

MEMORANDUM OF UNDERSTANDING

Between

**CLACKAMAS EDUCATION SERVICE DISTRICT
and
CLACKAMAS ESD EDUCATION ASSOCIATION**

March 22, 2011

The following agreement is hereby entered into between the Clackamas Education Service District (District) and the Clackamas ESD Education Association (Association) for the purpose of memorializing the terms and conditions for the implementation of reduction in force and recall in the 2010-2011 school year and for inclusion in the successor agreement to the 2007-2011 collective bargaining agreement. In consideration of the parties' mutual promises and obligations, as detailed below, the District and Association agree to the following:

A. Reduction in Force Notification

1. When the District determines that a reduction in force of any staff positions is necessary, the District will provide thirty (30) days written notification to the Association. The notice will include position(s) to be affected, the proposed time schedule, and the reasons for the proposed action.
2. The District will also present to the Association information regarding funding, educational needs, shifting priorities, and other factors that appear to the District to be appropriate.
3. The Association may notify the District of a desire to consult about the reduction in force within seven (7) calendar days of receipt of the notice from the District. The District will schedule the consultation within seven (7) calendar days.
4. Sudden, unanticipated funding shortfalls beyond the control of the District may cause the Association and District to mutually agree to shorten the timelines.
5. The District will provide the Association with a seniority list on December 1 of each year and an updated list, as needed, at the time of layoff notification to the Association. Seniority shall be defined as the length of continuous employment with the District beginning with the first day of actual service as a teacher or in another position recognized by the Clackamas ESD Education Association. Leaves of absence will not interrupt continuous service. Ties for position on the seniority list will be broken by a mutually agreed upon process for drawing of lots in the presence of Association and District representatives.

B. Procedure for Reduction in Force

1. The District will make every reasonable effort to:

- a. Transfer employees in positions scheduled for discontinuation to vacant positions for which they are licensed and/or qualified. Notice of transfer will be delivered personally or by certified mail, return receipt requested. The employees will have seven (7) calendar days to notify the District, in writing, of their acceptance of the transfer or their resignation.
 - b. Combine positions in a manner which allows employees to remain qualified so long as the combined positions meet the needs of the District.
2. The following criteria shall be applied in determining which employees shall be retained:
 - a. To fill a position that requires a license or authorization, the employee must be properly licensed or authorized at the time of layoff. "At the time of layoff" is defined as the last day worked under contract as a licensed employee in the District.
 - b. To fill a position that does not require a license or authorization, the employee must meet the minimum qualifications as listed in the position description at the time of layoff.
 - c. In determining employees to be retained when the District reduces its staff under this Article, after license/authorization or qualifications have been determined, seniority as defined in 9.A.5 shall be applied.
3. If the District desires to retain an employee with less seniority than the employee being released under this section, the District shall determine that the employee being retained has more competence or merit than the employee with more seniority who is being laid off. A competence or merit difference must be demonstrable and significant for the position.
 - a. Competence in a licensed or authorized position means the ability to teach or provide specialized service (i.e., physical therapy, occupational therapy, speech language therapy) to an age or grade level, based on recent experience within the last five years, or educational attainments, or both, but not based solely on being licensed or authorized to teach or provide specialized service to an age or grade level.
 - b. Competence in a position that does not require a license or authorization means the ability to perform the essential functions of the position based on recent professional work experience within the last five (5) years, or educational attainments, or both.
 - c. Merit means the measurement of one employee's ability and effectiveness against the ability and effectiveness of another employee. Merit will only be considered if the employee is currently on a Program of Assistance for Improvement.

4. Employees who are on leave of absence will be subject to the same criteria as all other employees and, for the purpose of reduction in force, shall be deemed to hold active employment status.

C. Implementation of Layoff

1. Layoff shall mean to place an employee on inactive duty status for a period of time of up to twenty-seven (27) months. Employees who are laid off shall receive no salary, benefits, or other accruals except as specifically provided for in this Article.
2. Any employee who is to be laid off will be notified personally, when possible, and in writing at least fifteen (15) calendar days before the proposed action. Such notice will include the proposed time schedule and the reasons for the proposed action.

D. Recall

1. Recall is the procedure for returning employees who have been laid off to active employment status within the District.
2. Employees who are affected by layoff under the provisions of this article shall be placed on the District's recall list. The District shall not consider for recall an employee who, at the time of layoff, has presented to the Director of Human Resources a written request not to be considered.
3. Employees shall retain recall rights for twenty-seven (27) months following layoff. Recall shall be offered to the most senior member on the recall list who holds the appropriate license or authorization or who meets the minimum qualifications for the position. If the District desires to recall an employee with less seniority, the employee being recalled shall have more competence and/or merit as defined in B.3 than the employee with more seniority.
4. Employees on the recall list who gain new licenses, endorsements, or authorizations shall be considered for recall to positions that require the new license, endorsement, or authorization. However, a laid-off employee may not displace a retained employee because of a new or enhanced license. It is the responsibility of the laid-off employee to notify and submit a copy of the new license to the Human Resources Department as soon as the new license is granted.
5. In the event of a recall, the District will notify the employee by certified mail, return receipt requested, at the last address given to the District's Human Resources Department by the employee.
6. The employee(s) who wish to return will notify the District's director of human resources within ten (10) calendar days of the receipt of the notice, in writing, of acceptance or rejection of the District's offered position and will return to active duty within thirty (30) calendar days of notification, unless granted an extension of time by the superintendent.

7. Rejection of a specific position, failure of the employee to respond within the time specified, or failure to report to work on the date specified in the recall notice will terminate the employee's right to recall.

E. Benefits on Recall


The following benefits shall accrue to employees who accept a position with the District under a recall:

1. Upon return to active employment, all accumulated sick leave for which the employee was eligible at the time of layoff and which remains unused will be restored to the employee.
2. Employees who worked in the District ninety-three (93) or more days of the school year in which the layoff occurred will have that year count toward advancement on the salary schedule. Employees who worked in the District for fewer than ninety-three (93) days will not gain advancement in salary.
3. Probationary employees who worked in the District one hundred thirty-five (135) or more days of the school year in which the layoff occurred will have that year count toward contract or regular employee status. Employees who worked in the District for fewer than one hundred thirty-five (135) days will not gain advancement toward contract or regular employee status.

F. Layoff or Recall Appeal

1. Any appeal over the interpretation or application of any provision of this Article shall be grievable but will proceed only through Level 2 of the grievance procedure before going to arbitration. Such appeals shall be made on an expedited basis as follows:
 - a. The Association shall have ten (10) days from the time the employee receives written notice of the layoff to appeal the layoff decision. This request shall be in writing.
 - b. If the grievance is not resolved at the Superintendent level, the Association and the District shall then have ten (10) days after the Superintendent has provided written notification of the decision to the Association to select an arbitrator. Failing to do so, the Association and the District shall request that ERB appoint an arbitrator who can hear the case within one (1) calendar month.
2. The results of such appeal shall be final.

G. All actions taken under this Article shall be in accordance with ORS 342.934.



Superintendent
For the District

3/23/11
Date



President
Association

3/23/11
Date