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I. The following is adopted as the amended Policy of the Board of Education effective as of January 1, 2002, with respect to compensation deferred pursuant to deferred compensation agreements entered into by authority of superseded forms of this Policy. This amended Policy supersedes all prior versions of this Policy.

(1) Effective January 1, 1991, no deferrals shall be made pursuant to existing agreements and no deferred compensation agreements shall be entered into pursuant to the deferred compensation plan authorized by the Board of Education pursuant to superseded versions of this Policy.

(2) Effective October 1, 1990, the Deputy Clerk is authorized to transfer deferred amounts to an asset management company as provided for in Resolution 1513 (September 27, 1990).

(3) Notwithstanding the selection of a Depository pursuant to a deferred compensation agreement, the District shall have absolute and uncontrolled discretion with respect to whether the amounts described therein are invested and, if invested, the institution or institutions in which they shall be invested. This Policy does not bind the District to comply with Participants' instructions regarding the deposit of deferred compensation. The Superintendent shall recommend to the Board any changes in deposit arrangements as shall appear prudent. The District shall have no fiduciary or other obligation to maximize earnings on deferred amounts for the benefit of Participants, and the measure of the District's obligations to the Participant involved shall be solely as set forth in the Agreement.

(4) Effective January 1, 1999, notwithstanding any provision in this Policy or its Exhibit A to the contrary, all assets and income of the deferred compensation plan established by this Policy shall be held in trust for the exclusive benefit of Participants and their beneficiaries. For purposes of the foregoing sentence, custodial accounts and annuity contracts described in Code Section 401(f) shall be treated as trusts under rules similar to the rules under Code Section 401(f).

(5) Effective January 1, 2002, the following provisions regarding rollover contributions are added to this Policy:

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II. **Rollover Contributions.** The District may in its discretion accept rollover contributions of cash or other property on behalf of a Participant, the amount of which shall be credited to the Participant's separate rollover account and which shall at times remain fully vested and non-forfeitable. A "rollover contribution" is:

(1) An amount received by the District's deferred compensation plan (the "Plan") from a Participant who, having received an eligible rollover distribution, as defined in Code Section 402(c)(4), from an eligible retirement plan, transfers any portion of the property received in the distribution to the Plan on or before the 60th day after the day on that the Participant received the property;

(2) An amount received by the Plan on behalf of a Participant in a direct trustee-to-trustee transfer of an eligible rollover distribution from an eligible retirement plan in accordance with Code Section 401(a)(31); or

(3) An amount received by the Plan from a Participant that consists of the portion of a distribution from an individual retirement account or annuity described in Code Section 408(a) or 408(b) that is eligible to be rolled over and would otherwise be includible in gross income, provided that the Participant transfers the amount to the Plan on or before the 60th day after the day on which the Participant received the amount.

(4) For purposes of (1), (2), and (3) above, an "eligible retirement plan" means a qualified trust described in Code Section 401(a), a qualified annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), or an eligible deferred compensation plan described in Code Section 457(b) that is maintained by an eligible employer described in Code Section 457(e)(1)(A).

(5) Prior to accepting any rollover contributions, the District shall obtain a statement from the plan administrator of the distributing plan that the plan is intended to comply with the applicable Code provision, or such other statement or verification as may be required by the Internal Revenue Service.

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III. **<u>Eligible Rollover Distributions</u>.** Effective January 1, 2002, the following provisions regarding eligible rollover distributions are added to this Policy:

(a) <u>General Rule</u>. To the extent required by law, and except as otherwise provided below, any portion of an eligible rollover distribution that would otherwise be includible in the distributee's gross income if not rolled over shall, at the election of and in lieu of distribution to the distributee, be paid directly to the eligible retirement plan specified by the distributee.

(b) <u>Definition of Eligible Rollover Distribution</u>. Subject to the limitations in (d) below, an "eligible rollover distribution" is any distribution of Plan benefits to a Participant, a Participant's surviving spouse, or a Participant's spouse or former spouse pursuant to a qualified domestic relations order ("distributee"), except the following distributions:

(A) Any distribution that is one of a series of substantially equal periodic payments made at least annually over one of the following periods:

(i) For the life (or life expectancy) of the distributee, or the joint lives (or life expectancies) of the distributee and a designated beneficiary; or

(ii) For a specified period of ten years or more.

(B) Any distribution to the extent it is required under Code Section 401(a)(9).

(C) Any distribution made on account of hardship.

A distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, any such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not includible in gross income. In the case of a transfer described in this

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paragraph, the amount transferred shall be treated as consisting first of the portion of the distribution that is includible in gross income (determined without regard to Code Section 402(c)(1)).

The provisions of Code Section 401(a)(31)(D) and the regulations thereunder are incorporated herein by reference for the purpose of further defining and interpreting the term "eligible rollover distribution," and those provisions shall be controlling.

(c) Definition of Eligible Retirement Plan. For purposes of the provisions of this Policy regarding eligible rollover distributions, an "eligible retirement plan" is:

(A) An individual retirement account described in Code Section 408(a);

(B) An individual retirement annuity described in Code Section 408(b) (other than an endowment contract);

(C) A qualified trust under Code Section 401(a) that is a defined contribution plan and permits the acceptance of rollover contributions;

(D) An annuity plan described in Code Section 403(a);

(E) An eligible deferred compensation plan described in Code Section 457(b) that is maintained by an eligible governmental employer described in Code Section 457(e)(1)(A); or

(F) An annuity contract described in Code Section 403(b).

The provisions of Code Section 401(a)(31)(E) and the regulations thereunder are incorporated herein by reference for the purpose of further defining and interpreting the term "eligible retirement plan," and those provisions shall be controlling.

(d) Limitations. The foregoing provisions are subject to the following limitations:

(A) The distributee may not elect to have an eligible rollover distribution paid directly to more than one eligible retirement plan.

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(B) The distributee may not elect to have an eligible rollover distribution paid directly to an eligible retirement plan if the total of all eligible rollover distributions payable to the distributee from this deferred compensation plan during the distributee's taxable year is reasonably expected to be less than $200 (or such higher amount permitted under applicable federal law).

IV. Effective January 1, 2002, the following provision shall apply to the distribution of a Participant's Account, notwithstanding any provision to the contrary in this Policy or its Exhibit A:

(1) **Distributable Events.** A Participant is entitled to distribution of his or her Account, at the time and in the manner provided in this Policy, on the occurrence of one of the following events:

(a) The Participant's severance of employment with the District.

(b) The beginning of the calendar year in which the Participant reaches age 70½.

(c) The Participant is faced with an unforeseeable emergency.

(2) **Cash-Out of Small Accounts.** Notwithstanding the above, where the portion of a Participant's Account that is not attributable to rollover contributions, as defined in Code Section 411(a)(11)(D), does not exceed $5,000, the Participant may elect to receive the Account in a single lump-sum payment, or the District may distribute the Account without the Participant's consent, provided that:

(a) No amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the distribution; and

(b) There has been no prior distribution to the Participant under this provision.

V. Effective January 1, 2002, notwithstanding any provision to the contrary in this Policy or its Exhibit A, Participants may elect the date on which payments are to begin under this plan, and the form in which the payments are to be made, at any time before the selected commencement date, subject to the District's procedures for applying for benefits. The District's procedures may require, among

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other things, that a written application for benefits be submitted at least a minimum number of days before the payment commencement date.

VI. Effective January 1, 2002, the following provision is added to this Policy:

A Participant, or a deceased Participant's death beneficiary, may elect at any time to have part of all of the Participant's Account paid in a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in Code Section 414(d)) maintained by the state of Oregon or a political subdivision of the state of Oregon, provided that the transfer is:

(1) For the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the defined benefit governmental plan; or

(2) A repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3).

VII. Effective January 1, 2002, the following provisions regarding required minimum distributions are added to this Policy:

(1) **Required Minimum Distributions.** Effective January 1, 2002, distributions to Participants and their death beneficiaries will be made in accordance with Code Section 401(a)(9) and the regulations thereunder, including Treasury Regulation Section 1.401(a)(9)-2. Provisions in this Policy and the deferred compensation plan reflecting Code Section 401(a)(9) override any distribution options inconsistent with Code Section 401(a)(9). The requirements of this paragraph and subsections (a) through (d) below shall take precedence over any inconsistent provisions of this Policy or the deferred compensation plan. All distributions required under this section shall be determined and made in accordance with Code Section 401(a)(9) and the Treasury regulations thereunder, which are incorporated herein by this reference.

(2) The provisions of subsections (a) through (d) below shall apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year:

(a) Time and Manner of Distribution.

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(A) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

(B) Death of Participant before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(i) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then, except as provided in (v) below, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.

(ii) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then, except as provided in (v) below, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(iii) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iv) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this paragraph (B), other than (B)(i), will apply as if the surviving spouse were the Participant.

(v) Participants or beneficiaries may elect on an individual basis whether the five-year rule described in (iii) above or the life expectancy rule

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described in (i) and (ii) above applies to distributions after the death of a Participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under (i) or (ii) above, or by September 30 of the calendar year which contains the fifth anniversary of the participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor beneficiary makes an election under this subparagraph (v), distributions will be made in accordance with (i) or (ii) above, as applicable, and subsection (c)(B)(i) below.

For purposes of this paragraph (B) and subsection (c), unless (iv) above applies, distributions are considered to begin on the Participant's required beginning date. If (iv) above applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under (i) above. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under (i) above), the date distributions are considered to begin is the date distributions actually commence.

(C) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with subsections (b) and (c). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury regulations.

(b) Required Minimum Distributions during Participant's Lifetime.

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(A) Amount of Required Minimum Distribution for Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(i) The quotient obtained by dividing the Participant's Accounts by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation § 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(ii) If the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Accounts by the number in the Joint and Last Survivor Table set forth in Treasury Regulation § 1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(B) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this subsection (b) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(c) **Required Minimum Distributions after Participant's Death.** If the Participant dies on or after the date distributions begin, the remainder of the Participant's Accounts shall be distributed at least as rapidly as under the distribution method being used as of the date of the Participant's death, and in accordance with the provisions of this subsection (c).

(A) Death On or After Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be

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distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Accounts by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

(I) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(II) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(III) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by

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dividing the Participant's Accounts by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) Death before Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. Unless the Participant or beneficiary elects under subsection (a)(B)(v) to have the five-year rule apply, if the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Accounts by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in subsection (c)(A).

(ii) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, or if the Participant or beneficiary elects under subsection (a)(B)(v) to have the five-year rule apply, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under subsection (a)(2)(a), this subsection (c)(B) will apply as if the surviving spouse were the Participant.

(d) Definitions.

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(A) Designated Beneficiary. The individual who is designated as the beneficiary under the terms of the Plan and is the designated beneficiary under Code Section 401(a)(9) and Treasury Regulation § 1.401(a)(9)-4, Q&A-1.

(B) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under subsection (a)(B). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(C) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Treasury Regulation § 1.401(a)(9)-9.

(D) Participant's Accounts. The Accounts as of the last Valuation Date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Accounts as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Accounts for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

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(E) Required Beginning Date. The required beginning date for a Participant is April 1 of the calendar year following the calendar year in which the Participant reaches age 70½ or retires, whichever occurs later.

VIII. This Policy may be terminated and modified by the Board in its sole discretion, provided that the termination or modification shall not affect rights acquired under deferred compensation agreements previously executed, except to the extent necessary to ensure that amounts deferred under the agreements are not includible in the Participants' taxable income before they are actually distributed.

Legal References: ORS 243.401 - 243.428; ORS 243.474 - 243.507; ORS 294.004; ORS 294.033

History: Adpt 6/14/76; Amd. 3/12/79; Amd. 8/10/81; Amd. 2/24/83; Amd 10/84; Amd 3/8/90; resolution adopting temporary replacement 9/27/90; temporary replacement repealed; Adpt 3/11/93; Amd. 3/31/94; Renumbered from 5.50.090 to 5.10.080 9/94; Emergency Amd 12/9/02, BA 2511; Final Adoption 2/10/2003 BA 2560