

<b>Policy Subject</b>  EARLY RETIREMENT INCENTIVE PROGRAM	<b>Location Code</b>  403.0	<b>Adoption Date</b>  11/09/87
	<b>Rescinds/Amends</b> 4/89; 11/89; 12/93; 8/93; 8/12/97; 8/8/2005	<b>Adopted</b>

**Policy 403.0**

Proposed to tile Board of Education, October 12, 1987 Second Reading, November 9, 1987

Revised: March/April, 1989

Revised: October, 1989

Revised: April, 1990 Revised: December, 1993

Revised: August, 1997

Revised: August, 2005

**A. PURPOSE:**

The purpose of this program is to encourage Eligible Employees who are considering an early-leaving decision to accelerate their retirement plans. Objectives include, but are not limited to, the following:

1. To offer financial incentives which will assist long-term employees considering early retirement or early-leaving decisions at the end of any school year during which this Early Retirement Incentive Program (ERIP) is in effect.
2. To reduce costs to the School District by replacing maximum salaried employees with lesser salaried employees.
3. To provide a better balance of employee experience.

**B. QUALIFICATIONS:**

1. **Eligible Employee:** To be a participant a person must be employed by the School District as of the date of acceptance of the person's application in the position of a fully certified employee covered by the negotiated agreement between the Norfolk Public School District and the Norfolk Education Association and paid pursuant to the salary schedule incorporated into said agreement in effect for the employee's last school year of employment, **or covered by an individual contract with the School district as an administrative employee and compensated pursuant to the salary schedule adopted by the Board of education for administrative employees in effect for the employee's last school year of employment** (hereinafter referred to as "**Administrator**", "Teacher" or "Eligible Employee").

2. **Full-Time Equivalency:** Eligible Employees, both full-time and part-time, may participate in the ERIP provided that the part-time employees' benefits

under such plan shall be prorated based on their FTE (full-time equivalency), said FTE to be determined based on the employee's actual scheduled salary as of November 1 of the employee's last school year of employment. Part-time employees who are on a leave of absence in part and work part-time as of November 1 of the employee's last school year of employment shall be eligible to participate in this ERIP to the extent of their on-duty FTE. Employees who take a years leave of absence will not lose their "consecutive years of service" status. However, the year an employee is on leave of absence will not count towards the Norfolk Public School ERIP. (Note: In unusual circumstances the board may waive stipulation at their discretion).

3. **Criteria for Eligibility:** To be eligible to participate in the ERIP, an employee must meet the following criteria to wit:

- a. **Years of Service:** The employee must have at least **fifteen (15)** consecutive years of creditable service to the School District.
- b. **Minimum Age:** The employee must have reached his/her 55<sup>th</sup> birthday by the end of the first fiscal year during which the employee is eligible for participation in this ERIP.
- c. **Salary Schedule Placement:**

(1) **Teachers:** **To be eligible for participation in this ERIP the Teacher** shall have a placement on the salary schedule in effect for the subject contract year in the BA+27, BA+45, MA, MA+9, MA+18, MA+27, MA+36, or MA+45 columns and on experience step nine (9) or greater; PROVIDED, however, this subparagraph shall not apply to persons eligible for the ERIP under former policy No. 403.

(2) **Administrators:** **To be eligible for participation in this ERIP the Administrator shall have earned a minimum of MA+18. Starting with the 2008-09 school year, an administrator must have earned a minimum of a MA+27 during their fifteen (15) years of consecutive service to the district as either a teacher or administrator.**

**PROVIDED, however, this subparagraph shall not apply to persons eligible for the ERIP under former policy No. 403.**

d. **Period of Eligibility:** To be eligible to participate in this ERIP, the employee must meet the requirement for the period of eligibility, hereinafter referred to as a "window", when an employee may elect to participate in this ERIP. The window shall open:

(1) On September 1, 2005 and close on August 31, 2008 for those persons eligible under paragraphs 3. a. and b. above; or,

(2) Beginning September 1, 2008, on September 1 of the fiscal year when the employee becomes eligible for full benefits under the Nebraska School Retirement System and shall close on the second August 31 thereafter.

The employee may apply for participation in this ERIP under 3. d. (1) or (2) above during any of the school fiscal years in effect in the window period, and retire from employment with the School District effective at the end of any of the school years which end during such school fiscal years.

(Note: The "initial" window of eligibility will be open for three (3) fiscal years from September 1, 2005, to August 31, 2008. Starting on September 1, 2008, the eligibility window will change to two (2) fiscal years).

4. **Notice of Salary Schedule Placement:** On or before November 1, 2005, for the 2005-2006 school year and on or before December 1 of each school year thereafter, the School District shall provide all Teachers of the School District verification of their salary schedule placement in the Norfolk Public School District and all Administrators of their total salary for such school year.

5. **Acceptance or Rejection of Applications:** The Board of Education of the School District, in its sole and absolute discretion, reserves the right to accept or reject any or all applications based on financial exigencies, availability of funds, budget, expenses, revenue, and other school finance issues.

6. **Criteria for Selection:** The total number of Eligible Employees who may participate in this ERIP in any one fiscal year shall not exceed twenty (20) Eligible Employees per fiscal year (School years 2005-06; 2006-07). (Note: The board may adjust this number at their discretion). For year three of the ERIP, the total number of Eligible Employees shall be ten (10). If there is more than one (1) applicant for participation in the ERIP, the selection of the Eligible Employee(s) allowed to participate in the ERIP shall be based upon the following criteria in descending order:

a. **Highest salary:** If two or more individual applications are filed on the same date, then the individual(s) with the highest salary on the Eligible Employee's Salary Schedule (Attachment "A") will be given preference for participation in the ERIP. For purposes of this paragraph, Eligible Employees' salaries will be compared only to other teachers' salaries to fill the Eligible Employee's pool available under this program.

b. **Date of Application:** The individual(s) with the date of application first in time will be given preference for participation in the ERIP. Applications will be date stamped by the Superintendent's office.

c. **Tiebreaker:** If two (2) or more individuals tie on criteria "a" and "b", the names of those persons who are tied shall be placed in a container and names will be drawn from the container for each opening in the ERIP.

(Note: Any change from this number will be at the discretion of the board of education).

#### **C. ENROLLMENT REQUIREMENTS:**

1. **Resignation:** Eligible Employee participants in the program shall resign their positions with the School District effective at the close of the Employee's last school year of employment as set forth on such Eligible Employee's application and thereby relinquish the employee's actual and existing continuing contract rights in consideration for the benefits outlined in paragraph "D" below.

2. **Notice of Plan and Future Employment:** The Superintendent or Superintendent's designee shall notify all Eligible Employees of the School District of the adoption of this ERIP and the attendant ERIP Application and Agreement on or before September 1. A copy of said ERIP Application and Agreement as it now exists or as it may be from time to time be amended may be obtained from the school office of each school in the district.

If the Eligible Employee participating in this program is re-employed by the School District as an Eligible Employee to a position within two (2) years of the Eligible Employee's last date of employment with the School District, said Eligible Employee shall relinquish all rights under this program to monies yet to be received under this plan for any portion of said three year period that has not elapsed on a per diem pro rata basis as of the date said Eligible Employee is re-employed; provided, however, this provision shall not apply to a participant substitute teaching for the district on a per diem basis.

3. **Application and Agreement:** Any Eligible Employee who attains the minimum eligibility requirements shall be eligible to participate in the ERIP. Each qualified Eligible Employee who wishes to participate must submit an Application and Agreement form properly executed on or before November 1 of the last school year of employment. An Application and Agreement may be withdrawn by the employee at any time within seven (7) days following the date when it was received by the Superintendent's office. The Superintendent, or his designee, shall review the employee's record to determine eligibility. **FAILURE TO SUBMIT THE APPLICATION OR AGREEMENT WITHIN THE TIME FRAME SPECIFIED THEREIN SHALL RESULT IN THE REJECTION OF SUCH APPLICATION OR AGREEMENT.**

4. **Terminated Employee's Ineligibility:** An employee who has received written notice of possible termination for reasons other than reduction in force, or who has received written notice of possible cancellation, shall NOT be eligible, and may NOT participate in this program, UNLESS after a hearing before the Board of Education it is determined that said employee's contract shall not be canceled or terminated, or the decision of the Board of Education to terminate or cancel is subsequently set aside.

An employee who has received written notice of possible termination for reason of a reduction in force shall be eligible and may participate in this program if, but only if, said employee expressly waives all rights to which he or she may be entitled under the reduction in force law.

**D. BENEFITS:**

1. **Early Retirement Benefit:**

a. **Calculation of Benefits:** An Eligible Employee requesting to receive the ERIP shall receive a benefit in an amount equal to the total years of service of the Eligible Employee in the Norfolk Public School District times \$1,000, (e.g. 20 Total Years of Service x \$1,000 = \$20,000).

b. **Payment:** The sums to be paid pursuant to paragraph D.1. above shall be payable in three (3) equal installments, the first to be paid on the first September 18 immediately following the Eligible Employee's last day of employment, the second and third payments to be made on the second September 18 immediately following the Eligible Employee's last day of employment, and the third payment to be made on the third September 18 immediately following the Eligible Employee's last day of employment.

(Note: All funds will be initially deposited into a district 403B Plan with the flexibility of being moved at any time into the applicant's 403B annuity).

c. **Tax Treatment of Payments:** The Employee will be paid all amounts and benefits due under the Early Retirement Incentive Agreement. The Early Retirement Incentive benefit shall be deemed a voluntary Early Retirement Incentive payment. It will be reported as a taxable Early Retirement Incentive payment. Any required state or federal income tax withholdings will be subtracted from each payment to the Employee. No state or federal retirement contributions, FICA, FUTA, or state or federal unemployment contributions, including employer's and Employee's share thereof have been, or will be, withheld from or contributed in relation to the Early Retirement Incentive pay amount or monies paid in lieu of insurance premiums by either party hereto. It is understood, and agreed, that in the event the School District or the Eligible Employee are called upon to pay the federal government or the State of Nebraska, or any other state or federal authority, sums or payments that should have been withheld from or contributed in relation to the Early Retirement Incentive pay amount or monies paid in lieu of insurance premiums, including retirement contributions, FICA, FUTA, or state or federal unemployment contributions, the School District and the Eligible Employee each shall be responsible for the payment of their respective share of such tax , along with any penalty and interest.

2. **Source of Funds:** The School District shall pay the entire cost of the Plan.

3. **Administration:** This Plan shall be administered by the Board of Education by and through the administration of the School District.

4. **Beneficiary Designation:** In order for the application to be considered complete, a beneficiary must be designated. Upon the death of the participant employee before all benefits are paid, the beneficiary (or beneficiaries) shall receive benefits pursuant to the terms of this ERIP.

5. **COBRA Rights:** Pursuant to COBRA, a retired employee will have the opportunity to continue participation in the School District's group health insurance plan for at least eighteen (18) months following retirement upon payment by the employee of the monthly insurance premiums.

**E. TIME FOR CONSIDERATION OF APPLICATION AND AGREEMENT, AND WAIVER AND RELEASE OF CLAIMS:**

1. **Time to Consider Application and Agreement:** An employee who elects to participate in the Norfolk Public School District Early Retirement Incentive Program shall be given at least forty-five (45) days within which to consider the ERIP Application and Agreement. That ERIP Application and Agreement shall alert the employee that the Norfolk Public School District Early Retirement Incentive Program is totally voluntary in nature.

2. **Waiver and Release of Claims:** The ERIP Application and Agreement shall also include a specific Waiver and Release of Claims of the participant's rights under the Age Discrimination and Employment Act (ADEA), 29 U.S.C. §§ 621-634 and the Act Prohibiting Unjust Discrimination in Employment Because of Age, Neb. Rev. Stat. § 48-1001, et seq., the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001, et seq., and all other state and federal constitutions, statutes and regulations that relate to the validity of the ERIP and allow the employee to revoke the Release or Waiver at any time within seven (7) days after signing the contract and advise the employee to consult with an attorney before signing the Application and Agreement. **THE SPECIFIC TERMS OF THE WAIVER AND RELEASE OF CLAIMS SHALL BE AS FOLLOWS:**

**WAIVER AND RELEASE OF CLAIMS:** By entering into this Agreement, the Eligible Employee hereby releases, waives, acquits, and forever discharges the School District, all past, present, and future members of the Board of Education of such School District in their official, and individual capacities, the Administrators, and all other officers, agents, and employees of the School District in their official and individual capacities, from any and all claims, however characterized, whether for damages, costs, expenses, compensation, penalties, wages, benefits, reinstatement, attorneys' fees, or attorneys' fees under 42 U.S.C. § 1988 or the like, which Eligible Employee may now have or which may accrue in the future with respect to, arising out of, or in relation to the Eligible Employee's employment with the School District including, but not limited to, claims or rights under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA), 29 U.S.C. §§ 621-634, the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001, et seq., and the Act Prohibiting Unjust Discrimination in Employment on the Basis of Age, Neb. Rev. Stat. § 48-1001, et seq., Title IX and under Title VII of

**the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1866 and 1871, as amended from time to time, claims or rights under 42 U.S.C. §1981, through and including 42 U.S.C. § 1988, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the Family Medical Leave Act of 1993, all claims or rights relating to discrimination on the basis of race, ethnic background, color, religion, sex, age, disability, handicap, marital status or national origin before the state or federal EEOC or NEOC, or any other agency or department or the state or federal courts under any state or federal constitution, law, rule, or regulation, all claims or rights relating to libel, slander, breach of confidentiality or privacy, or any claims or rights of whatsoever nature arising under any other state, federal, or local constitution, statute, regulation, or ordinance arising out of the Eligible Employee's employment with the School District, this Application and Agreement, the ERIP, or the Eligible Employee's resignation from such employment. The Eligible Employee further covenants not to sue and hereby agrees not to institute any proceedings against and agrees to indemnify and hold harmless the School District or any other persons named herein in their official or individual capacities based on any matter relating to the Eligible Employee's employment at the School District, this Application and Agreement, the ERIP, or the Eligible Employee's resignation.**

**This waiver, release, covenant not to sue, and indemnification agreement is given in exchange for consideration in addition to that which the Eligible Employee is already entitled to pursuant to law. The Eligible Employee acknowledges that the Eligible Employee has been advised by this Application and Agreement, and in writing to consult with an attorney before entering into the ERIP or signing this Application and Agreement. The Eligible Employee further acknowledges that the Eligible Employee has had sufficient time to decide whether or not to execute this ERIP Application and Agreement, including sufficient time to consider the Waiver and Release of Claims and all other matters contained herein.**

**F. TERM OF PROGRAM:**

**The Norfolk Public School District's ERIP shall be offered only to Eligible Employees as defined herein, and those who timely submit a ERIP Application and Agreement. This ERIP program and policy, and all benefits provided herein, may be repealed at any time by the Board of Education in its sole and absolute discretion.**

**NORFOLK PUBLIC SCHOOLS  
EARLY RETIREMENT INCENTIVE PROGRAM  
APPLICATION AND AGREEMENT  
(Approved: August 8, 2005)**

**(NOTE: THIS APPLICATION AND AGREEMENT MUST BE SUBMITTED TO THE SUPERINTENDENT'S OFFICE ON OR AFTER \_\_\_\_\_, 200\_\_, BUT ON OR BEFORE \_\_\_\_\_, 200\_\_).**

This Early Retirement Incentive Program ("ERIP") Application and Agreement is offered and made this \_\_\_\_ day of \_\_\_\_\_, 2005, between Madison County School District 59-0002, a/k/a Norfolk Public School District ("School District"), and \_\_\_\_\_, ("Eligible Employee"), whose address is \_\_\_\_\_, in \_\_\_\_\_, Nebraska.

**WHEREAS, the School District has established an Early Retirement Incentive Program for the purpose of encouraging Eligible Employees who are considering an early leave decision to accelerate their retirement plans; and**

**WHEREAS, the Eligible Employee is desirous of voluntarily participating in the ERIP sponsored by the School District and in the voluntary termination of the Eligible Employee's employment; and**

**WHEREAS, the Eligible Employee meets all the criteria for participation in the ERIP set forth in the ERIP program adopted by the Board of Education on August 8, 2005, and**

**WHEREAS, the Eligible Employee acknowledges that the Eligible Employee has had forty-five (45) or more days to consider the ramifications of participation in the ERIP, and acknowledges that the Eligible Employee's participation in the ERIP is voluntary and that the Eligible Employee was not coerced in any manner to participate in the ERIP sponsored by the School District.**

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

1. ELIGIBLE EMPLOYEE DATE OF BIRTH: \_\_\_\_\_, \_\_\_\_.

2. ELIGIBLE EMPLOYEE SALARY SCHEDULE AMOUNT:

TEACHER: Column \_\_\_\_\_; Step \_\_\_\_\_; Salary Amount \_\_\_\_\_.

3. ELIGIBLE EMPLOYEE RESIGNATION: The Eligible Employee by signing this Application and Agreement hereby voluntarily, unconditionally, and irrevocably resigns from the Eligible Employee's employment position, relinquishes the Eligible Employee's actual and existing continuing contract rights by law, and resigns from all other employment relations with the School District effective at the end of the \_\_\_\_\_ school year, and further hereby waives any and all notice of action by the Board of Education of the School District to accept the resignation and to terminate the Eligible Employee's continuing contract and employment with the School District, and waives any and all rights the Eligible Employee may have under Neb.Rev.Stat. ' ' 79-12,107 to 79-12,121 (old statute numbers), or ' ' 79-824 to 79-839 (new statute numbers), or other laws as they now exist or as they may be amended in the future relating to continued employment or rights of recall. The Eligible Employee further authorizes the Board of Education of the School District to advertise for, and contract with a replacement Employee, if deemed appropriate, for the \_\_\_\_\_ school year. The School District by approving and signing this Application and Agreement hereby unconditionally and irrevocably, accepts the Eligible Employee's resignation ending all employment relations between the School District and the Eligible Employee effective at the end of the \_\_\_\_\_ school year. The Eligible Employee authorizes the School District to approve and accept this Application and Agreement immediately upon its presentation to the School District by the Eligible Employee.

4. EARLY RETIREMENT BENEFITS:

a. Benefit: In consideration of the Eligible Employee's resignation and relinquishment of the Eligible Employee's actual and existing continuing contract rights by law and of other covenants and conditions set forth in this Application and Agreement, the Eligible Employee shall receive a benefit in the amount equal to the total years of service of the Eligible Employee to the Norfolk Public School District times \$1,000, (e.g. 20 years of total service x \$1,000 = \$20,000 benefit).

b. **Payment:** The sums to be paid pursuant to paragraph 4 a. above shall be payable in three (3) equal installments, the first to be paid on the first September 18 immediately following the Eligible Employee's last day of employment, the second payment to be made on the second September 18 immediately following the Eligible Employee's last day of employment, and the third payment to be made on the third September 18 immediately following the Eligible Employee's last day of employment. (Note: All funds will be initially deposited into a district 403B Plan but will have the flexibility of being moved at any time into the applicant's personal 403B annuity).

c. **Tax Treatment of Payments:** The Employee will be paid all amounts and benefits due under the Early Retirement Incentive Agreement. The Early Retirement Incentive benefit shall be deemed a voluntary Early Retirement Incentive payment. It will be reported as a taxable Early Retirement Incentive payment. Any required state or federal income tax withholdings will be subtracted from each payment to the Employee. No state or federal retirement contributions, FICA, FUTA, or state or federal unemployment contributions, including employer's and Employee's share thereof have been, or will be, withheld from, or contributed in relation to, the Early Retirement Incentive pay amount or monies paid in lieu of insurance premiums by either party hereto. It is understood, and agreed, that in the event the School District or the Eligible Employee are called upon to pay the federal government or the State of Nebraska, or any other state or federal authority, sums or payments that should have been withheld from or contributed in relation to the Early Retirement Incentive pay amount or monies paid in lieu of insurance premiums, including retirement contributions, FICA, FUTA, or state or federal unemployment contributions, the School District and the Eligible Employee each shall be responsible for the payment of their respective share of such tax, along with any penalty and interest.

5. **Beneficiary Designation:** The Eligible Employee hereby designates \_\_\_\_\_, whose address is \_\_\_\_\_, Social Security No. \_\_\_\_\_ or Tax I.D. No. \_\_\_\_\_, to be his/her beneficiary in case of his/her death. Any monies due the Eligible Employee will continue to the beneficiary until the total benefit distribution is paid in full pursuant to the provisions of this Agreement. (Note: If you have more than one beneficiary please list below:

**Additional** **Beneficiaries:** **Name**

\_\_\_\_\_  
Address \_\_\_\_\_  
Social Security Number \_\_\_\_\_  
Tax I.D. \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_  
S.S. # \_\_\_\_\_  
Tax I.D. \_\_\_\_\_

6. **Tax Consequences:** Early Retirement Incentive Pay has been determined to be taxable income for state and federal income tax purposes and will be treated as such. It will be reported as a taxable retirement payment. However, based upon court rulings and IRS determination in the 8th circuit court of appeals, such Early Retirement Incentive Payment is NOT subject to FICA (Social Security) Taxes, and such tax shall not be withheld from the payment hereunder.

7. **WAIVER AND RELEASE OF CLAIMS:** By entering into this Agreement the Eligible Employee hereby releases, waives, acquits, and forever discharges the School District, all past, present, and future members of the Board of Education vof such School District in their official and individual capacities, the Administrators, and all other officers, agents, and employees of the School District, in their official and individual capacities, from any and all claims, however characterized, whether for damages, costs, expenses, compensation, penalties, wages, benefits, reinstatement, attorneys' fees, or attorneys' fees under 42 U.S.C. ' 1988 or the like, which Eligible Employee may now have or which may accrue in the future with respect to, arising out of, or in relation to the Eligible Employee's employment with the School District including, but not limited to, claims or rights under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA), 29 USC ' ' 621-634, the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. ' 1001, et. seq., and the Act Prohibiting Unjust Discrimination in Employment on the Basis of Age, Neb. Rev. Stat. ' 48-1001, et seq., Title IX and under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1866 and 1871, as amended from time to time, claims or rights under 42 U.S.C. ' 1981, through and including 42 U.S.C. ' 1988, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the Family Medical Leave Act of 1993, all claims or rights relating to discrimination on the basis of race, ethnic background, color, religion, sex, age, disability, handicap, marital status or national origin before the state or federal EEOC or NEOC, or any other agency or department or the state or federal courts under any state or federal constitution, law, rule, or regulation, all claims or rights relating to libel, slander, breach of confidentiality or privacy, or

**any claims or rights of whatsoever nature arising under any other state, federal, or local constitution, statute, regulation, or ordinance arising out of the Eligible Employee's employment with the School District, this Application and Agreement, the ERIP, or the Eligible Employee's resignation from such employment. The Eligible Employee further covenants not to sue, and hereby agrees not to institute any proceedings against, and agrees to indemnify and hold harmless, the School District or any other persons named herein in their official or individual capacities based on any matter relating to the Eligible Employee's employment at the School District, this Application and Agreement, the ERIP, or the Eligible Employee's resignation.**



**ACCEPTANCE**

Upon the action of the Board of Education on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, approving and ratifying the foregoing Application and Agreement, and the acceptance by the Board of Education of the resignation of the Eligible Employee identified above, the above Early Retirement Incentive Program Application and Agreement is hereby deemed to have been accepted and approved by the Eligible Employee and the Madison County School District 59-0002, a/k/a Norfolk Public School District, and shall be carried into effect by the Administration.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**MADISON COUNTY SCHOOL DISTRICT  
59-0002, a/k/a NORFOLK PUBLIC SCHOOL DISTRICT**

**BY: \_\_\_\_\_  
President, Board of Education**