Executed this 9th day of June, 2008 as the duly authorized officer of the Employer.

(Name and Title)

First Approval June 9, 2008

Final Approval July 14, 200

0365.1 **Medical Reimbursement Plan**

ARTICLE 1 - INTRODUCTION

1.1 Purpose - The purpose of the Plan is to provide reimbursement for certain medical expenses of Participants not otherwise covered by insurance or by the Employer. The Employer intends that the Plan qualify as an accident and health plan under Section 105(e) of the Code, and that the nontaxable benefits provided under the Plan are eligible for exclusion from Participants' income under Section 105(b) of the Code.

ARTICLE 2 - DEFINITIONS

As used in this Plan document, the following terms shall have the following meanings:

2.1 "Adoption Agreement" means the agreement set forth in Article VII of the Cafeteria Plan.

2.2 "Cafeteria Plan" means the Employer's Cafeteria Plan.

2.3 "Code" means the Internal Revenue Code of 1986, as amended from time to time.

2.4 "Compensation" means all the earned income, salary, wages and other earnings paid by the Employer to a Participant during a Plan Year, including any amounts contributed by the Employer pursuant to a salary reduction agreement which are not includable in gross income under Sections 125, 132(f), 402(g)(3), 402(h), 403(b) or 457(b) of the Code.

2.5 "Dependent" an individual defined in Code Section 152 without regard to Code Sections 152(b)(1), (b)(2) and (d)(1)(B). Any child to whom Code Section 152(e) applies (relating to custody of a child in the case of divorced parents) is treated as a dependent of both parents.

2.6 "Employee" means any individual whom the Employer treats as its common-law employee, who is performing services for the Employer for wages, salary, or other remuneration as evidenced by the Employer's withholding taxes from such compensation. Unless indicated otherwise in the Adoption Agreement, an independent contractor, a contractor's employee and a leased employee shall not be considered an Employee hereunder. An independent contractor, a contractor's employee or a leased employee (or other individual) who is reclassified as a common-law employee on a retroactive basis will not be treated as having been an Employee for purposes of the Plan for any period prior to the date that he or she is so reclassified.

2.7 "Employer" means the Employer named in the Adoption Agreement and any affiliate or subsidiary that, with the consent of the Employer, becomes an Employer by adopting the Plan, or any successor business organization that assumes the obligations of the Employer.

2.8 “Entry Date” means for each Eligible Employee the first day that the Employee becomes eligible to participate in the Plan.

2.9 “Medical Reimbursement Benefits” means, for any Plan Year, the amount available to a Participant as benefits in the form of reimbursements of Qualified Medical Expenses.

2.10 “Medical Reimbursement Account” means the account established by the Plan Administrator under the Plan for each Participant from which benefits in the form of reimbursements of Qualified Medical Expenses shall be paid.

2.11 “Participant” means any Employee who has met the eligibility requirements of the Plan and has elected to participate in the Plan by providing the Plan Administrator with an executed Benefits Enrollment Form and Salary Reduction Agreement.

2.12 “Plan” means the terms of this document as described herein.

2.13 “Plan Administrator” means the Employer or such other person or committee as may be appointed by the Employer to administer the Plan as set forth in the Adoption Agreement.

2.14 “Plan Year” means the 12-consecutive month specified in the Adoption Agreement.

2.15 “Qualified Medical Expenses” mean the medical expenses incurred during a Plan Year by a Participant, Spouse or Dependent for medical care (as defined in Code Section 213) but only to the extent that the Participant or other person incurring the expenses is not reimbursed for the expenses through insurance or otherwise (other than under the Plan). Premiums for other health or accident insurance do not constitute Qualified Medical Expenses. For purposes of the Plan, an expense is incurred on the date when the underlying services giving rise to the medical expenses are performed and not on the date that the services are billed by the service-provider or paid by the Participant.

2.16 “Salary Reduction Agreement” means the agreement by an Employee authorizing the Employer to reduce the Employee’s Compensation while a Participant during the Plan Year for purposes of obtaining reimbursement of Qualified Medical Expenses under the Plan.

2.17 “Spouse” means an individual who is legally married to a Participant but shall not include an individual separated from a Participant under a decree of legal separation.

ARTICLE 3- ELIGIBILITY AND PARTICIPATION

3.1 Commencement of Participation. An eligible Employee shall become a Participant in the Plan after providing the Plan Administrator with an executed Benefits Enrollment Form setting forth the amount of Medical Reimbursement Benefits to be made available to the Employee for the immediately following Plan Year or remaining portion of the Plan Year, provided the Employee satisfies the eligibility conditions set forth in the Adoption Agreement. The Participant must, before the end of the first Plan Year of participation and, before the end of each subsequent Plan Year, provide the Plan Administrator with a newly executed Benefits Enrollment Form. Each such new agreement shall specify the amount to be made available to the Participant for the immediately following Plan Year or remaining portion of the Plan Year covered by the agreement. If a Participant fails to execute a valid Benefits Enrollment Form before any Plan Year the Participant shall be deemed to have elected to have \$0 of benefits allocated to the Plan for such Plan Year, subject to the Participant's right to make a mid-year election change in accordance with the provisions of the Employer's Cafeteria Plan governing election changes.

3.2 Term of Participation. Each Participant shall be a Participant in the Plan for the entire Plan Year or the portion of the Plan Year remaining after the Participant's Entry Date, if later than the first day of the Plan Year. A Participant shall cease to be a Participant in the Plan on the earliest of:

- (a) the date the Participant dies, resigns or terminates employment with the Employer, subject to the provisions of Sections 3.3 and 3.4;
- (b) the date the Participant fails to make required contributions under the Plan;
- (c) the date the Participant ceases to be an eligible Employee; or
- (d) the date the Plan terminates.

3.3 Participation by Rehired Employees. If a terminated Employee should later be rehired by the Employer in the same Plan Year as the Plan Year in which he or she separated from service, such Employee may elect to resume participation in the Plan the terms of the Agreement to Participate and Salary Reduction Agreement in force on the date of termination of employment.

3.4 COBRA Continuation Coverage.

(a) In General. Subject to any provision in the Code or Regulations governing COBRA Continuation Coverage to the contrary, COBRA type continuation shall be available to all Participants. Any Participant, Spouse or Dependent eligible for continuation coverage under the Plan under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") as amended from time to time, shall be allowed to continue to participate in the Plan, so long as such Participant, Spouse or Dependent complies with the provisions set out in COBRA.

(b) Limited COBRA Obligation. Notwithstanding subsection (a), an Employer that satisfies the conditions of subsection (b)(1) shall be obligated to provide continuation coverage only under the terms of subsection (b)(2).

(1) An Employer satisfies the terms of this subsection if: (i) The Employer, as applied to each Participant, does not adopt a maximum benefit under the Plan which exceeds two times the Participant's salary reduction election under this Plan for the year (or if greater, the amount of the Participant's salary reduction election for the year plus \$500); (ii) all Participants eligible under this Plan are eligible for the Employer's major medical insurance coverage; and (iii) the maximum amount that the Plan can require a Participant to pay for a year of continuation coverage equals or exceeds the maximum benefit available under the Plan for the year.

(2) An Employee of an Employer that satisfies the conditions of subsection (b)(1) is not entitled to continuation coverage under this Plan to the extent the Employee has overspent his or her Medical Reimbursement Account. For this purpose, a Participant has overspent his or her account if the maximum amount that the Plan is permitted to require the Participant to pay for his or her continuation coverage for the remainder of the Plan Year in which the Participant's qualifying event occurred exceeds: (i) the annual election amount of the Participant's Medical Reimbursement Benefits for the Plan Year determined as of the date of the Participant's qualifying event, minus (ii) the total reimbursements submitted to the Plan by the Participant as of the date immediately preceding the Participant's qualifying event.

If a Participant has not overspent his or her Medical Reimbursement Account at the time of the Participant's qualifying event, the Participant is entitled to continue coverage under the Plan in accordance with the Code and Regulations governing continuation coverage; provided, however, that such a Participant's entitlement to continuation coverage will end as of the last day of the Plan Year in which the Participant's qualifying event occurred.

c) The Employer shall adopt rules relating to continuation coverage, provided under Section 4980B of the Code or applicable state law, as may be required from time to time, and shall advise affected individuals of the terms and conditions of such continuation coverage.

3.5 Family Medical Leave Act. Subject to any provision in the Code, Regulation or contract governing FMLA leave coverage to the contrary, FMLA type continuation coverage shall be available to all participants under the terms set forth in the Employer's Cafeteria Plan, which terms are incorporated herein by reference.

ARTICLE 4- BENEFITS

4.1 Provision of Benefits. Benefits under the Plan shall take the form of reimbursement of Qualified Medical Expenses incurred by a Participant, Spouse and Dependents during the Plan Year. A Participant, or former Participant, shall be entitled to benefits under the Plan for Qualified Medical Expenses incurred only while a Participant.

4.2 Amount of Reimbursement. A Participant shall be entitled to benefits under the Plan for a Plan Year in an amount that does not exceed the Participant's Medical Reimbursement Benefits. The amount of a Participant's Medical Reimbursement Benefits shall be uniformly available during the Plan Year.

4.3 Change in Participant Election. A Participant may not change the amount of Medical Reimbursement Benefits to be made available for a Plan Year during that Plan Year, except in accordance with the provisions of the Employer's Cafeteria Plan governing election changes, incorporated herein by this reference.

4.4 Nondiscriminatory Benefits. The Plan is intended to not discriminate in favor of highly compensated individuals as to eligibility to participate, contributions and benefits in accordance with applicable provisions of the Code. The Plan Administrator may take such actions as excluding certain highly compensated employees from participation in the Plan if, in the Plan Administrator's judgment, such actions serve to assure that the Plan does not violate applicable nondiscrimination rules.

4.5 Minimum and Maximum Benefits. Notwithstanding any other provisions of this Plan, a Participant shall elect to have an amount of Compensation allocated to his or her Medical Reimbursement Account for the Plan Year within the limits set forth in the Adoption Agreement.

ARTICLE 5- FUNDING AND PAYMENT OF BENEFITS

5.1 Funding. Contributions to the Plan for the Plan Year shall be limited to the amounts elected by Participants on their Benefits Enrollment Forms for the Plan Year, subject to Section 4.5. Contributions to the Plan shall be made to, and all Plan assets shall be held in, such accounts or funds as the Employer deems appropriate.

5.2 Participants' Accounts. The Plan Administrator shall establish a separate Medical Reimbursement Account for each Participant in the Plan. The Plan Administrator shall credit a Participant's Medical Reimbursement Account with the amount of Medical Reimbursement Benefits to be made available to the Participant pursuant to the Participant's Benefits Enrollment Form. The Plan Administrator shall charge a Participant's Medical Reimbursement Account in the amount of any reimbursements made to the Participant. The Plan Administrator may also establish a minimum reimbursement amount below which requests for reimbursement shall not be made during the Plan Year but which must be made by the end of the Plan Year (including the time set forth in Section 5.5).

5.3 Payment of Benefits. Reimbursement shall only be made under the Plan on the basis of Qualified Medical Expenses incurred by the Participant, Spouse or Dependent, as presented to the Plan Administrator on a written form specified by the Plan Administrator and as evidenced by a written statement from a third party. No reimbursement will be paid under this Plan to the extent that (a) an expense has been submitted for reimbursement as a dependent care expense under any Dependent Care Assistance Plan of the Employer, (b) such reimbursement or payment is covered under any insurance policy or policies, whether paid for by the Participant or Employer, or under any other health or accident plan by whomever maintained, and in the event that there is such reimbursement or payment, in whole or in part, then to the extent of the coverage under such policy or plan, the Employer will be relieved of any liability here under, or (c) an expense is for individual health insurance premiums or a Spouse's or Dependent's group health insurance premiums. It shall be the duty of the Plan Administrator to construe what are and what are not Qualified Medical Expenses subject to reimbursement from a Participant's Medical Reimbursement Account.

If the Plan Administrator determines that an expense is a Qualified Medical Expense subject to reimbursement, the Plan Administrator shall reimburse the Participant for the Qualified Medical Expense within a reasonable time. To make the determination that a Qualified Medical Expense subject to reimbursement has been incurred, the Plan Administrator may require proper evidence of any or all of the following:

- (a) the name of the person or persons for whom the expenses have been incurred;
- (b) the nature of the expenses incurred;
- (c) the date the expenses were incurred;
- (d) the amount of the requested reimbursement; or
- (e) that the expenses have not been otherwise paid through an insurance program offered by the Employer or any other employer, or reimbursed from any other source. The Plan Administrator shall be the sole arbiter of what constitutes a Qualified Medical Expense subject to reimbursement under the Plan. In the event of the death of the Participant prior to the payment of any claims, payment shall be made in the following priority:
 - (f) Executor of the Estate of the deceased Participant,
 - (g) Spouse,
 - (h) The children of the Participant in equal shares.

If a Participant has none of the above living persons, then the Participant shall be deemed to have no beneficiary and his or her account will be forfeited to the Employer.

Special Rule for Over-the-Counter Medicines and Drugs. Nothing in this Plan shall be interpreted to limit a Participant's right to reimbursement of expenditures for non-prescription medicines and drugs for medical care. For purposes of this Section,

the term “medicines and drugs” means only items that are legally procured and generally accepted as falling within the category of medicines and drugs. An expenditure that is merely beneficial to the general health of an individual is not an expenditure for medical care. Likewise, toiletries, cosmetics and sundry items are not medicines and drugs, unless used as treatment for a specific medical condition as supported by a doctor’s note.

Reimbursements for over-the-counter medicines and drugs will only be made hereunder in accordance with the requirements and procedures established by the Plan Administrator. Reimbursements will be made under this Section only for a reasonable amount of anticipatory buying of medicines and drugs, as determined by the Plan Administrator, in its sole discretion.

5.4 Forfeiture of Benefits. Unless the Employer has elected in the Cafeteria Plan to allow a grace period, a Participant forfeits any amount of Medical Reimbursement Account under the Plan for a Plan Year if a claim for reimbursement is not provided to the Plan Administrator within 90 days after the last day of the Plan Year or the last day of participation in the Plan, if earlier. Upon such forfeiture, the Participant’s Medical Reimbursement Account shall be reduced to zero. At the discretion of the Employer, forfeitures of benefits under the Plan may be reallocated to Participants in any reasonable manner. Forfeitures of benefits may also be applied toward the cost of administering the Plan. Forfeitures of benefits shall become the sole property of the Employer.

Notwithstanding the foregoing, if the Employer has elected in the Cafeteria Plan to allow a grace period, a Participant may use amounts remaining in his or her Medical Reimbursement Account at the end of the Plan Year for reimbursement of Qualified Medical Expenses incurred in the “Grace Period.” The Grace Period begins on the first day of the following Plan Year and ends on the 15th day of the third month of the following Plan Year. Amounts remaining in the Participant’s account at the end of the Grace Period are forfeited. Amounts remaining in the Participant’s Account at the beginning of the Grace Period may not be converted to cash or used to pay any other taxable or nontaxable benefit. The Plan Administrator will establish procedures that first apply unused amounts in the Participant’s account at the beginning of the Grace Period to Qualified Medical Expenses, followed by amounts in the Participant’s account for the Plan Year in which the Grace Period occurs. Claims for reimbursement for expenses incurred during the Plan Year or the Grace Period must be submitted by the end of the fifth month of the Plan Year in which the Grace Period occurs, unless participation in the Plan ends. In that case, claims must be submitted within 90 days following the date participation ends.

ARTICLE 6 - PLAN ADMINISTRATION

6.1 Plan Administrator. The Plan Administrator shall be responsible for the administration of the Plan.

6.2 Plan Administrator's Duties. In addition to any rights, duties or powers specified throughout the Plan, the Plan Administrator shall have the following rights, duties and powers:

(a) to interpret the Plan, to determine the amount, manner and time for payment of any benefits under the Plan, and to construe or remedy any ambiguities, inconsistencies or omissions under the Plan;

(b) to adopt and apply any rules or procedures to insure the orderly and efficient administration of the Plan;

(c) to determine the rights of any Participant, Spouse, Dependent or beneficiary to benefits under the Plan;

(d) to develop appellate and review procedures for any Participant, Spouse, Dependent or beneficiary denied benefits under the Plan;

(e) to provide the Employer with such tax or other information it may require in connection with the Plan;

(f) to employ any agents, attorneys, accountants or other parties (who may also be employed by the Employer) and to allocate or delegate to them such powers or duties as are necessary to assist in the proper and efficient administration of the Plan, provided that such allocation or delegation and the acceptance thereof are in writing; and

(g) to report to the Employer, or any party designated by the Employer, after the end of each Plan year regarding the administration of the Plan, and to report any significant problems as to the administration of the Plan and to make recommendations for modifications as to procedures and benefits, or any other change which might insure the efficient administration of the Plan.

However, nothing in this section is meant to confer upon the Plan Administrator any powers to amend the Plan or change any administrative procedure or adopt any other procedure involving the Plan without the express written approval of the Employer regarding any amendment or change in administrative procedure, or Benefit Provider. Notwithstanding the preceding sentence, the Plan Administrator is empowered to take any actions he sees fit to assure that the Plan complies with the nondiscrimination requirements of Section 105 of the Code.

6.3 Information to be Provided to Plan Administrator. The Employer, or any of its agents, shall provide to the Plan Administrator any employment records of any employee eligible to participate under the Plan. Such records shall include, but will not be limited to, any information regarding period of employment, leaves of absence, salary history, termination of employment, or any other information the Plan Administrator may need for the proper administration of the Plan. Any Participant, Spouse or Dependent or any other person entitled to benefits under the Plan shall furnish to the Plan Administrator his correct post office address, his date of birth, the names, correct addresses and dates of birth of any designated beneficiaries, with proper proof thereof, or any other data the Plan Administrator might reasonably request to insure the proper and efficient administration of the Plan.

6.4 Decision of Plan Administrator Final. Subject to applicable State or Federal law, and the provisions of Section 6.5, any interpretation of any provision of this Plan made in good faith by the Plan Administrator as to any Participant's rights or benefits under this Plan is final and shall be binding upon the parties. Any misstatement or other mistake of fact shall be corrected as soon as reasonably possible upon notification to the Plan Administrator and any adjustment or correction attributable to such misstatement or mistake of fact shall be made by the Plan Administrator as he considers equitable and practicable.

6.5 Review Procedures. If any claim is wholly or partially denied, the Plan Administrator will notify the claimant of this decision in writing within 30 days after the claim is received by the Plan Administrator. The notification will be written in a manner calculated to be understood by such person and will set forth (a) specific reasons for the denial, (b) specific reference to pertinent Plan provisions on which the denial is based, (c) a description of any additional material or information necessary to perfect such claim and an explanation of why such material or information is necessary, (d) information as to the steps to be taken if the person wishes to submit a claim for review; (e) if an internal rule or other similar criterion was relied upon to deny benefits, the internal rule or other similar criterion, or a statement that such rule or other criterion was relied upon in denying benefits and that a copy of such rule or other criterion will be provided free of charge to such person upon request; and (f) if a denial is based on medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request.

If special circumstances require an extension of time for processing the claim, written notice of the extension and expected determination date shall be given to such person prior to the termination of the initial 30-day period. In no event shall such extension exceed a period of 15 days from the end of such initial period. In the event the Plan Administrator needs more information to process a claim, the Plan Administrator shall specifically describe the required information and the claimant has

45 days from the date of such notice from the Plan Administrator to provide any additional information

If a person's claim is denied, he or she or his or her duly authorized representative may (a) request a review upon written application to the Plan Administrator, (b) review pertinent documents, and (c) submit written comments, records, documents and other relevant information, which information shall be considered on appeal regardless of the initial benefit review. Such person will be provided, upon request and free of charge, reasonable access to, and copies of, all documents or other information relevant to such person's claim for benefits. A claimant must file a request for review within 180 days after his or her receipt of written notification of the denial of a claim. The Plan will notify him or her of its decision in writing within 60 days after the request for review is received by the Plan Administrator.

The review on appeal shall not afford deference to the initial benefit review and must be conducted by an appropriate named fiduciary of the Plan who is neither the individual who made the initial denial that is the subject of the appeal or such person's subordinate. In deciding any appeal that is based in whole or in part on medical judgment, including determinations with regard to whether a particular treatment, drug or other item is experimental, investigational or not medically necessary or appropriate, the named fiduciary shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment. The Plan will ensure that the health care professional engaged for purposes of such consultation is an individual who is neither an individual who was consulted in connection with the initial benefit determination nor the subordinate of any such individual. The Plan will identify any medical or vocational experts whose advice was obtained on behalf of the Plan in connection with a claimant's appeal without regard to whether the Plan relied upon such person's advice in making a benefit determination.

If any claim is wholly or partially denied on appeal, the Plan will notify the claimant of its decision in writing. The notification will be written in a manner calculated to be understood by such person and will set forth (a) specific reasons for the denial, (b) specific reference to pertinent Plan provisions on which the denial is based, (c) a statement that such person is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents and other information relevant to such person's claim for benefits, and (d) an internal rule or other similar criterion was relied upon to deny benefits, the internal rule or other similar criterion, or a statement that such rule or criterion was relied upon in denying benefits and that a copy of such rule or other criterion will be provided free of charge to such person upon request.

6.6 Extensions of Time. In any case where the Plan Administrator determines special circumstances apply, the Plan Administrator may extend the amount of time any Participant, Spouse, Dependent or designated beneficiary may need to appeal a claim, upon proper application to the Plan Administrator.

6.7 Rules to Apply Uniformly. The Plan Administrator shall perform his or her duties in a reasonable manner and on a nondiscriminatory basis and shall apply uniform

rules to all Participants similarly situated under the Plan.

6.8 Indemnity. The Employer does hereby agree to indemnify and hold harmless, to the extent allowed by law and over and above any liability coverage contracts or directors and officers insurance, any officer or director of the Employer, designated by the Employer or the Plan Administrator who has been employed, hired or contracted to assist in the fulfillment of the administration of this Plan. In addition, the Employer agrees to pay any costs of defense or other legal fees incurred by any of the above parties over and above those paid by any liability or insurance contract.

6.9 Use and Disclosure of Protected Health Information; HIPAA Security. If the Employer is or becomes subject to the applicable requirements of HIPAA, the Plan (or a health insurance issuer or HMO with respect to the Plan) may disclose Summary Health Information to the Employer, provided the Employer requests the Summary Health Information for the purpose of obtaining premium bids from health plans for providing health insurance coverage, or modifying, amending, or terminating the Plan.

(a) Certification of Plan Sponsor. The Plan (or a health insurance issuer or HMO with respect to the Benefit offered under the Plan) shall disclose Protected Health Information ("PHI") to the Employer only upon receipt of a certification by the Employer that the Plan has been amended to incorporate the provisions of 45 CFR § 164.504(f)(2)(ii), and that the Employer agrees to the conditions of disclosure set forth in subsection (b). The Plan shall not disclose and may not permit a health insurance issuer or HMO to disclose PHI to the Employer as otherwise permitted herein unless the statement required by 45 CFR § 164.520(b)(1)(iii)(C) is included in the appropriate notice.

(b) Conditions of Disclosure. The Employer agrees that with respect to any PHI disclosed to it by the Plan, a health insurance issuer or an HMO, the Employer shall:

(1) Not use or further disclose the PHI other than as permitted or required by the Plan documents or as required by law.

(2) Ensure that any agents, including a subcontractor, to whom it provides PHI received from the Plan, agree to the same restrictions and conditions that apply to the Employer with respect to such PHI.

(3) Not use or disclose the PHI for employment related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer.

(4) Report to the Plan any use or disclosure of the information that is inconsistent with the uses or disclosures provided for of which it becomes aware.

(5) Make available PHI in accordance with 45 CFR § 164.524.

(6) Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR § 164.526.

(7) Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528.

(8) Make its internal practices, books, and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of Health and Human Services for purposes of determining compliance by the Plan with Subpart E of 45 CFR § 164.

(9) If feasible, return or destroy all PHI received from the Plan that the Employer maintains in any form and retain no copies of such PHI when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

(10) Ensure that the adequate separation between Plan and Employer, required in 45 CFR § 164.504(f)(2)(iii), is established.

(c) Adequate Separation Between Plan and Employer. In compliance with HIPAA, the Employer will designate persons entitled to access to PHI. The Employer shall only allow those persons so identified to be given access to PHI. These specified persons shall only have access to and use of PHI to the extent necessary to perform the Plan Administration Functions that the Employer performs for the Plan. In the event that any of these specified persons do not comply with the provisions of this Article, that person, if an employee of the Employer, shall be subject to disciplinary action by the Employer for noncompliance pursuant to the Employer's employee discipline and termination procedures. If that person is a non-employee, the Employer shall take appropriate action with the entity involved, to ensure that appropriate discipline or sanctions are imposed and that non-compliance does not recur.

(d) Permitted and Non-permitted Uses and Disclosure of Protected Health Information. Unless otherwise permitted by law, and subject to obtaining a written certification pursuant to subsection (a), the Plan may disclose PHI to the Employer, provided the Employer uses or discloses such PHI only for the purpose of carrying out Plan Administration Functions that the Employer performs for the Plan, consistent with the provisions of subsection (b). Notwithstanding the provisions of this Section to the contrary, in no event shall the Employer be permitted to use or disclose PHI in a manner that is inconsistent with 45 CFR § 164.504(f). The Plan may not permit a health insurance issuer or HMO with respect to the Plan to disclose PHI to the Employer except as permitted by 45 CFR § 164.504(f). The Plan may not disclose PHI to the Employer for the purpose of employment-related actions or decisions or in connection with any other benefit or employee benefit plan of the Employer.

(e) Information Regarding Participation. Notwithstanding subsection (d), the Plan, or a health insurance issuer or HMO with respect to the Plan, may disclose to the Employer information on whether an individual is participating in the Plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the Plan.

(f) Definitions. The following definitions apply for purposes of this Section:

(1) Health Information means: any information, whether oral or recorded in any form or medium, that: is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearing house; and relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual.

(2) Health Plan means: an individual or group plan that provides or pays the cost of medical care (as defined in Section 2791(a)(2) of the Public Health Service Act, 42 U.S.C. § 300gg-91(a)(2)).

(3) Individually Identifiable Health Information means: a subset of Health Information including demographic information collected from an individual, and which: is created or received by a health care provider, Health Plan, employer, or health care clearing house; and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(4) Plan Administration Functions means: administration functions performed by the Employer on behalf of the Plan, excluding functions performed by the Employer in connection with any other benefit or benefit plan of the Employer.

(5) Protected Health Information (PHI) means: Individually Identifiable Health Information: Except as follows that is: transmitted by electronic media; maintained in any media described in the definition of electronic media at 42 CFR § 162.103; or transmitted or maintained in any other form or medium. Protected Health Information excludes Individually Identifiable Health Information in: Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S. C. § 1232g; records described at 20 U.S.C. § 1232g(a)(4)(B)(iv); and employment records held by a Covered Entity in its role as employer.

(6) Summary Health Information means: information that: summarizes the claims history, claims expenses or type of claims experienced by individuals for whom a plan sponsor has provided health benefits under a Health Plan; and from which the information described at 42 CFR § 164.514(b)(2)(i) has been deleted, except that the geographic information described in 42 CFR § 164.514(b)(2)(i)(B) need only be aggregated to the level of a five digit zip code.

(g) Certification of Employer for Security and Conditions of Disclosure. The certification of the Employer required pursuant to (a) shall also certify that the Employer will comply with the Security Standards as set forth at 45 CFR Parts 160, 162, and 164 (the "Security Rule").

The Employer agrees that with respect to any PHI, as defined above, disclosed to it by the Plan, a health insurance issuer or an HMO, the Employer shall:

(1) Ensure that any business partner to whom it provides PHI received from the Plan, agrees to the same privacy and security restrictions and conditions that apply to the Employer with respect to such PHI.

(2) Report to the Plan any security incident as that term is defined in 45 CFR § 164.304.

(3) Ensure that electronic "firewalls" are in place to secure electronic PHI.

(4) Implement reasonable and appropriate safeguards for electronic PHI as defined in 45 CFR § 164.103, created, received, maintained, or transmitted to or by the Employer on behalf of the Plan, in accordance with the Security Rule.

ARTICLE 7 - GENERAL PROVISIONS

7.1 Amendment and Termination. The Employer may amend or terminate this Plan at any time by legal action of the authorized agents of the Employer, subject to the limitation that no amendment shall change the terms and conditions of payment of any benefit a Participant, Spouse, Dependent or beneficiary was entitled to under the Plan at the time of the amendment or termination. The Employer may also make amendments apply retroactively to the extent necessary so that the Plan remains in compliance with Section 105 of the Code or any other provision of the Code applicable to the Plan.

7.2 Non-assignability. Any benefits to any Participants under this Plan shall be non-assignable and for the exclusive benefit of Participants, Spouses, Dependents and beneficiaries. No benefit shall be voluntarily or involuntarily assigned, sold or transferred.

7.3 Not an Employment Contract. By creating this Plan and providing benefits

under the Plan, the Employer in no way guarantees employment for any employee or Participant under this Plan. Participation in this Plan shall in no way assure continued employment with the Employer.

7.4 No Guarantee of Tax Consequences. Neither the Administrator nor the Employer makes any commitment or guarantee that any benefits described in this Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether said benefit is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such benefit is not so excludable.

7.5 Rights Against Employer. Neither the establishment of the Plan, nor any modification thereof, nor any distributions hereunder, shall be construed as giving to any participant or any other person any legal or equitable rights against the Employer or its board, officers, partners or members, as applicable.

7.6 Severability. In any case where any provision of this Plan is held to be illegal or invalid, such illegality or invalidity shall apply only to that part of the Plan and shall not apply to any remaining provisions of the Plan, and the Plan shall be construed as if such illegal or invalid provision had never existed under the Plan.

First Approval June 9, 2008

Final Approval July 14, 2008

0365.2. Dependent Care Assistance Plan

ARTICLE 1 - INTRODUCTION

1.1 **Purpose.** The purpose of the Plan is to enable Participants to elect to receive reimbursements of their dependent care expenses on a tax-favorable basis. The Employer intends that the Plan qualifies as a Dependent Care Assistance Plan under Section 129 of the Code, and that the benefits provided under the Plan are eligible for exclusion from Participants' income under Section 129 of the Code.

ARTICLE 2 - DEFINITIONS

As used in this Plan document, the following terms shall have the following meanings:

2.1 "Adoption Agreement" means the agreement set forth in Article VII of the Cafeteria Plan.

2.2 "Cafeteria Plan" means the Employer's Cafeteria Plan.

2.3 "Code" means the Internal Revenue Code of 1986, as amended from time to time.

2.4 "Compensation" means all the earned income, salary, wages and other earnings paid by the Employer to a Participant during a Plan Year, including any amounts contributed by the Employer pursuant to a salary reduction agreement which are not includable in gross income under Sections 125, 132(f), 402(a)(8), 402(h), 403(b) or 457(b) of the Code.

2.5 "Dependent" means an individual who: (a) qualifies as a child as defined in Code Section 152(c), under the age of 13; (b) is an adult spouse physically or mentally unable to care for himself or herself, having the same principal place of residence as the Employee for more than one-half of the calendar year; or (c) is a qualified relative of the Employee, within the meaning of Code Section 152(a)(3), physically or mentally unable to care for himself or herself, with respect to whom the Employee provides more than one-half of the individual's support, whose gross income is less than the dependency exemption amount defined in Code Section 151(d), and who has the same principal place of residence as the Employee for more than one-half of the calendar year.

2.6 "Dependent Care Expenses" means expenses incurred by a Participant for the care of a Qualifying Individual or for related Household Services which would be considered employment-related expenses under Section 21(b)(2) of the Code. Dependent Care Expenses do not include: (a) any amount paid for services outside the Participant's household at a camp where a Qualifying Individual stays overnight; and (b) any amount paid to the following individuals or entities: (1) an individual with respect to whom a deduction is allowable under Code Section 151(c) to the Participant or his or her Spouse; (2) the Participant's Spouse; (3) a child of the Participant (within the meaning of Code Section 151(c)(3)) who is less than 19 years of age at the close of the taxable year; or (4) a day-care center providing care to six or more individuals unless

the center is a facility which complies with all applicable state and local licensing laws and regulations of the jurisdiction in which it is operated, provides care for more than six individuals (other than individuals who reside at the facility), and receives payment for providing services for any individual (regardless of whether such facility is operated for profit).

For purposes of this Section, "Household Services" means services done in and around the Employee's home that were necessary to run the home if they were partly for the well-being and protection of a Qualifying Individual.

2.7 "Dependent Care Reimbursement Benefits" means, for any Plan Year, the amount available to a Participant as benefits in the form of reimbursements of Dependent Care Expenses.

2.8 "Dependent Care Reimbursement Account" means the account established by the Plan Administrator under the Plan for each Participant from which benefits in form of reimbursements of Dependent Care Expenses shall be paid.

2.9 "Earned Income" means all income derived from wages, salaries, tips, self employment, and other Employee compensation.

2.10 "Effective Date" means the date specified in the Adoption Agreement on which the Plan is effective and applicable to Employees.

2.11 "Employee" means any individual whom the Employer treats as its common-law employee, who is performing services for the Employer for wages, salary, or other remuneration as evidenced by the Employer's withholding taxes from such compensation. Unless otherwise indicated in the Adoption Agreement, an independent contractor, a contractor's employee and a leased employee shall not be considered an Employee hereunder. An independent contractor, a contractor's employee and a leased employee (or other individual) who is reclassified as a common-law employee on a retroactive basis will not be treated as having been an Employee for purposes of the Plan for any period prior to the date that he or she is so reclassified.

2.12 "Employer" means the Employer named in the Adoption Agreement.

2.13 "Entry Date" means the date(s) specified by the Employer in the Adoption Agreement as of which Eligible Employees may become Participants.

2.14 "Participant" means any Employee who has met the eligibility requirements of the Plan and has elected to participate in the Plan by providing the Plan Administrator with an executed Benefits Enrollment Form and Salary Reduction Agreement.

2.15 "Plan" means this instrument, including any amendments hereto.

2.16 "Plan Administrator" means the Employer or such other person or committee as may be appointed by the Employer to administer the Plan as set forth in the Adoption Agreement.

2.17 "Plan Year" means the 12-consecutive month specified in the Adoption Agreement.

2.18 "Qualifying Individual" means a Dependent.

2.19 "Salary Reduction Agreement" means the agreement by an Employee

authorizing the Employer to reduce the Employee's Compensation while a Participant during the Plan Year for purposes of obtaining Dependent Care Reimbursement Benefits under the Plan.

2.20 "Spouse" means an individual who is legally married to a Participant but shall not include an individual separated from a Participant under a decree of legal separation.

ARTICLE 3- ELIGIBILITY AND PARTICIPATION

3.1 Participation. An Employee shall become a Participant in the Plan after Providing the Plan Administrator with an executed Benefits Enrollment Form setting forth the amount of Dependent Care Reimbursement Benefits to be made available to the Employee for the immediately following Plan Year or remaining portion of the Plan Year, provided the Employee satisfies the eligibility conditions set forth in the Adoption Agreement. The Participant must, before the end of the first Plan Year of participation and, before the end of each subsequent Plan Year, provide the Plan Administrator with a newly executed Benefits Enrollment Form.

Each such new agreement shall specify the amount to be made available to the Participant for

the immediately following Plan Year or remaining portion of the Plan Year covered by the agreement. If a Participant fails to execute a valid Benefits Enrollment Form before any Plan Year, the Participant shall be deemed to have elected to have \$0 of benefits allocated to the Plan for such Plan Year, subject to the Participant's right to make a mid-year election change in accordance with the provisions of the Employer's Cafeteria Plan governing election changes.

3.2 Term of Participation. Each Participant shall be a Participant in the Plan for the entire Plan Year or the portion of the Plan Year remaining after the Participant's Entry Date, if later than the first day of the Plan Year. A Participant shall cease to be a Participant in the Plan on the earliest of:

(a) the date the Participant dies, resigns or terminates employment with the Employer, subject to the provisions of Section 3.3;

(b) the date the Participant fails to make required contributions under the Plan;

(c) the date the Participant ceases to be an eligible Employee; or

(d) the date the Plan terminates.

3.3 Participation by Rehired Employees. If a terminated Employee should later be rehired by the Employer in the same Plan Year as the Plan Year in which he or she separated from service, such Employee may elect to resume participation in the Plan under the terms of the Agreement to Participate and Salary Reduction Agreement in force on the date of termination of employment.

ARTICLE 4- BENEFITS

4.1 Provision of Benefits. Benefits under the Plan shall take the form of

reimbursement of Dependent Care Expenses incurred during the Plan Year. A Participant shall be entitled to benefits under the Plan for Dependent Care Expenses incurred only while a Participant.

4.2 Amount of Reimbursement. A Participant shall be entitled to benefits under the Plan for a Plan Year in an amount that does not exceed the Participant's Dependent Care Reimbursement Benefits. The amount of a Participant's Dependent Care Reimbursement Benefits shall be available during the Plan Year in accordance with the provisions of Section 5.2.

4.3 Change in Participant Election. A Participant may not change the amount of Dependent Care Reimbursement Benefits to be made available for a Plan Year during that Plan Year, except in accordance with the provisions of the Employer's Cafeteria Plan governing election changes, which provisions are incorporated by reference herein.

4.4 Nondiscriminatory Benefits. The Plan is intended to not discriminate in favor of highly compensated individuals as to eligibility to participate, contributions and benefits in accordance with applicable provisions of the Code. The Plan Administrator may take such actions as excluding certain highly compensated employees from participation in the Plan if, in the Plan Administrator's judgment, such actions serve to assure that the Plan does not violate applicable nondiscrimination rules.

4.5 Maximum Benefits. Notwithstanding any other provisions of this Plan, no Participant shall receive Dependent Care Reimbursement Benefits in excess of the
least (a) the Participant's Earned Income;
(b) if married, the Participant's Spouse's Earned Income;
(c) \$5,000 (\$2,500 if married and filing a separate income tax return);
or
(d) the amount set by the Employer, if any.

If a Participant's Spouse is a full-time student or incapable of self-care, such Spouse shall be deemed to have Earned Income of \$200 per month (\$400 per month if a Participant has two or more qualified Dependents for which claims are filed hereunder).

ARTICLE 5 - FUNDING AND PAYMENT OF BENEFITS

5.1 Funding. Contributions to the Plan for the Plan Year shall be limited to the Amounts allocated to Dependent Care Benefits as determined by the Benefits Enrollment Forms of Participants for the Plan Year, subject to Section 4.5. Contributions to the Plan shall be made to, and all Plan assets shall be held in, such accounts or funds as the Employer deems appropriate.

5.2 Accounts and Account Balances. The Plan Administrator shall establish a separate Dependent Care Reimbursement Account for each Participant in the Plan. The Plan Administrator shall credit a Participant's Dependent Care Reimbursement Account with the amount of Dependent Care Reimbursement Benefits to be made available to the Participant pursuant to the Agreement to Participate as those amounts are actually contributed to the Plan. The Plan Administrator shall charge a Participant's Dependent Care Reimbursement Account in the amount of any reimbursements made to the Participant. The amount of any reimbursement of Dependent Care Expenses may not exceed the balance of the Participant's Dependent Care Reimbursement

Account at the time of the reimbursement. The Plan Administrator may also establish a minimum reimbursable amount below which reimbursements shall not be made during the Plan Year, but which must be made by the end of the Plan Year (including the period set forth in Section 5.4).

5.3 Payment of Benefits. Reimbursement shall only be made under the Plan on the basis of Dependent Care Expenses incurred by the Participant or the Participant's Spouse, as presented to the Plan Administrator on a written form specified by the Plan Administrator. It shall be the duty of the Plan Administrator to construe what are and what are not Dependent Care Expenses subject to reimbursement from a Participant's Dependent Care Reimbursement Account. If the Plan Administrator determines that an expense is a Dependent Care Expense subject to reimbursement, the Plan Administrator shall reimburse the Participant for the Dependent Care Expense within a reasonable time. To make the determination that a Dependent Care Expense subject to reimbursement has been incurred, the Plan Administrator may require proper evidence of any or all of the following:

- (a) the name of the person or persons for whom the expenses have been incurred;
- (b) the nature of the expenses incurred;
- (c) the date the expenses were incurred;
- (d) the amount of the requested reimbursement; or
- (e) that the expenses have not been otherwise paid through a program offered by the Employer or any other employer, or reimbursed from any other source.

The Plan Administrator shall be the sole arbiter of what constitutes a Dependent Care Expense subject to reimbursement under the Plan. In the event of the death of the Participant prior to the payment of any claims, payment shall be made in the following priority:

- (f) Executor of the Estate of the deceased Participant,
- (g) Spouse,
- (h) The Participant's children in equal shares. If a Participant has none of the above living persons, the Participant shall be deemed to have no beneficiary, and his/her account will be forfeited to the Employer.

5.4 Forfeiture of Benefits. Unless otherwise provided in the Cafeteria Plan concerning a grace period, a Participant forfeits any amount of Dependent Care Reimbursement Benefits under the Plan for a Plan Year if a claim for reimbursement is not provided to the Plan Administrator within 90 days after the last day of the Plan Year or the last day of participation in the Plan, if earlier. Upon such forfeiture, the Participant's Dependent Care Reimbursement Account shall be reduced to zero. At the discretion of the Employer, forfeitures of benefits under the Plan may be reallocated to Participants in any reasonable manner. Forfeitures of benefits may also be applied toward the cost of administering the Plan. Forfeitures of benefits shall become the sole property of the Employer.

Notwithstanding the foregoing, if the Employer has elected in the Cafeteria Plan to allow a grace period, a Participant may use amounts remaining in his or her Dependent Care Assistance Account at the end of the Plan Year for reimbursement of Dependent Care Expenses incurred in the "Grace Period." The Grace Period begins on the first day of the following Plan Year and ends on the 15th day of the third month of the following Plan Year. Amounts remaining in the Participant's account at the end of the Grace Period are forfeited. Amounts remaining in the Participant's Account at the beginning of the Grace Period may not be converted to cash or used to pay any other taxable or nontaxable benefit. The Plan Administrator will establish procedures that first apply unused amounts in the Participant's account at the beginning of the Grace Period to Dependent Care Expenses, followed by amounts in the Participant's account for the Plan Year in which the Grace Period occurs. Claims for reimbursement for expenses incurred during the Plan Year or the Grace Period must be submitted by the end of the fifth month of the Plan Year in which the Grace Period occurs, unless participation in the Plan ends. In that case, claims must be submitted within 90 days following the date participation ends.

5.5 Annual Report to Participants. On or before each January 31, the Plan Administrator shall provide a written statement to each Participant (or former Participant) of the amount of reimbursements of Dependent Care Expenses paid to the Participant (or former Participant) for the immediately preceding calendar year.

ARTICLE 6- PLAN ADMINISTRATION

6.1 Plan Administrator. The Plan Administrator shall be responsible for the administration of the Plan.

6.2 Plan Administrator's Duties. In addition to any rights, duties or powers specified throughout the Plan, the Plan Administrator shall have the following rights, duties and powers:

(a) to interpret the Plan, to determine the amount, manner and time for payment of any benefits under the Plan, and to construe or remedy any ambiguities, inconsistencies or omissions under the Plan;

(b) to adopt and apply any rules or procedures to insure the orderly and efficient administration of the Plan;

(c) to determine the rights of any Participant, Spouse, Dependent or beneficiary to benefits under the Plan;

(d) to develop appellate and review procedures for any Participant, Spouse, Dependent or beneficiary denied benefits under the Plan;

(e) to provide the Employer with such tax or other information it may require in connection with the Plan;

(f) to employ any agents, attorneys, accountants or other parties (who may also be employed by the Employer) and to allocate or delegate to them such powers or duties as are necessary to assist in the proper and efficient administration of the Plan, provided that such allocation or delegation and the acceptance thereof are in writing;

(g) to report to the Employer, or any party designated by the Employer, after the end of each Plan Year regarding the administration of the Plan, and to report any significant problems as to the administration of the Plan and to make recommendations for modifications as to procedures and benefits, or any other change which might insure the efficient administration of the Plan.

However, nothing in this Section is meant to confer upon the Plan Administrator any powers to amend the Plan or change any administrative procedure or adopt any other procedure involving the Plan without the express written approval of the Employer regarding any amendment or change in administrative procedure, or Benefit Provider. Notwithstanding the preceding sentence, the Plan Administrator is empowered to take any actions he sees fit to assure that the Plan complies with the nondiscrimination requirements of Section 129 of the Code.

6.3 Information to be Provided to Plan Administrator. The Employer, or any of its agents, shall provide to the Plan Administrator any employment records of any employee eligible to participate under the Plan. Such records shall include, but will not be limited to, any information regarding period of employment, leaves of absence, salary history, termination of employment, or any other information the Plan Administrator may need for the proper administration of the Plan. Any Participant or Dependent or any other person entitled to benefits under the Plan shall furnish to the Plan Administrator his correct post office address, his date of birth, the names, correct addresses and dates of birth of any beneficiaries, with proper proof thereof, or any other data the Plan Administrator might reasonably request to insure the proper and efficient administration of the Plan.

6.4 Decision of Plan Administrator Final. Subject to applicable State or Federal law, and the provisions of Section, any interpretation of any provision of this Plan made in good faith by the Plan Administrator as to any Participant's rights or benefits under this Plan is final and shall be binding upon the parties. Any misstatement or other mistake of fact shall be corrected as soon as reasonably possible upon notification to the Plan Administrator and any adjustment or correction attributable to such misstatement or mistake of fact shall be made by the Plan Administrator as he considers equitable and practicable.

6.5 Review Procedures. In cases where the Plan Administrator denies a benefit under this Plan for any Participant, Spouse or Dependent or any other person eligible to receive benefits under the Plan, the Plan Administrator shall furnish in writing to said party the reasons for the denial of benefits. The written denial shall be provided to the party within 30 days of the date the benefit was denied by the Plan Administrator. The written denial shall refer to any Plan or section of the Code upon which the Plan Administrator relied in making such denial. The denial may include a request for any additional data or material needed to properly complete the claim and explain why such data or material is necessary and explain the Plan's claim review procedures. If requested in writing, and within 30 days of the claim denial, the Plan Administrator shall afford any claimant whose request for claim was denied a full and fair review of the Plan Administrator's decision, and within 30 days of the request for review of the denied claim, the Plan Administrator shall notify the claimant in writing of his final decision on the reviewed claim.

With respect to the denial of any claim for benefits from an insurance company or other third-party benefit provider, paid for as a premium-type Benefit under the Plan, the review procedures of the insurance company or other third-party benefit provider shall apply.

6.6 Extensions of Time. In any case where the Plan Administrator determines Special circumstances apply, the Plan Administrator may extend the amount of time any Participant, Spouse, Dependent or beneficiary may need to appeal a claim, upon proper application to the Plan Administrator.

6.7 Rules to Apply Uniformly. The Plan Administrator shall perform his or her Duties in a reasonable manner and on a nondiscriminatory basis and shall apply uniform rules to all Participants similarly situated under the Plan.

6.8 Indemnity. The Employer does hereby agree to indemnify and hold harmless, to the extent allowed by law and over and above any liability coverage contracts or directors and officers insurance, any officer or director of the Employer, designated by the Employer or the Plan Administrator who has been employed, hired or contracted to assist in the fulfillment of the administration of this Plan. In addition, the Employer agrees to pay any costs of defense or other legal fees incurred by any of the above parties over and above those paid by any liability or insurance contract.

ARTICLE 7 - GENERAL PROVISIONS

7.1 Amendment and Termination. The Employer may amend or terminate this Plan at any time by legal action of the authorized agents of the Employer, subject to the limitation that no amendment shall change the terms and conditions of payment of any benefit a Participant, Spouse, Dependent or beneficiary was entitled to under the Plan at the time of the amendment or termination. The Employer may also make amendments apply retroactively to the extent necessary so that the Plan remains in compliance with Section 129 of the Code or any other provision of the Code applicable to the Plan.

7.2 Non-assignability. Any benefits to any Participants under this Plan shall be non-assignable and for the exclusive benefit of Participants, Spouses, Dependents and beneficiaries. No benefit shall be voluntarily or involuntarily assigned, sold or transferred.

7.3 Not an Employment Contract. By creating this Plan and providing benefits under the Plan, the Employer in no way guarantees employment for any employee or Participant under this Plan. Participation in this Plan shall in no way assure continued employment with the Employer.

7.4 No Guarantee of Tax Consequences. Neither the Administrator nor the Employer makes any commitment or guarantee that any benefits described in this Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether said benefit is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such benefit is not so excludable.

7.5 Rights Against Employer. Neither the establishment of the Plan, nor any modification thereof, nor any distributions hereunder, shall be construed as giving to any participant or any other person any legal or equitable rights against the Employer or its board, officers, partners or members, as applicable.

7.6 Severability. In any case where any provision of this Plan is held to be illegal or invalid, such illegality or invalidity shall apply only to that part of the Plan and shall not apply to any remaining provisions of the Plan, and the Plan shall be construed as if such illegal or invalid provision had never existed under the Plan.

First Approval June 9, 2008

Final Approval July 14, 2008

0366 **Wage Information**

The District will not terminate or retaliate against any employee for inquiring about or sharing compensation information for the purpose of determining whether the District gives equal pay for equal work. However, an employee with authorized access to wage information as part of their job function, who discloses the wages of other employees to those who do not have authorized access to other employees' compensation information, may be disciplined for such disclosure, up to and including termination, unless the disclosure is made in response to a complaint or investigation proceeding, hearing or other similar action.

First Approval July 8, 2019

Final Approval August 12, 2019

0367 **Staff Payments During Closure**

In the event of inclement weather, a pandemic, or other unexpected or extraordinary circumstances, the Board of Education or the Superintendent may close school or a particular school building in order to protect staff and students from harm and will establish a reopen date when it is safe to return. If such closure extends for a long period of time as determined by the Superintendent, then the Superintendent may implement procedures, agreements, or other requirements to compensate staff during a closure to ensure staff return to employment after the closure. The District may consistently pay staff according to District policies and procedures already established by salaries or wages.

First Approval Oct. 12, 2020

Final Approval Nov. 9, 2020

Legal Reference: 2 C.F.R. § 200.430

0370 **Collective Bargaining**

The board of education, as provided by law, may enter into professional negotiations with its certified employees.

The right of certified employees to join organizations of their own choice and to be represented by such organizations in professional and employment relations with the district is recognized; no employee, however, shall be compelled to join such an organization and individual employees shall have the right to individually represent themselves in their employment relations.

A representative organization shall give to the board of education a written request to meet and confer regarding employment and relations with certified employees. The request to meet and confer shall specify the areas to be discussed by the parties.

First Approval June 11, 1984 Final Approval July 9, 1984

First Approval March 11, 1985 Final Approval April 8, 1985

79-1287 et. seq. Teachers' Professional Negotiation act. First Amendment

0371 **Recognition of Bargaining Agent**

Recognition of a bargaining agent, as provided by statute, shall be in effect for a period of one year. If more than one agent requests recognition, the board of education may recognize an exclusive bargaining agent based on whether or not one organization seeking bargaining rights has enrolled a majority of employees during the two preceding years and may request a certified membership list as evidence of majority representation.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference R.R.S. 79-1287 et. seq. Teachers' Professional Negotiation Act.

0372 **Association Use of School Facilities**

The Teacher's Association shall be permitted to use school building facilities for meetings provided such use does not interfere with educational functions or activities of the school. The meetings are to be held outside of the normal employee workday.

First Approval May 14, 2007

Final Approval June 11, 2007

0380 **Security of Personnel**

The board of education affirms its intent to provide security for its employees through various actions and conditions such as: Recognition of Constitutional protection of the First and Fourteenth Amendments of the Constitution of the United States; issuance of continuing contracts to teachers who successfully complete the probationary period of employment; protection from arbitrary treatment through provision of grievance procedures; protection from illness or temporary disability; academic freedom; opportunities for participating in decisions which affect the employee's work duties; opportunities for professional development; and the like.

The superintendent shall have the responsibility for developing plans, for board review and action, related to providing a sense of security among employees.

First Approval June 11, 1984

Final Approval July 9, 1984

0381 **Grievance Procedures**

Grievance procedures shall be established between the board and the recognized bargaining agent of certified employees through professional negotiations. If grievance procedures are not included in any negotiated agreement, the Superintendent shall recommend, for board review and action, grievance procedures to be used with employees of the district.

First Approval June 11, 1984

Final Approval July 9, 1984

First Amended March 11, 1985

Final Amended April 8, 1985

Tenure

0382 **Tenure**

Professional employees who are eligible for tenure in accordance with laws of the State of Nebraska shall be granted tenure by the board.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference 79-12,107 Tenure

0382.1 **Probation and Evaluation**

Professional employees shall be granted probationary status in accordance with laws of the State of Nebraska. The probationary status of an employee shall not be extended beyond the length of time provided by law. Evaluation of probationary employees shall be as required by law and by board policy for evaluation of employees (0350).

First Approval June 11, 1984 Final Approval July 9, 1984

Legal Reference: R.R.S. 79-12,111 Probationary certificated employee; probationary period; evaluation; contract amendment or non-renewal; procedure.

0383 **Academic Freedom**

Within the guidelines of professional codes of ethics and codes of ethics established by the State of Nebraska, professional employees of the district are granted academic freedom; academic freedom, however it is not an absolute and must be exercised with concern for the welfare, growth, and development of pupils; the use of recognized methods of scholarship; and the application of good taste and judgment in the selection and use of materials and methods of instruction.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal reference: R.R.S. 79-443 District Board; schools; supervision and control.
79-1280 et.seq. Professional Practices Commission

0383.1 **Controversial Issues**

Because a major purpose of the educational program is for students to become responsible members in our nation's free and democratic society, emphasis is placed in the instructional program on teaching about our American heritage, the rights and privileges of citizenship, and the responsibilities of citizenship to maintain the American way of life.

In training for effective citizenship, teachers may need to help students study, from time to time, issues which are controversial. In the determination of which issues are to be studied and how instruction is to be provided, the board recognizes students' rights to study any controversial issue which has political, economic, or social significance and concerning which (at the students' level of understanding) students should begin to have an opinion. Students should have free access to relevant information, including materials which circulate freely in the community. Teachers should provide competent instruction in an atmosphere of freedom from bias and prejudice and permit students to form and express their opinions on controversial issues without thereby jeopardizing their relations with their teachers.

The superintendent shall specify, in writing, rules, regulations and procedures which pertain to instruction in controversial issues; these rules, regulations, and procedures shall be submitted to the board of education for review and action.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 79-213 Instruction; American citizenship, duties of officers.
79-443 District board; schools; supervision and control.

0384 **Contracts**

The contract of any tenured teacher who has not received written notice of intent to terminate employment by April 15 shall be continued for the following school year. Teachers shall return signed contracts within twenty-one (21) days of their issuance or the board shall assume that said teachers do not intend to return to their positions for the ensuing year. The superintendent may extend the deadline for return of signed contracts if extenuating circumstances are present.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: R.R.S. 79-1248 et. seq. Employment.

0385 **Privacy of Protected Health Information**

The Health Insurance Portability and Accountability Act of 1996 protects certain health information. Prior to obtaining or releasing employees' protected health information, employees may be requested to sign an authorization for disclosure of health information. If protected health information is requested by a third party, the School District will ensure that protected health information is released only as allowed by federal and state law.

First Approval June 8, 2003

Final Approval July 14, 2003

0386 **Use of Public Resources by Employees**

Restrictions on Use

No Board member or employee of Bancroft-Rosalie Community Schools shall use or authorize the use of his or her public office or any confidential information received through the holding of the public office to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated.

No Board member or employee shall use or authorize the use of school district personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.

No Board member or employee shall use or authorize the use of school resources for the purpose of campaigning for or against the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question. For purposes of this restriction, "school resources" means personnel, property, resources, or funds under the official care and control of the Board member or employee.

Authorized Uses

The uses described below are not authorized by employees, and violate this policy, where an employee's use: (1) interferes with the conduct of school business; (2) interferes with the performance of the employee's duties and responsibilities; (3) is contrary to another Board policy or a rule or directive set forth in an employee handbook or other employee communication device; (4) is contrary to a supervisor's directive; or (5) the use is for the employee's personal financial gain or potential for potential for personal financial gain.

Incidental or De Minimis Use: Use of school resources by a Board member or employee which is incidental or de minimis does not constitute a violation of this policy.

Personal Use as Part of Compensation: Use of school resources for personal purposes is authorized by this policy if:

1. the use of the resource for personal purposes is part of the employee's compensation provided in an employment contract or is consistent with this policy; and

2. the personal use of the resource as compensation is reported in accordance with the Internal Revenue Code of 1986, as amended, and taxes, if any, are paid by the affected employee.

Employees who engage in such personal use shall, upon request of the Board of Education or the administration, provide evidence to establish that the compensation has been reported and taxes paid as required by the Tax Code.

School Vehicles: Use of a school vehicle by a Board member or employee to travel to a designated location or the home of the Board member or employee is permissible when the primary purpose of the travel serves a school district purpose. Such use is authorized by this policy. No travel other than directly to the school-related trip destination shall occur, however, when students are in the vehicle or if the vehicle is a school bus.

Communication Devices: Employees of the District shall be permitted to use the District's telecommunication system, a cellular telephone, an electronic handheld device, or a computer under the control of the school district for email, text messaging, a local call, or a long-distance call, to a child at home, a teacher, a doctor, a day care center, a baby-sitter, a family member, or any other person to inform any such person of an unexpected schedule change or for other essential personal business. Any such communication shall be kept to a minimum and shall not interfere with the conduct of school business or the performance of an employee's duties.

Employees may use the District computer system, Internet Service, and e-mail system for personal and Teacher Association use, free of charge, as a benefit of employment with the District. The use of the District's computer system shall not interfere with the employee's ability to perform their assigned duties. Inappropriate use includes, but is not limited to, excessive personal e-mail or messaging, excessive personal Internet surfing, buying or selling items for personal use, playing computer games, downloading unauthorized programs, and any other computer-related activity that detracts from the employee's job during normal working hours.

There is no right to privacy on the District's computer system. All activities on the system and network may be monitored, intercepted, recorded, read, copied, or captured in any manner and disclosed in any matter, by personnel authorized by the Board of Education or the Superintendent.

A Board member or employee shall be responsible for payment or reimbursement of charges (e.g. long distance charges), if any, that directly results from any such communication. The Board member or employee shall promptly report any such communication that results in an expense to the School District to the

Superintendent or the Superintendent's designee. The Superintendent or the Superintendent's designee shall establish procedures for reimbursement of charges incurred as a result of such communications.

Use of the District's internet system for such communications shall not be permitted to the extent such use violates the terms of the E-Rate program, which restricts use of the internet system to "educational purposes."

Election Issues: A Board member or the Superintendent, in the normal course of his or her duties, may use school resources to research and prepare materials to assist the School Board in determining the effect of a ballot question on the School District.

Mass mailings, mass duplication, or other mass communications at school expense for the purpose of qualifying, supporting, or opposing a ballot question is not permitted. Mass communications does not include placing public records demonstrating the consequences of the passage or defeat of a ballot question affecting the School District on its existing websites.

A Board member or employee may campaign for or against the qualification, passage, or defeat of a ballot question or the nomination or election of a candidate when no school resources are used. An employee shall not engage in campaign activity for or against the qualification, passage, or defeat of a ballot question or the nomination or election of a candidate while on duty time.

A Board member or authorized employee may make school facilities available for campaign purposes if the identity of the candidate or the support for or opposition to the ballot question is not a factor in making the facilities available or a factor in determining the cost or conditions of use.

The School Board may discuss and vote upon a resolution supporting or opposing a ballot question.

A Board member may respond to specific inquiries by the press or the public as to his or her opinion regarding a ballot question or provide information in response to a request for information.

A Board member or employee may identify himself or herself by his or her official title when communicating about a ballot question. Employees who do so shall clearly communicate that their communication is their personal opinion and does not reflect the position or views of the Board of Education or the School District unless express authorization is given by the Board of Education or the Superintendent.

First Approval May 14, 2007

Final Approval July 9, 2007

Amended July 13, 2009

Final Approval Aug. 10, 2009

0387 **Use of Surveillance Cameras**

I. Surveillance Cameras. The Board authorizes the use of video (not audio) cameras on district property to ensure the health, welfare and safety of all staff, students and visitors to district property, and to safeguard district facilities and equipment.

A. Permissible Locations. Video surveillance cameras may be used or placed in the following locations on campus:

1. Outdoor facilities: such as parking lots, walkways, picnic areas, athletic fields and stadiums and points of ingress and egress.
2. Indoor facilities: foyers, lobbies, hallways, and other common areas.
3. School Buses, both regular and activity buses.

B. Impermissible Locations. Video surveillance cameras may not be used or placed in offices, classrooms, laboratories, locker rooms, restrooms or any location in a school where students are receiving instruction. For purposes of combating criminal activity, cameras may be used in the above locations when students are not in those locations but will not under any circumstances be placed in locker rooms or restrooms.

C. Notice. School employees and students shall be notified through student/parent and staff handbooks that video surveillance may occur on district property.

D. Video recording. Any recording made by a surveillance camera, on tape or digitally, in which a student is the focus of the video shall be considered an educational record. A parent may view the video, but parents must give permission for others to view. If two or more students are the focus of the same video, then both parents have a right to view it.

E. As a general rule, the video record shall be maintained for a period not to exceed 30 calendar days and then destroyed. Copying over a previous recording on videotape or in a digital file is a permissible method of destroying an out-of-date video recording.

F. This policy is based on the presumption and belief that neither students, staff nor guests have a reasonable expectation of privacy in those events that occur in plain view of other students, staff and guests in those public areas of a school campus subject to video surveillance as described above.

G. If a surveillance camera records unlawful conduct or conduct in violation of the Board of Education Policies on employee or student conduct, the record shall be admissible as evidence in any proceeding regarding the discipline of any student or staff member. In the event a video recording is used or intended for use as evidence in a student or employee disciplinary proceeding that recording ceases to be a public record and from that point forward is and shall be considered a confidential student record as provided by the Family Educational Rights and Privacy Act (FERPA).

H. Video and Audio Recording of School Activities. Parents, students, the public and the media are encouraged and authorized to photograph and/or video-tape any school activities to which the public is invited as spectators, including but not limited to: intramural and interscholastic athletic events, school plays, performances of the band or chorus, or any other similar public event. Neither students nor staff has any reasonable expectation of privacy in such events. Any student (or student's parent) who objects to this policy may be excused from participation in the activity. In the event a school is performing a copyrighted play or music, the school is authorized, as necessary and appropriate, to notify the public that video or audio-taping is prohibited.

II. Video and Sound Recording of Instruction.

A. As a general rule, students, parents, the public and the media may not video or audiotape classroom instruction or any other instructional activities that occur in school. It is the opinion and belief of the Board of Education that students and staff have a reasonable expectation of privacy regarding their performance in class. Students must feel free to respond to a teacher's questions, to participate in class discussions and to develop their vocational, artistic or other educational skills in an environment conducive to learning.

B. Teachers, principals and other school administrators may use audio and/or videotape for legitimate educational or administrative purposes, including but not necessarily limited to:

1. Evaluating student and/or teacher performance;
2. Developing student or staff skills through self-assessment;
3. Accommodating the needs of students or staff with disabilities.

C. Video or audiotape recordings of students or staff instructional programs or activities are either confidential student records under FERPA or confidential personnel records and are not public records

Use of Surveillance Cameras

First Approval: January 12, 2015

Final Approval: February 9, 2015

Legal References: Family Educational Rights and Privacy Act (FERPA)

0388 **Workplace Privacy Policy**

1. The District will abide by the Nebraska Workplace Privacy Act and will not:
 - a. Require or request that an employee or applicant provide or disclose any user name or password or any other related account information in order to gain access to the employee's or applicant's personal Internet account by way of an electronic communication device;
 - b. Require or request that an employee or applicant log into a personal Internet account by way of an electronic communication device in the presence of the District in a manner that enables the District to observe the contents of the employee's or applicant's personal Internet account or provides the District access to the employee's or applicant's personal Internet account;
 - c. Require an employee or applicant to add anyone, including the District, to the list of contacts associated with the employee's or applicant's personal Internet account or require or otherwise coerce an employee or applicant to change the settings on the employee's or applicant's personal Internet account which affects the ability of others to view the content of such account;
 - d. Take adverse action against, fail to hire, or otherwise penalize an employee or applicant for failure to provide or disclose any of the information or to take any of the actions prohibited by the Workplace Privacy Act.
 - e. Require an employee or applicant to waive or limit any protection granted under the Workplace Privacy Act as a condition of continued employment or of applying for or receiving an offer of employment.

Notwithstanding anything to the contrary, all employees must abide by the District's technology policies, procedures and guidelines, including the District's Internet Use policy and/or practice. Pursuant to the Workplace Privacy Act, the District may also:

- a. Monitor, review, access, or block electronic data stored on an electronic communication device supplied by or paid for in whole or in part by the District or stored on the District's network, to the extent permissible under applicable laws;
- b. Access information about an employee or applicant that is in the public domain or is otherwise obtained in compliance with the Workplace Privacy Act;
- c. Conduct an investigation or require an employee to cooperate in an investigation if the District has specific information about potentially wrongful activity taking place on the employee's personal Internet account, for the purpose of ensuring compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct;
- d. Any other reason permitted by the Workplace Privacy Act.

Legal Reference: Laws 2016, LB 821

First Approval July 11, 2016

Final Approval August 8, 2016

0389 Professional Boundaries Between Employees and Students

All employees are expected to observe and maintain professional boundaries between themselves and students. A violation of professional boundaries will be regarded as a form of misconduct and may result in disciplinary action.

The following non-exclusive list of actions will be regarded as a violation of the professional boundaries that employees are expected to maintain with a student:

- Using e-mail, text messaging, instant messaging or social networking sites to discuss with a student a matter that does not pertain to school-related activities, such as the student's homework, class activity, school sport or club, or other school-sponsored activity. Electronic communications with students are to be sent simultaneously to multiple recipients, not to just one student, except where the communication is clearly school-related and inappropriate for persons other than the individual student to receive (for example, e-mailing a message about a student's grades).
- Engaging in social-networking friendships with a student on social networking sites. Material that employees post on social networks that is publicly available to those in the school community must reflect the professional image applicable to the employee's position and not impair the employee's capacity to maintain the respect of students and parents or impair the employee's ability to serve as a role model for children. Employees shall not friend or follow students on any social networking site.
- Engaging in sexual activity, a romantic relationship, or dating a student or a former student **within one year of the student graduating or otherwise leaving the District.**
- Making any sexual advance - verbal, written, or physical - towards a student.
- Showing sexually inappropriate materials or objects to a student.
- Discussing with a student, sexual topics that are not related to a specific curriculum.
- Telling sexual jokes to a student.
- Invading a student's physical privacy (e.g., walking in on the student in a restroom).
- Hugging or other physical contact with a student that is initiated by the employee when the student does not seek or want this attention.
- Being overly "touchy" with a specific student.
- Allowing a specific student to get away with misconduct that is not tolerated from other students, except as appropriate for students with an IEP or 504 Plan.
- Discussing with the student the employee's problems that would normally be discussed with adults (e.g., marital problems).
- Giving a student a ride in the employee's personal vehicle without express permission of the student's parent or school administrator unless another adult is in the vehicle.
- Taking a student on an outing without obtaining prior express permission of the student's parent or school administrator.
- Inviting a student to the employee's home without prior express permission of the student's parent and school administrator.
- Going to the student's home when the student's parent or a proper chaperone is not present.
- Giving gifts of a personal nature to a specific student.
- Discussing alcohol, tobacco or other illicit drugs in a non-instructional setting, such as describing a party that the employee attended.

Professional Boundaries Between Employees and Students

- Discussing another student's or employee's personal matters when it is not appropriate outside of the instructional setting.
- "Grooming," which includes building trust with a student and individuals close to the student in an effort to gain access to and time alone with the student, with the ultimate goal of engaging in sexual contact or sexual penetration with the student, regardless of when in the student's life the sexual contact or sexual penetration would take place.

Appropriate exceptions are permitted to the foregoing for legitimate health or educational purposes and for reasons of family relationships between employees and their children who are students in the District. A staff member seeking an exception must receive advance approval from his or her administrator. If a staff member is unable to communicate with an administrator in advance (such as in the event of an emergency), the staff member must notify the administrator as soon as possible, but not later than 24 hours immediately following the event.

Any person who suspects a District employee of engaging in any prohibited conduct under this policy, including grooming, should contact the Superintendent as soon as practical.

An employee who violates this policy may face discipline, up to and including termination of employment, and may be referred to the appropriate certification or credentialing agencies for further discipline.

A violation of this policy will result in referral to the Department of Health and Human Services, law enforcement, or both.

First Approval Oct 12, 2020

Final Approval Nov 9, 2020

Legal Reference: LB 1080 (2020)

0390 **Continuity of Personnel**

The board of education affirms its intent to establish organizational provisions designed to retain personnel and to foster continuity in the service of personnel to the district.

The superintendent shall be responsible for development of plans to:

maintain health and occupational mobility of employees;

provide for orderly separation from employment with the district;

provide for the well-being of employees;

provide replacement personnel when employees are unable to perform their assigned duties.

Rules, regulations, and procedures developed to ensure continuity of personnel services shall be in accordance with law and with board policies.

First Approval June 1, 1984

Final Approval July 9, 1984

79-441 District property; custody and care; duty of board. 79-1248 et. seq. Employment.

0391 **Duties of Employees**

Teachers are expected to be on call between the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, and shall be on duty at assigned responsibilities on all duty days unless otherwise excused by their immediate supervisor or by the superintendent. Teachers may leave school premises at 4:00 p.m. provided their duties do not require their continued attendance on school premises.

Teachers may be assigned responsibilities at hours other than normal duty hours by their immediate supervisor or by the superintendent in order to carry out responsibilities for supervising or directing school activities or programs, or for participating in programs under the direct sponsorship of the school. Such assigned responsibilities shall be made by the immediate supervisor or superintendent in such a manner as to distribute the work load experienced by individual teachers in as equitable a manner as possible.

Employees are expected to be in attendance at meetings which are announced by the superintendent or other authorized supervisory personnel, except when a meeting is designated as an optional meeting. Legitimate reasons for absence from meetings called by supervisory personnel shall be the same as those recognized as legitimate reasons for absence from regular duties.

Meetings announced by administrative and supervisory personnel may be scheduled before the regular school day begins, during the school day, after dismissal of classes in the afternoon, or during evening hours, provided reasonable notice is given in advance. Attendance of personnel at such meetings may be required.

In scheduling meetings of employees regarding the discharge of employee duties, administrative and supervisory personnel shall exercise every possible means to schedule meetings in such a manner as to cause minimum interference with scheduled classroom meeting time.

Administrative and supervisory personnel are authorized to require the attendance of teachers at meetings held within the district and to approve attendance at meetings held outside the district when such meetings are judged necessary for conduct of the business of the district.

First Approval June 11, 1984 Final Approval July 9, 1984
Legal Reference: 79-439 et. seq. District board.

0392 **Authorized Absences and Leaves**

The board of education affirms its belief that provisions for absences and leaves for employees helps attract and retain employees who will continue to grow professionally, will maintain personal health and well-being, and will experience greater job satisfaction as employees of the district. The board recognizes its responsibilities relative to these purposes and intends to provide the following benefits or opportunities:

1. opportunities for continuing professional growth
2. sick leave and related benefits for recuperation from illness
3. opportunities for voluntary participation by employees in income protection plans
4. emergency leave
5. personal leave

Absences, leaves, and vacations of employees shall be in accordance with provisions established by negotiation between the board and either individual employees or representative bargaining associations.

The board reserves the right to approve or deny requests for absences, leaves, or vacations, of employees when provisions governing such absences, leaves, or vacations are not specified by law, by board policy, or by negotiated agreements between the board and either individual employees or representative bargaining associations.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference. 79-401 School district; body corporate; powers.

0392.1

Travel

Subject to approval by the superintendent, district employees may be authorized to travel on official business for the school district or to attend meetings for purposes of professional growth.

Approved travel on official business or for purposes of professional growth shall be at district expense; an itemized statement of expenses incurred by the employee shall be processed in the same manner as other claims against district funds.

Costs of transportation shall be determined as the actual cost of public transportation, which is purchased or, if the employee travels by use of a personal vehicle, by reimbursement of expense at the mileage rate established by the board for the fiscal year.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 79-807 Board of education; third-class district; compensation.

0392.2

Inclement Weather

Whenever inclement weather or other reasons force a cancellation of classes, classified employees who are full time employees shall receive one hour's pay, according to the hourly wage rate, if they have not been notified of the cancellation of classes, arrive at their duty stations, and present themselves for work. Employees who are asked to remain at home on such days shall not report to work unless specifically requested to do so; employees who report to work when not requested to do so shall not be eligible for compensation at the hourly wage rate.

No sick leave shall be charged to an employee during any days of canceled classes.

First Approval June 11, 1984

Final Approval July 9, 198

0392.3 **Family Leave**

It shall be the policy of Bancroft-Rosalie Schools, (hereinafter the "School District"), whenever it employs 50 employees or more, to grant benefits under the Family and Medical Leave Act to eligible employees up to twelve (12) weeks of leave for certain medical or family emergencies in a twelve (12) month period of time. such benefits are subject to the following:

1. You must have been employed with the school district for at least twelve months before you can request this leave and have worked a minimum of 1250 hours during the prior twelve-month period.
2. This leave is unpaid.
3. You must first use all paid maternity leave, vacation time, and sick leave/excused time that you have earned. These days or weeks will be counted against the twelve (12) weeks of leave. For example, if you request eight (8) weeks of leave, and you have accrued and have remaining two (2) weeks of vacation and (5) days of sick leave/excused absence time, you must use the vacation and sick leave/excused absence time of three weeks, and then you will receive an additional three (3) weeks of requested leave, unpaid.
4. Family leave can be used for:
 - a. The birth of a child;
 - b. The adoption of a child;
 - c. To care for a sick spouse, child or parent;
 - d. For your own serious health condition.
5. Employees eligible for leave and who are employed primarily in the instructional capacity, who request leave for a foreseeable and planned medical treatment where the leave would last longer than 20% of the total number of school days during the leave period will be required to (1) either take the leave for a period not to exceed the duration of the planned treatment, or transfer temporarily to an available position for which the employee is qualified which will better accommodate the recurring periods of leave. If transferred, you will receive equal pay and benefits.
6. If your leave for any reason begins more than five weeks before the end of an academic term, the School District may require you to continue the leave until the end of the academic term if the leave requested is at least three weeks in length and your return would take place during the last three-week period of the academic term. If you take leave less than five weeks before the end of the academic term for any reason other than your own serious health condition, the School District may require you to continue your leave until the end of the academic term if the leave is longer than two weeks and your return to work would occur during the last two weeks of the academic term.

7. You must give at least thirty (30) days notice except for emergency situations.
8. The School District will maintain your health insurance while you are on leave under the same terms and conditions as when you were employed. You will be expected to pay your share of any health insurance premium each month when it comes due. If you do not return from your leave, you will be expected to repay the School District for the full amount of your health insurance premiums paid by the School District during your leave.
9. The School District will require verification for the reasons stated in the family leave request, including medical certification from any doctors who may be involved. Any employee who submits false reasons or fraudulent records to support a family leave request will be subject to immediate discharge.
10. If both husband and wife are employed by the School District, that husband-wife team is entitled to only twelve (12) weeks total for any qualifying event.
11. With limited exceptions, any employee who takes a leave will be returned to his former position or an equivalent position with the same pay and benefits.
12. You must fill out the proper family leave form in order to obtain a leave. Your supervisor will not have authority to grant or alter any leave terms or conditions.

If you have any other questions about this policy, please contact your personnel manager.

First Approval Feb. 7, 1994

Final Approval March 14, 1994

0392.4 **Adoption Leave**

Adoption leave will be permitted to be taken by an adoptive parent for the same time and in the same terms as an employee is permitted to take a leave of absence upon the birth of an employees child. Since the district does not allow a leave of absence upon birth except as sick leave, the adoption leave will be permitted only if it is determined by the employee's physician that leave is needed for health-related reasons and the employee has sick leave available for such leave.

The adoptive parent leave of absence begins following the commencement of the parent-child relationship. The parent-child relationship commences, for purposes of adoption leave, when the child is placed with the employee for purposes of adoption. The employee shall be deemed to have waived any adoptive leave days following the commencement of the parent-child relationship, except as the Superintendent and the employee may otherwise agree. Advance notice of an anticipated adoption shall be provided by the employee to the Superintendent as soon as possible.

Adoption leave will not be available where the child being adopted is: (1) a special needs child over eighteen years of age, (2) over eight years of age and not a special needs child, (3) a stepchild being adopted by the child's stepparent, (4) a foster child being adopted by the child's foster parent, or (5) a child who was originally under a voluntary placement for purposes other than adoption, without assistance from an attorney, physician, or other individual or agency, which later results in a petition for the adoption of the child by the person with whom the voluntary placement was made.

First Approval Nov. 15, 1999

Final Approval Dec.13, 1999

LB 134, Laws of 1999

0392.5**Military and Family Military Leave**

Military leave and family military leave will be granted to the extent required by state and federal law.

Employees requesting military leave must notify the Superintendent as soon as they receive notification of activation. Employees are to attach a copy of their orders to a District leave request form when they prepare the request for military leave.

Employees requesting to take family military leave must notify the Superintendent at least 14 days in advance of taking such a leave if the leave will be for 5 or more consecutive days, consult with their supervisor to schedule the leave so as to not unduly disrupt operations of the school, and for leaves of less than 5 days, notify the Superintendent of the leave request as soon as practicable.

Family military leave under the Family and Medical Leave Act (FMLA) will be provided in accordance with that law and subject to the provisions of the Board policy pertaining to FMLA leave.

First Approval May 14, 2007

Final Approval June 11, 2007

AMENDED First Approval June 9, 2008

Final Approval July 14, 2008

Legal Reference: Neb. Rev. Stat. §§ 55-160 to 55-166;
Neb. Rev. Stat. §§ 55-501 to 55-507;
29 U.S.C.A. §§ 2611, et seq. and 29 CFR Part 825;
38 USC Sections 4301 to 4333 and 20 CFR Part 10

0392.6 **Injury Leave**

A District employee who believes that they have been physically injured within the employee's scope of employment by another individual who intentionally, knowingly, or recklessly causes bodily injury to such employee must report such injury to the employee's administrator as soon as practical. An administrator will then investigate the circumstances to determine if the employee qualifies for paid injury leave. The employee may be required to provide confirmation from a physician regarding the causation and the period of time for which an employee is unable to work. If the administrator determines that the employee qualifies for paid injury leave, then the employee will receive up to seven calendar days of paid injury leave to cover the amount of time that the employee was otherwise scheduled to work. Such paid injury leave will not count against the employee's other available leave.

If the administrator determines that the employee does not qualify for paid injury leave, then the employee may be required to use other available leave. There is no appeal process for an employee who has been denied a request for paid injury leave.

First Approval Oct. 12, 2020

Final Approval Nov. 9, 2020

Legal Reference: LB 1186 (2020)

0393 **Substitute teachers**

The superintendent may employ substitute teachers, except those who are classified as interim teachers, without election and appointment by the board. All substitute teachers must have a valid teaching certificate on file with the county superintendent prior to actual performance of duties as a substitute teacher.

The rate of compensation for substitute teaching shall be set by the board, acting upon the recommendation and advice of the superintendent. Differentiated rates may be paid to teachers who teach more than five (5) consecutive days as a substitute for the same absent teacher.

Interim teachers, those who teach longer than twenty-five (25) consecutive days for the same absent teacher, shall be issued a work agreement, subject to board approval, and shall be paid an amount for each day of service equal to the daily rate of a beginning teacher on the first step of the salary schedule.

The assignment of certified employees to substitute teaching assignments, in addition to regular duty assignments, shall be avoided whenever possible and shall occur only in an emergency. Teachers who perform substitute teaching duties, in addition to regular duty assignments, will be compensated in accordance with provisions of the negotiated agreement between the board and the representative bargaining association.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 79-1248 et. seq. Employment

0394 **Absenteeism and Tardiness**

The superintendent shall be responsible for development of rules, regulations, and procedures to control employee absenteeism from work or tardiness to work. These rules, regulations, and procedures, specified in writing, shall be in accord with any provisions of law or negotiated agreements between the board and representative bargaining associations. These rules, regulations, and procedures shall be reviewed by the board and are subject to board approval.

First Approval June 11, 1984

Final Approval July 9, 1984

0395 **Health and Safety of Personnel**

The Superintendent shall develop plans for providing for the health and safety of all employees and shall specify, in writing, the rules, regulations, and procedures which are applicable. These rules, regulations, and procedures must be in accord with any provisions of law or negotiated agreements between the board and representative bargaining associations. Rules, regulations, and procedures established for the health and safety of personnel shall be submitted, in writing, to the board for annual review.

If the health of any employee is thought to be such as to adversely influence the welfare of students or other employees, the employee may be required, by the superintendent, to submit to an examination by a licensed physician or surgeon. The expense of any such required examination shall be an obligation of the district.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 79-443 District board; schools; supervision and control

0395.1 **Playground and Lunch Line Supervisors**

The board shall employ or assign personnel to serve as playground and lunch line supervisors so as to provide all teachers with an uninterrupted lunch period of not less than thirty (30) minutes.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 79-547 Teachers; lunch period; exceptions

0395.2 **Safety Committee and Written Injury Prevention Program**

I. Selection of Safety Committee.

Bancroft-Rosalie School shall establish a safety committee consisting of four (4) members. There shall be two (2) members representing the employer and a like number representing the employees. The employer's representatives may be non-management employees. The safety committee shall be established through a collective bargaining process with those employees who are within a bargaining unit and shall give due regard to including employees who are not being negotiated for by a collective bargaining agent in the process of selecting a safety committee.

II. Meetings of the Safety Committee.

It shall be the duty of the safety committee to meet at least once in every three month period of operation or more often if necessary to respond to unresolved employee complaints concerning safety in the workplace. For purposes of counting three month or quarterly periods for meetings, each calendar year shall be broken into three month periods or quarterly periods as follows: a) January 1 through March 31; b) April 1 through June 30; c) July 1 through September 30; d) October 1 through December 31.

The safety committee shall meet during a work day at a time to be announced by the superintendent or board designee after consultation with the committee chairman, at least five days in advance, except that it shall be incumbent upon the safety committee to determine when it shall meet in the event of a death, injury, or complaint that is work related. In the event the regular safety committee meeting announced by the superintendent or the board designee will pose a hardship to one or more members of the safety committee, the safety committee by and through any of its members may communicate such fact to the superintendent or board designee, who shall reschedule such regular meeting with advice from the safety committee.

III. Safety Committee Officers

Once the safety committee membership is complete, the committee may at its first regularly convened meeting or other meeting, select a chairman whose duties shall consist of assisting in scheduling and coordinating meetings of the safety committee as needed or required. The chairman shall serve as the liaison between the safety committee and the superintendent or board designee for purposes of facilitating attendance by the membership of the safety committee. The chairman may have such other duties as the safety committee deems appropriate in the interest of developing effective safety plans and programs and in enhancing the cooperation between employer and employees in promoting a safe workplace.

Additionally, at the first meeting of the safety committee, a secretary shall be appointed who shall record the proceedings of the safety committee and produce minutes in readable form of such proceedings. Once the minutes of the meeting have been created, they shall be filed with the superintendent or board designee. It shall thereafter be the duty of the superintendent or board designee to maintain such minutes on file for a period of at least three years of his/her receipt of such

minutes.

IV. Distribution of Names of Safety Committee.

It shall be the duty of the secretary of the safety committee to make known to the superintendent or board designee, the Board of Education, and to all employees of the school district the names of such safety committee members. The secretary shall make known to the superintendent or board designee and each employee of the district any changes which may occur in the membership of the safety committee.

V. Plan of Employer.

It shall be the duty of the employer to prepare an injury prevention program with the goal of effectively assisting in preventing job related injuries or death. The program shall address all work sites of the employer and all classes of workers. Once the plan of the employer is prepared it shall be presented to the safety committee in such a manner as the employer deems appropriate in meeting the goals set forth in this policy.

The program presented by the employer shall consist of at least the following as to each work site of the employer and for each class of employee at each work site:

1. It shall list each category of workplace danger ascertained by the employer.
2. It shall state the nature and anticipated causation of injuries or illnesses or possible death in the workplace that are anticipated by employer at the time the program is developed.
3. A declaration of methods and strategies proposed by the employer to avoid job related illnesses or injuries and death, including such things as safety rules development, describing safe working practices, administrative controls and making a recommendation for the eventual provision, if necessary, of personal protective equipment to control exposures.

The program presented by the employer shall specifically address safety training as follows:

1. Initial safety orientation of rules, policies, and job specific procedures for employees new to the work in a manner that is readily understood by each employee.
2. Job specific training for employees before they perform work that has been identified as potentially dangerous by the employer.
3. Periodic refresher training/dissemination of information on at least an annual basis for employees concerning the employer's injury prevention program as it may be modified by the safety committee, on safety rules, policies, and procedures identified by the employer.

It shall be the duty of the superintendent or board designee or such other individual or individuals as the board may identify, to, as soon as practicable, develop the employer's injury prevention program.

Nothing in this policy shall be construed to place any greater duties on the employer than is provided by law pertaining to the employer/employee relationship. All communications of the safety committee shall be advisory in nature and shall have no binding effect.

VI. Safety Committee Program.

The safety committee may adopt, reject or modify the employer's safety plan. If the safety committee amends or rejects the employer's plan the safety committee shall communicate the amended plan to the administration within five (5) working days of such modification or rejection. If the committee rejects the employer's plan it shall have a duty to develop a plan of its own within thirty (30) days of its receipt of the employer's safety program. Additionally, upon receipt of notice that the safety committee has accepted the employer's safety program or upon the receipt by the administration of the amended safety committee program or upon receipt of a program developed by the safety committee after the safety committee's rejection of the employer's plan, the superintendent or board designee shall communicate to all employees the safety rules, policies, and procedures and any changes to such rules, policies, and procedures.

If the safety committee has rejected the employer's safety plan or amended it in a manner unacceptable to the employer, the employer shall develop safety rules and procedures which shall include both general workplace safety and job site specific safety rules. In any event, such rules and procedures of the employer shall be communicated to all employees as described in this paragraph.

VII. Accident Review

The safety committee may review all deaths and recordable injuries or illnesses which are job related to the employer. After such review, and when appropriate, the committee may make written recommendations regarding future prevention. Such safety committee review shall not supersede normal federal enforcement or insurance investigations that may take place. Such recommendations shall be considered by the employer but shall not be binding on the employer. Nothing in this policy shall be construed to relieve the employer of its duty to report any workplace deaths to OSHA or the Nebraska Department of Labor's Division of Safety and Labor Standards.

VIII. Designation of Safety Committee Member to Participate in Department of Labor Inspections.

An employee representative from the safety committee or such other person as the safety committee may designate, shall accompany the state representative during any Department of Labor inspection of the premises of the employer.

IX. Non-Discrimination and Non-Retaliation.

It shall be the policy of the district to in no manner retaliate or in any other manner unlawfully discriminate against any employee who has made any oral or written complaint to the safety committee or to any governmental agency having regulatory responsibility pertaining to any occupational safety and health issue. Any employee making such a complaint shall not be financially or in any other manner punished for making such a complaint. Nothing in this policy shall be construed to vest any

Safety Committee and Written Injury Prevention Program

complaining employee with any right greater than that which the employee has, based upon the employee's relationship with the employer at the time such complaint was made.

First Approval Feb. 7, 1994

Final Approval March 14, 1994

Amended First Approval Feb. 13, 1995

Final Approval March 13, 1995

Legal Reference: Rule 002 Nebraska Department of Labor

0396 **Assignment and Transfer of Personnel**

The superintendent shall assign all administrative and supervisory personnel, all building administrators, certified personnel, and classified personnel to their positions, duties, and responsibilities.

All employees are appointed to fill types of positions and are subject to assignment to specific positions provided the assignment is in accord with law and any conditions of employment which may be included in negotiated agreements between the board and its employees. Assignments, in so far as possible, shall provide for equitable and fair distribution of duties, work load, and responsibilities, except for personnel whose contracts specify special duties and load.

Except in an emergency, specific assignments of professional employment shall be made prior to August 1 of each year with regard to the assignment of the employee for the ensuing school year.

All professional employees shall have the opportunity, at least once each school year, to request reassignment for the ensuing school year to any position within the district for which they are eligible by virtue of certification.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference 79-441 District Property; custody and care; duty of board.

0397 **Separation from Service**

The intent of the board, whenever an employee is to be separated from service to the district, it to provide to the greatest degree possible for the mutual benefit of the employee and the district. The primary concern of the board, however, must be for the continued operation of the district and its programs and services in the most effective and efficient manner.

First Approval June 11, 1984

Final Approval July 9, 1984

0397.1 **Resignation**

A teacher may expect to be released from his or her contract with the district if the teacher files a written request, with a plausible and sound reason, through the superintendent to the board of education, by or before April 7. A teacher shall not expect to be released from his or her contract if the request for release is filed after June 1; however, a teacher may, at any time, negotiate with the board for release from a contract by mutual agreement provided the superintendent recommends such negotiation to the board.

Classified personnel who wish to terminate their employment in good standing should submit a written notification of resignation with the superintendent at least two weeks prior to the employee's last day of intended employment. The superintendent may release an employee earlier than the employee's intended last day of employment, provided there is mutual agreement to do so and a suitable replacement has been found for the employee who has resigned.

First Approval June 11, 1984

Final Approval July 9, 1984

First Amended March 13, 2006

Final Amended Apr 10, 2006

Legal Reference: 79-441 District property; custody and care; duty of board.

0397.2 **Reduction in Force**

Reduction in force of certificated staff members may be appropriate due to declining enrollments, limited financial support, changes in curricular programs, decline in the taxable value of property located within the school district, a decline in state or federal financial aid, an increase in the cost of operating the school district, or another change or changes in circumstances. If such changes occur and a reduction of certificated staff is necessary, the superintendent shall notify those certificated employees whose contracts may be amended, terminated or not renewed. Provided, however that the employment of a permanent employee may not be terminated through a reduction in force while a probationary employee is retained to render a service which such permanent employee is qualified by reason of certification and endorsement to perform or where a certification is not applicable, by reason of college credits in the teaching area.

A reduction in force shall consist of a reduction of one or more positions or a reduction in the percentage of employment of one or more certificated staff members even if the number or percentage of employment of the certificated staff overall may be increased by other hirings or increases in the percentage of employment of other employees. Reduction in force may result in termination of employment, an amendment to the employee's contract reducing the employee from full time to part-time status, or an amendment to the contract of a part-time employee further reducing that employee's percentage of employment.

Due to the confidential and unique personal working relationship necessary between the administration and the board of education, a certificated employee who is not currently serving in a predominately administrative capacity shall have no rights under this policy to any administrative position within the school system.

The selection of personnel for reduction in force shall be made with consideration given to the following criteria, which are not listed in any order of importance: (1) programs to be offered; (2) areas of certification and endorsement; (3) state and federal regulations which may mandate certain employment practices; (4) special qualifications that may require specific training and/or experience; (5) contributions to activity programs; (6) qualifications based on past performance and competence as determined by the principal and/or superintendent through employee evaluation procedures; (7) the organizational and educational effect created by multiple part-time certificated employees; and (8) any other reasons which can be rationally related to the instruction in or administration of the school system.

Employee evaluations (including frequency of evaluations, evaluation forms, and number and length of classroom observations, if applicable) used for purposes of this policy shall conform to the board policies and administrative rules, regulations, and practices (in effect at the time) related to the periodic evaluation of certificated staff members.

If, after consideration of the above, it is the opinion of the superintendent that no significant difference exists between or among certificated employees being considered for reduction in force, the employee(s) with the longest uninterrupted service to the district shall be retained.

Reduction in Force

Uninterrupted service shall be defined as the number of continuous, full time years of employment in the district as a teacher. A break in service will terminate a teacher's uninterrupted service under this provision. That period of time when a teacher is on a leave of absence shall not constitute a break in service; however, any years of leave of absence or fractions of years of leave of absence will not count as years of employment for the purpose of determining the length of teachers' uninterrupted service.

Any certificated employee whose contract has been reduced shall be considered to have been dismissed with honor and shall, upon request, be provided a letter to that effect. Such employee shall have preferred rights to reemployment for a period of 24 months commencing at the end of the contract year and the employee shall be recalled on the basis of length of service to the school or any position for which he or she is qualified by endorsement or college preparation to teach. The employee shall, upon reappointment, retain any benefits which had accrued to said employee prior to termination, but such leave of absence shall not be considered as a year of employment by the district. An employee under contract to another educational institution may waive recall but such waiver shall not deprive the employee of his or her right to subsequent recall.

It shall be the responsibility of each certificated employee to file with the superintendent of schools a copy of said employee's teaching certificate, including endorsements, upon initial employment with the district. On or before March 15th of each year thereafter, for so long as the employee is employed in the school system or has right of recall, evidence of any changes in said employee's certification or endorsements which have occurred since March 15th of the previous year or are pending shall be filed with the superintendent of schools.

Any certificated employee whose employment contract is terminated as a result of reduction in force shall, during the period which he or she is eligible for recall; report his or her current address to the superintendent of schools and shall inform the superintendent of any changes of address thereafter. If a vacancy in the system occurs for which said employee has right of recall, the offer of such employment may be sent by the superintendent to the employee's last known address. If no acceptance of such offer is received in writing from the employee within ten days of mailing, the employee shall be deemed to have waived his or her rights to recall and to said employment position.

First Approval June 11, 1984

Final Approval July 9, 1984

First Approval March 12, 1990

Final Approval April 10, 1990

Legal Reference: 79-1254.05 Board of education; adopt; reduction in force policy; requirement.

79-1254.06 Reduction in force; board of education and school district administration; duties.

79-1254.07 Reduction in force; employee contract terminated; effect; recall; rights.

79-1254.08 Reduction in force; noncompliance; how treated.

0397.3 **Dismissal**

The board of education reserves the right to dismiss from service or to amend the contract or agreement for services of any district employee. Such dismissal or amendment of contract may be for just cause as specified by statute.

Rules, regulations, and procedures to be followed when termination or dismissal is being considered shall be specified in the teacher handbook and shall include notification of the due process rights of the employee.

All proceedings for consideration of dismissal shall be in accordance with laws governing the consideration of dismissal and the conduct of dismissal proceedings.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 79-1249 et. seq. Employment. 79-1280 Professional Practices Commission.

0397.4 **Disability**

The board shall make provisions for disability benefits for employees as may be provided by law. In addition, the board may provide opportunities to employees for voluntary participation in long-term disability benefit programs.

First Approval June 11, 1984

Final Approval July 9, 1984

Death

0397.5

Death

The superintendent shall develop rules, regulations and procedures to be followed in the event of the death of an employee while in active service to the district. Such rules, regulations, and procedures shall be submitted, in writing, to the board for review and action.

First Approval June 11, 1984

Final Approval July 9, 1984

0397.6 **Retirement**

The retirement age of all personnel, classified and certified, is established as seventy (70) years of age.

Any employee who is seventy (70) years of age or older, on or before July 1, shall not be guaranteed employment for any fiscal year or contract period beginning on or after his or her seventieth birthday. The board may choose to continue employment, if the employee so desires, on a year by year basis.

The board recognizes that some employees may wish to retire prior to the age of seventy (70) years and encourages those employees who may wish to do so to plan for early retirement.

First Approval June 11, 1984

Final Approval July 9, 1984

Legal Reference: 84-1316 et. seq. Retirement system.

0398 **Suspension**

The superintendent shall have the power to develop rules, regulations, and procedures permitting the suspension of employees from active duty; such rules, regulations, and procedures shall be in accordance with law. Rules, regulations, and procedures for the suspension of employees shall be submitted, in writing, to the board for review and action.

By use of emergency powers, the superintendent shall have the power to suspend any employee, with pay, in the event that conditions leading to suspension are not covered in rules and regulations adopted by the board.

First Approval June 11, 1984

Final Approval July 9, 1984

0399 Alcohol and Drug Testing for School Drivers

It is the policy of Bancroft-Rosalie Community School that its drivers should be free from drug and alcohol abuse. Consequently, the use of illegal drugs or improper use of alcohol by drivers is prohibited. The overall goal of alcohol and drug testing is to ensure a drug-free and alcohol-free transportation environment and to reduce accidents, injuries and fatalities. The requirements of this policy are in addition to other requirements established by federal and state law and board policy regarding the use of alcohol and drugs. In some instances, those laws of policies may be more restrictive than the requirements set out in this policy.

This school district is required under the provisions of the Federal Omnibus Transportation Employee Testing Act of 1991 to implement a drug and alcohol testing program for all persons subject to commercial driver's license requirements. This comprehensive program must include conducting pre-employment, reasonable suspicion, random, post-accident, return to duty and follow-up testing for use of alcohol or drugs by such drivers, notifying drivers of the requirements and consequences of the program, and maintaining appropriate records.

Implementation Date

The testing program referred to in this policy shall be implemented on January 1, 1996.

Definitions

For the purpose of this policy, the following terms are defined:

Alcohol -- The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl and isopropyl alcohol.

Driver -- Any person who operates a commercial motor vehicle. This includes full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operated contractors.

Drug -- For purposes of this policy includes any of the following controlled substances: marijuana, cocaine, opiates, amphetamines and phencyclidine.

Medical Review Officer -- A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who meets the qualifications as listed in 49 C.F.R. 40.3.

Safety-Sensitive Function -- Includes all on-duty functions performed from the time a driver begins work or is required to be ready to work until he or she is relieved from work and all responsibility for performing work. It includes driving; waiting to be dispatched; inspecting

and servicing equipment; supervising, performing or assisting in loading and unloading; repairing or obtaining and waiting for help with a disabled vehicle; performing driver requirements related to accidents; and performing any other work for the district or paid work for any other entity.

Substance Abuse Professional -- A licensed physician or certified psychologist, social worker, employee assistance professional or certified addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders.

Program Coordinator --The board shall designate the superintendent or designee as the program coordinator to implement the alcohol and drug testing program of the district within the guidelines of this policy.

Alcohol and Drug Prohibitions - No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No driver shall be on duty or operate a commercial motor vehicle while the driver possesses alcohol. No driver shall use alcohol while performing safety-sensitive functions. No driver shall perform safety-sensitive functions within four hours after using alcohol. No driver required to take a post-accident test shall use alcohol for eight hours following the accident or until he or she undergoes a post accident alcohol test (whichever comes first)

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any drug, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely perform the function. No driver shall report for duty, remain on duty or perform a safety-sensitive function if the driver tests positive for drugs.

Pre-Employment Tests

An alcohol and drug test shall be conducted in accordance with federal regulations before any bus driver is permitted to perform a safety-sensitive function for the district. Testing for newly hired drivers shall be conducted after the offer of employment but before employment commences. Offers of employment are contingent on these test results. A refusal to submit to drug and alcohol testing and/or refusal to release information as required by the district shall remove the applicant from employment consideration. Such testing will also be required of any employee transferring into a covered position.

Exceptions shall be made for drivers who have had the alcohol test required by law within the previous six months and participated in the drug testing program required by law within the previous 30 days, provided that the district has been able to make all verifications required by law.

Post-Accident Tests

Alcohol and drug tests shall be conducted as soon as practicable after an accident on any driver:

1. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved loss of life; or
2. Who receives a citation under state or local law for a moving traffic violation arising from a recordable accident. A recordable accident includes: (a) a fatality; (b) bodily injury requiring treatment away from the accident scene and (c) disabling damage to one or more vehicles requiring the vehicle to be towed or transported away from the scene of the accident.

Drivers shall make themselves readily available for testing, unless such driver has the need for immediate medical attention.

No such driver shall use alcohol for eight hours after the accident, or until he or she undergoes a post-accident alcohol test, whichever occurs first.

Post-accident testing requirements may be fulfilled by properly administered tests conducted by federal, state and/or local law enforcement officials as long as the results of those tests are provided by the district.

Random Testing

Alcohol and drug testing shall be conducted on a random basis at unannounced times throughout the year in accordance with federal regulations. Tests for alcohol shall be conducted just before, during or just after the performance of safety-sensitive functions. Drivers shall be selected by a scientifically valid random process, and each driver shall have an equal chance of being tested each time selections are made.

Reasonable Suspicion Tests

Any qualified supervisor or district administrator who has reasonable suspicion to believe that a bus driver has violated the alcohol or drug prohibitions of the district shall require the driver to submit to reasonable suspicion testing. A qualified supervisor or administrator must be a person who has been properly trained, in accordance with federal regulations, to make a determination that reasonable suspicion exists. This reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of drugs.

Alcohol testing is authorized for reasonable suspicion only if the required observations

are made just before, during or just after the period of the workday when the driver must comply with alcohol prohibitions. An alcohol test may not be conducted by the person who determines reasonable suspicion exists to conduct such a test. If an alcohol test is not administered within two hours of a determination of reasonable suspicion, the district shall prepare and maintain a record explaining why this was not done. Attempts to conduct alcohol tests shall terminate after eight hours, and the district will state in the record the reasons for not administering the test.

A qualified supervisor or district administrator who makes observations leading to a reasonable suspicion test shall make a written record of his/her observations within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier.

Return-To-Duty Tests

An alcohol or drug test shall be conducted when a driver who has violated the district's alcohol or drug prohibition returns to performing safety-sensitive duties.

Employees whose conduct involved alcohol cannot return to duty in a safety-sensitive function until the return-to-duty test produces a verified result that meets federal and district standards.

Employees whose conduct involved drugs cannot return to duty in a safety-sensitive function until the return-to-duty test produces a verified negative result.

Follow-up Tests

A driver who violates the district's alcohol or drug prohibition and is subsequently identified by a substance abuse professional as needing assistance in resolving an alcohol or drug problem shall be subject to unannounced follow-up testing as directed by the substance abuse professional in accordance with law. Follow-up alcohol testing shall be conducted just before, during or just after the time when the driver is performing safety-sensitive functions.

Refusal to Submit to Tests.

No driver shall refuse to submit to any of the tests. An employee will be considered to refuse to submit when he or she fails to provide adequate breath or urine for testing when notified of the need to do so, or when he or she engages in conduct that clearly obstructs the testing process. Such refusal will be treated as if the district received a positive test.

Testing Procedures

The employer shall follow the federal guidelines and standards of the Department of health and Human Services regarding testing and laboratory procedures. This shall include a

selection of sites with appropriately trained personnel for alcohol and drug testing, selection of a laboratory certified by the Department of Health and Human Services to conduct drug specimen analysis, and selection of a Medical Review Officer to verify laboratory drug test results. The drug and alcohol testing program of

this school district shall provide individual privacy in the collection of specimen samples to the maximum extent possible. The specimen collection procedures and chain of custody shall ensure that specimen security, proper identification and integrity are not compromised.

Enforcement

Employees whose conduct involved alcohol or drug use cannot return to duty in a safety-sensitive function until the return-to-duty test produces the required result. A driver who is tested and found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall not perform or continue to perform safety-sensitive functions until the start of the driver's regularly scheduled duty period but not less than 24 hours after the test was administered. Further employment actions up to and including termination may be instigated in accordance with the Drug Free Workplace act of 1988 (P.L. 101-226) and other state and federal laws.

Rehabilitation

An employer shall provide for the identification and opportunity for treatment of covered employees who are determined to have used, in violation of federal law or regulations, alcohol or drugs. This information shall include the names, addresses and telephone numbers of substance abuse professionals and counseling and treatment programs.

Employee Records

Employees' alcohol and drug test results and records shall be maintained in strict confidentiality and released only in accordance with law. Upon written request, a driver shall receive copies of any records pertaining to his or her use of alcohol or drugs, including any records pertaining to his or her tests. Records shall be made available to a subsequent employer or other identified persons only as expressly requested in writing by the driver. Test records shall be maintained with the separate medical files of each employee.

District Records and Reports

The district shall maintain records of its alcohol and drug prevention programs as required by federal law in 49 CFR 382.401.

Notification

Each driver shall receive educational materials that explain the requirements of the

Code of federal Regulations Title 49, Part 382, together with a copy of the district's policy. The program coordinator shall ensure that all covered employees receive written materials explaining the district's drug and alcohol misuse prevention program requirements including:

1. The identity of the program coordinator, a contact person knowledgeable about the, materials, policy, administrative regulations and the Omnibus Act;
2. The categories of employees covered;
3. Specific information concerning prohibited conduct;
4. Sufficient information about the safety-sensitive functions performed by drivers to make clear what period of the workday the driver is required to comply with part 382;
5. The circumstances under which employees will be tested;
6. Procedures used in the testing process;
7. The requirement that a driver submit to alcohol and drug tests administered in Accordance with federal law;
8. An explanation of what constitutes a refusal to submit to a drug and/or alcohol test;
9. The consequences for drivers found to have violated the drug and alcohol prohibitions of part 382, including the requirement that the driver be removed immediately from safety-sensitive functions and the procedures for referral, evaluation and treatment;
10. The consequences for drivers found to have an alcohol concentration of 0.02 or greater, but less than 0.04; and
11. Information on the effects of drug use and alcohol misuse on personal life, health and safety in the workplace.

Drivers shall also receive information about legal requirements, district policies and disciplinary consequences related to the use of alcohol and drugs.

Employees shall sign a statement certifying that they have received the materials.

Before any driver operates a commercial motor vehicle, the district shall provide him or her with post-accident procedures that will make it possible to comply with post-accident testing requirements.

Before drug and alcohol tests are performed, the district shall inform drivers that the tests are given pursuant to the Code of Federal Regulations, Title 49, Part 382. this notice shall be provided only after the compliance date specified in law.

The district shall notify a driver of the results of a pre-employment drug test if the drivers requests such results within 60 calendar days of being notified of the disposition of his or her employment application.

The district shall notify a driver of the results of random, reasonable suspicion and post-accident drug tests if the test results are verified positive. the district shall also tell the driver which controlled substances were verified as positive.

First Approval February 13, 1995 Final Approval March 13, 1995

Legal Reference: Code of Federal Regulations, Title 49, Part 382

