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<input type="checkbox"/> Community Relations <input type="checkbox"/> Administration <input type="checkbox"/> Business Procedures <input type="checkbox"/> Community Operations <input checked="" type="checkbox"/> Personnel <input type="checkbox"/> Students <input type="checkbox"/> Instruction	

SUBJECT: Severance for Non-Represented Employees Policy

PURPOSE

Health Sciences Charter School ("HSCS") must continuously assess staffing in order to remain competitive. At times, it is necessary to involuntarily terminate the employment of employees. If an affected employee separates from employment with HSCS in a Qualifying Termination (as defined in Section III below), HSCS will provide the employee with the severance pay and other benefits described in this Policy and Procedure ("Policy") on the conditions set forth below in order to minimize the individual's financial loss in the transition from HSCS to a new employment situation.

APPLICABILITY

An employee is covered by this Policy and eligible for severance pay and other severance benefits under the specific circumstances set forth below, if the employee satisfies all of the following conditions:

- The employee is actively employed (see defined terms) by HSCS on the day prior to the termination of his or her employment with HSCS.
- The employee is a regular full-time employee or a regular part-time employee (see defined terms).
- The employee has completed at least one year of Continuous Service (see defined terms).
- The employee is not eligible for severance pay under any other HSCS policy or under any employment agreement or other agreement.

An employee who satisfies all of the above conditions is referred to in this Policy as a covered employee.

POLICY

1) Qualification for Severance Pay

- a) Qualifying Terminations. Subject to the terms and conditions set forth below, a covered employee will be eligible for severance pay and other severance benefits if the covered employee separates from employment with HSCS in a Qualifying Termination as defined below. A "Qualifying Termination" is an involuntary termination of a covered employee's employment by HSCS, but only if the termination is the result of lack of work, the elimination of the employee's position, the closing of a facility or operation, or a change or curtailment of operations that reduces HSCS's work force. The involuntary termination of a covered employee's employment by HSCS for any other reason is not a "Qualifying Termination".

- 2) Outsourcing. In the event that HSCS's outsourcing of a function results in the elimination of an employee's position and the termination of the employee's employment with HSCS, and the business entity to which the function is outsourced makes an offer of employment to the employee, the employee will not be considered to have been involuntarily terminated by HSCS, and therefore will not be eligible for severance pay and other severance benefits under this Policy, regardless of whether the employee accepts the position offered by such business entity, and regardless of whether the position or compensation offered by such business entity is comparable to the employee's position with or compensation from HSCS.
- 3) Continuation in Employment until Release Date. In order for any involuntary termination to be considered a Qualifying Termination, the covered employee must remain in employment with HSCS and actively employed until the date determined by HSCS to be the employee's last day of work.
- a) Determinations. HSCS reserves full and absolute discretionary authority under this Policy to decide whether any covered employee's separation from employment is a Qualifying Termination, and any such decision will be final, conclusive, and binding unless arbitrary and capricious. HSCS's Principal in conjunction with HSCS Human Resources and the Board of Trustees Personnel Committee is responsible for approving all employment terminations and job changes with respect to employees covered under this Policy, and therefore has been delegated HSCS's authority and responsibility for making all such decisions.
- 4) Severance Pay
- a) Severance Pay - General. If a covered employee separates from employment with HSCS in a Qualifying Termination, the employee will be entitled to severance pay subject to the waiver and release requirement described in (D) below and the further terms and conditions of this Policy. The severance pay payable to the employee will be as set forth below, and extended as provided below, if applicable:
- i) Severance pay payable to the employee will be the continuation of the employee's Base Salary (see Defined Terms) for the number of weeks determined under the following chart based on the employee's position and completed years of Continuous Service:

Job Category	Severance Amount per Year of Continuous Service
Administration – Leadership	2 weeks (max 1 year)
Administration – Management	2 weeks (max 6 months)
Staff	1 week (max 3 months)

The Job Category is pre-defined within each job description.

The total number of weeks for which an employee is entitled to severance pay is referred to as the continuation period.

- b) Salary Continuation. The severance pay payable by the continuation of the employee's Base Salary as described above will be paid to the employee at regular payroll intervals over the continuation period. The continuation period will begin on the day immediately following the date of the employee's termination of employment and will continue for the period determined above. However, no payments will be made until and unless (i) the employee signs the waiver and release agreement described below by the deadline established in the waiver and release agreement, and (ii) the applicable revocation period expires with no revocation by the employee. Payment of any severance pay withheld pending the employee's execution of the waiver and release agreement and the expiration of the revocation period with no revocation by the employee will be made in the first regular payroll period possible after the expiration of the revocation period. HSCS may, in its discretion, pay all or part of an employee's severance pay in a lump sum payment.
- c) Withholding and Deductions. The severance payments described above will be reduced by any applicable federal, state, and local income, employment, and excise taxes required to be withheld there from by HSCS and any other applicable deductions of any other amounts that HSCS may be legally required to deduct or the employee has voluntarily elected to have deducted from any such payments.
- d) Death of Covered Employee. A covered employee's eligibility for severance pay ends on the date of the employee's death unless (i) the employee's death occurs after the employee's termination date; (ii) the employee has signed the waiver and release agreement described below and returned the agreement to HSCS prior to his or her death; and (iii) the employee has not revoked the waiver and release agreement prior to his or her death. Any severance pay payable after the employee's death will be paid in a lump sum to the personal representative of the employee's estate within thirty (30) days after HSCS's receipt of written proof, satisfactory to HSCS, of the representative's appointment.

5) Other Severance Benefits - Continuation of Health Insurance Coverage.

In any case in which a covered employee is entitled to severance pay under this Policy, the employee will also be entitled to continuation of his or her health insurance coverage for the period beginning on the termination of the employee's employment with HSCS and ending on the last day of the month in which the continuation period ends (irrespective of whether HSCS accelerates payment by paying all or part of the employee's severance pay in a lump sum), subject to the further terms and conditions set forth below. During this period, the employee will be provided with health insurance coverage of the same type as provided to active employees of HSCS on the same terms and conditions applicable thereto, including the availability of coverage options and any requirement that the employee contributes toward the cost of the coverage option selected by the employee. Any contributions toward the cost of such coverage required of the employee will be made by deduction from the severance payments payable to the employee or as otherwise required by HSCS. After the expiration of any health care coverage for which the employee is eligible under this Policy, the employee will have the right to elect continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 as amended ("COBRA") at his or her expense for a period of up to eighteen (18) months (or such longer period as may be required by COBRA), provided that the employee is otherwise eligible for such coverage under COBRA.

6) Waiver and Release

Notwithstanding any provision of this Policy to the contrary, a covered employee will not be entitled to the severance pay and any other severance benefits described in this Policy unless (i) the employee has executed and delivered to HSCS a full and complete waiver and release agreement by the deadline established by HSCS, and (ii) does not revoke the waiver and release agreement during any revocation period required or permitted by law. The waiver and release agreement will release HSCS from any and all claims of any nature whatsoever (including, without limit, any and all statutory claims), and will be in the standard form used by HSCS from time to time upon the termination of employment of covered employees.

DEFINED TERMS

As used in this Policy, the following terms will have the following meanings:

- 1) "Actively Employed" means that a covered employee is either:
 - i) on the active payroll of HSCS and currently performing services;
 - ii) entitled to short-term disability benefits under a short-term disability program sponsored by HSCS;
 - iii) on a workers' compensation leave; or
 - iv) on a company-approved leave of absence.
- 2) "Base Salary" means:
 - i) in the case of an employee who is exempt from the overtime provisions of the federal Fair Labor Standards Act on his or her termination date, the employee's weekly rate of regular base salary in effect on the employee's termination date; in the case of an employee who is not exempt from the overtime provisions of the federal Fair Labor Standards Act on his or her termination date, the eligible employee's hourly rate of regular base wages in effect on the employee's termination date multiplied by the number of regular straight time hours for which the employee was normally scheduled to work on a weekly basis during the calendar year in which the employee was involuntarily terminated.
- 3) "Comparable Position" means:
 - i) a job or position (as established by HSCS) that has a salary range which includes the employee's current Base Salary or any position at higher level.
- 4) "Continuous Service" means:
 - i) the employee's most recent period of continuous, uninterrupted employment as an employee of HSCS, subject to the following:

An employee will be considered to have been employed by HSCS during any of the following periods of absence: (i) any period of absence due to illness for which the employee was paid his or her regular base salary or wages or for which the employee was paid short-term disability benefits under an employer-sponsored short-term disability program; (ii) up to 12 months of any period of absence during which the employee was eligible for long-term disability benefits under an employer-sponsored

long-term disability program; (iii) up to eighteen (18) months of any period of absence during which the employee was on workers' compensation leave; and (iv) any other period of company-authorized paid or unpaid leave of absence, provided that the employee returned to active employment with HSCS at the expiration of such leave of absence.

- ii) Except as otherwise expressly provided in (3) above, only periods of employment on HSCS's regular payroll will be considered as "Continuous Service."
- 5) "Full-time employee" as defined in the HSCS Employee Handbook.
 - 6) "Part-time employee" as defined the HSCS Employee Handbook.
 - 7) "Regular Full-time Employee" means:
 - i) a full-time employee on HSCS's regular payroll, and "Regular Part-time Employee" means a part-time employee on HSCS's regular payroll. Each of these terms excludes, without limitation, per-diem employees, temporary employees, individuals employed by temporary help firms, technical help firms, staffing firms, or employee leasing firms, employees performing services under a student cooperative or student intern program and any individuals considered by HSCS to be independent contractors rather than common-law employees.

PROCEDURE

1) Legal Matters.

- a) This Policy is a welfare plan under Title I of ERISA, and as such shall be governed by and construed in accordance with federal law.
- b) This Policy is not a condition of employment, and is not to be construed as giving to any covered employee or other person any legal or equitable right against HSCS, except as expressly provided herein. It is specifically limited to covered employees as described in this Policy, and HSCS undertakes no obligation to establish a similar policy for other employees in like circumstances. All severance and other benefits provided under this Policy shall be paid from HSCS's general assets, except for any health insurance coverage provided through insurance or a third party payer arrangement. Nothing in this Policy shall require HSCS to create any trust or fund for the purpose of providing such benefits, nor shall anything herein be construed to create any trust or fund for such purpose.
- c) If any portion of this Policy shall be held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remainder of the Policy, but the Policy shall be construed as if such illegal or invalid provision had not been inserted herein.
- d) Any payments and benefits payable or provided under this Policy which are subject to any restriction or limitation under the New York Insurance Law or any regulation promulgated thereunder shall only be payable or provided if, and to the extent that, such payments or benefits comply with such restriction or limitation.
- e) Notwithstanding anything to the contrary in this Policy, the total amount of severance pay payable to any covered employee will not exceed those values listed in the Policy section of this document.

- f) This Policy is designed and intended to be exempt from section 409A of the Internal Revenue Code. The Policy will be interpreted and administered accordingly.

2) Administration

- a) HSCS is the "named fiduciary" (within the meaning of section 402(a) of ERISA) with the authority to control and manage the operation and administration of this Policy, and in such capacity, will have full power and authority to interpret and administer this Policy, including, without limitation, the authority to establish and administer a claims procedure in compliance with section 503 of ERISA and the authority to promulgate such rules and procedures as HSCS deems necessary for the implementation of this Policy. HSCS has delegated all such authority or responsibility with respect to this Policy to the SVP–HRAS. Such delegation, and the delegation of authority under III, A, 5 above to decide whether a covered employee's separation from employment is a "qualifying termination", may be superseded at any time by a written instrument executed by the Personnel Committee of HSCS. All decisions, actions, or interpretations of HSCS or its delegate will be final, conclusive, and binding unless arbitrary and capricious.
- b) HSCS will also be the "plan administrator" of this Policy (within the meaning of section 3(16) of ERISA).
- c) The day to day administration of this Policy, including the calculation and processing of severance pay and continuation of benefits, coordination with other appropriate HSCS departments including the payroll department, and communication of the Policy will be the responsibility of the Principal in conjunction with HSCS's Human Resources Department.

3) HSCS's Rights To Amend And Discontinue The Policy

HSCS reserves the rights to amend this Policy at any time and to discontinue this Policy at any time, without notice, and if it deems appropriate, retroactively. HSCS may exercise its' right to amend and discontinue this Policy through action of its Personnel Committee or Human Resources Department.

DISTRIBUTION

This Policy and Procedure shall be available to all employees via the Staff Handbook and HR policy directory.

RESPONSIBILITIES

Human Resources is generally responsible for administration of this Policy.

REVISION

It shall be the responsibility of the HSCS Personnel Committee (or designee) to review this Policy on a regular basis and make revisions as appropriate. Any changes in the Policy may be effected without prior notice.

Supporting Procedures:

Staff Handbook

Related Laws, Regulations & Acts:

NYSED Law

Social Services Law Section

NY Code

Adopted: 08/15/2013

Revised: 1/4/2022