



REDUCTION-IN-FORCE POLICY

I. PURPOSE

The purpose of this policy is to establish an orderly, non-discriminatory and equitable procedure to reduce the number of NAS-LC employees in the event that The New America NAS-LC-Las Cruces experiences insufficient or reduced revenues, and to preserve a sound balanced educational program that is consistent with the function and responsibilities of the NAS-LC charter.

II. DISCRETION

NAS-LC's head administrator ("Administrator") shall exercise his/her discretion in accordance with this policy when determining that a reduction in force in personnel is necessary. The Administrator will base his/her decisions on the best available information, including consultation with his/her business manager and the NAS-LC's finance committee. His/her decision will be made in good faith and shall, under no circumstances, be implemented as a pretext for terminating or discharging employees contrary to law.

Unless otherwise required by law, the Administrator shall advise the NAS-LC's governing body as to any circumstances that may ultimately require a RIF, so that advanced notice to personnel can be given and so that options to avoid a RIF can be considered.

The Administrator shall not be required to prepare a RIF Plan as defined below, if a reduction can be accomplished through attrition (resignation, retirement, etc.) or by termination of a sufficient number of non-tenured staff.

III. DEFINITION

A reduction in force ("RIF") is a procedure used when a NAS-LC must abolish a position. This may include eliminating full or part-time licensed or unlicensed contract or non-contract employees.

IV. REASONS FOR REDUCTION IN FORCE

The nature and grounds for any RIF shall be determined by the Administrator. Examples of reasons for a RIF are:

A. *NAS-LC reorganization.* This may occur when the charter program is ending, consolidating or when reorganizing NAS-LC programs and functions;

B. *Decreased enrollment.* This may occur when there has been a decrease in the current year enrollment or because enrollment did not meet enrollment projections in the charter NAS-LC or a specific program offered by the charter NAS-LC.

C. *Financial exigencies.* This can result from a decline in NAS-LC's financial resources that compel a reduction in the NAS-LC's current (or projected) operational budget that necessitates a decrease of programs at their existing level or elimination of a program altogether, such as:

- decline in enrollment;
- loss of state, federal or local funding; and/or

- decrease of funding due to other directives from governing entities (courts, NMPED, Legislature, etc.)

V. TIMING

A RIF may occur any time during a fiscal year in accordance with this policy and procedures.

VI. REDUCTION IN FORCE PLAN

A. *Administrator's Plan.* The Administrator shall prepare a RIF Plan ("Plan") and present it to the NAS-LC's Governing Body. The Plan shall focus on the impact to educational programs and how it may be modified to reduce costs, programs and personnel while still accomplishing the mission and educational program described in the NAS-LC's charter. Where circumstances warrant (e.g. specific program funding), a Plan may address particular program content areas or activities in the case where the RIF predominately impacts that aspect of the educational program. The Administrator shall have the discretion to include information that he/she deemed significant when deciding to implement a RIF; however, the following topics must be explained:

1. Description of the cause or causes requiring a RIF;
2. Explanation of steps taken to avoid a RIF, if any (e.g. reduction by attrition, cuts in non-licensed staff, abolition of non-essential services, activities or extra-curricular programs, etc.)
3. A designation of the part or parts of the total educational program or particular program or activity in which the RIF is proposed;
4. The number of positions proposed to be reduced in each program or activity;
5. A designation of non-essential services or activities to be retained, with a justification for retaining the services or activities; and
6. A discussion of alternatives (if any) considered by the Administrator with an explanation for why such alternatives were rejected.

B. *Governing Body's Consideration.* The NAS-LC's Governing Body will consider the Administrator's Plan at a public meeting at which the Administrator shall present the proposed Plan and justification for a RIF. The discussion and action on whether a reduction-in-force is merited by financial circumstances and discussion on the Plan will be in open session; however, the Governing Body is not restricted from holding portions of the discussions in closed session in accordance with New Mexico Open Meetings Act exception.¹ The Governing Body may allow such review, consultation, and comment by employees and members of the public on the Plan and reasons for the RIF, as the Governing Body, in its discretion, deems appropriate.

The Governing Body may propose recommendations to the Plan to ensure that the Plan addresses the financial reasons for implementing a RIF. The Head Administrator, however, shall

¹ NMSA 1978 §1-15-1(H). "The provisions of Subsections A, B and G of this section do not apply to: ...
 (2) limited personnel matters; provided that for purposes of the Open Meetings Act [10-15-1.1 NMSA 1978], "limited personnel matters" means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee; provided further that this subsection is not to be construed as to exempt final actions on personnel from being taken at open public meetings, nor does it preclude an aggrieved public employee from demanding a public hearing. Judicial candidates interviewed by any commission shall have the right to demand an open interview;..."

be the final decision-maker on the content and scope of the Plan after giving due consideration to the recommendations of the Governing Body.

If a mid-year RIF is proposed which would require the discharge of tenured certified staff, the Administrator and the Governing Body will adopt a joint determination as to the projected financial burdens to NAS-LC and the conclusion that NAS-LC cannot survive financially for the fiscal year already underway unless a RIF is carried out.

C. *Notice to Employees.* The final Plan to implement the RIF will be made available to all staff, by providing copies thereof in the NAS-LC's office, within two (2) work days after the Plan has been approved by the Governing Body.

V. CRITERIA, RANKING AND WEIGHT – LICENSED NAS-LC PERSONNEL

A. *Criteria.* The primary consideration in any RIF shall be maintenance of a sound and balanced educational program consistent with the functions and responsibilities of the NAS-LC, including the duty to conduct its business within the confines of a balanced budget. The Administrator shall consider a variety of factors in determining which employees will be included in the RIF, including without limitation:

1. Licensure. If a position requires a license or certification, then the type of licenses or certification will be evaluated for purposes of assessing order of lay off. Substandard licensure is inferior to full licensure, and a person who is fully licensed to teach within the presently assigned content area will be retained in preference to a person holding a substandard license. Points will be assigned to various levels of licensure.

(a) A "teaching waiver"² will be treated as "substandard licensure" and assigned zero (0) points.

(b) An "assignment waiver"³ working in the affected position, but possessing full licensing in another content area not affected by the RIF will be allocated five (5) points.

(c) Full license and teaching in the affected content area will be allocated ten (10) points.

(d) A "teaching endorsement"⁴ applicable to the qualifications for the individual's current assignment or content area in the affected position will receive an additional two (2) points up to a maximum of six (6) points.

(e) A "full license" in affected area will receive ten (10) points.

(f) Extracurricular Licensing/Experience/Assignment. No employee may receive points on the rating sheet for extracurricular, athletic or co-curricular assignments, unless the licenses are directly relevant to the affected program. If relevant to the affected position, the employee will receive two (2) points up to a maximum of (6). The Administrator, however, shall identify any extracurricular, athletic and co-curricular programs or activities for which an employee may receive credit in the Plan and has the discretion to assign this category of licensure a different weight than (a) through (f).

2. Years of Experience. Each licensed individual considered for termination or discharge will be awarded one (1) point for each year of full-time service during the most recent period of uninterrupted service at NAS-LC, prior to the current year, excluding approved extended leaves of absence, up to a maximum of the total number of years the NAS-LC has existed.

² According to NMSA 1978 Section 22-10A-14B.

³ According to NMSA 1978 Section 22-10A-14C

⁴ Endorsements must be recognized by the New Mexico Public Education Department.

3. Education. Credit for education will be determined based on degree, additional hours, and whether the degree or additional hours are applicable to the affected program:

DEGREE	APPLICABLE	NOT APPLICABLE
• B.A.	1 point	½ point
• B.A. + 15	2 points	1 point
• B.A. + 45 or M.A.	4 points	2 points
• M.A. + 15	6 points	3 points
• M.A. + 45 and higher	8 points	4 points
• Ed.D. and Ph.D.	10 points	5 points

4. Performance. The Administrator shall rate the relative performance of each person considered for discharge using evaluation criteria based on the NAS-LC's approved performance evaluation process. The Administrator may include additional competencies that reflect, in his or her judgment, attributes necessary for success in the particular program(s) affected by a RIF. The rating form will include standard and specific competency areas, will specify the score for each performance category or attribute, and will allow for a maximum score of twenty (20) points. The Administrator may consult with any individual with supervisory responsibilities, if any, over the affected individual when completing the performance evaluation. The Administrator will consider no more than three (3) prior year evaluations received by the individual at NAS-LC. The Administrator may devise such other measures as deemed necessary to address situations where implementation of the performance rating cannot occur in the normal manner, so long as such measures are rationally designed to award points to licensed personnel based on the employee's performance.

5. Tenure. Where cumulative scores on the rating sheet are equal between two or more licensed NAS-LC instructors being considered for termination or discharge, tenured licensed NAS-LC instructors will be retained in preference to licensed NAS-LC instructors who have been employed by NAS-LC for less than three consecutive NAS-LC years of service.

6. Other Criteria. The Administrator may add any other criteria that he or she deems relevant to assessing the necessary qualifications, including but not limited to highly qualified status, technical skills, areas of training for which endorsements or licensure are not awarded, transferability of job skills/versatility, personal strength and teamwork.

7. Weight. The Administrator may determine whether any or all of the criteria should be assigned a different weight and shall describe such weighting criteria and rationale for the different weight allocation in the Plan.

B. *Selection Based on Scores*. The Administrator will total the points allocated based on the criteria specified above. The person with the lowest score will be the person who is released by termination or discharge unless such action would have a serious and detrimental effect on the total educational program. In such event, the Administrator may select a higher scoring person for termination or discharge but will prepare a written justification for such action in the best interests of the NAS-LC, along with the rating sheets for such positions. The computations of the Administrator, plus the rating forms on the persons considered for release, will be available for review by the person released.

C. *Transfer/Reassignment*. If a position is available at NAS-LC and the person released from the affected program qualifies, he/she may be assigned to that position if:

1. Existing Vacancy. If, upon the effective date of the termination or discharge due to a RIF, there is an existing vacancy in another program for which the affected person is licensed

and qualified, he or she will be transferred or reassigned to that vacant position. There will be no obligation to create a vacancy to accommodate such person.

2. No Existing Vacancy. Where the affected person is licensed and qualified for another program or programs at NAS-LC, but all such positions are currently filled, the selection criteria described above, subject to the modifications described below, will be applied to determine whether the affected person may be transferred or reassigned to another program and another person, currently employed in the other program, may be released.

(a) If the affected person is fully licensed for a position in another program or an administrative position but has not actually taught in such program or held such an administrative position during any part of the preceding five (5) NAS-LC years, such person will not be considered qualified for transfer or reassignment to the other position.

(b) If the affected person is fully licensed for a position in another program or administrative position, and has current experience in the responsibilities of that position, the Administrator will determine in his/her best judgment whether removing the incumbent and replacing him/her with the affected person is in the best interest of the NAS-LC program.

D. *Due Process*. A licensed instructor or administrator discharged or a tenured teacher terminated pursuant to this policy will be entitled to the procedural rights provided pursuant to the New Mexico NAS-LC Personnel Act,⁵ applicable regulations and the NAS-LC's policies. The written decision of the Governing Council, to the extent required by statute and regulation, will clearly specify that the termination or discharge resulted from a RIF and not from any cause personal to the person released.

E. *Appeal*. Appeals to an independent arbitrator from termination or discharge pursuant to this policy are governed by the provisions of NMSA 1978, §22-10A-25, NMSA 1978 §22-10A-28, respectively, and any applicable regulations of the New Mexico Public Education Department.

VI. CRITERIA, RANKING AND WEIGHT – NON-LICENSED NAS-LC PERSONNEL

A. *Criteria*. The primary consideration in any RIF shall be maintenance of a sound and balanced educational program consistent with the functions and responsibilities of the NAS-LC, including the duty to conduct its business within the confines of a balanced budget. The Administrator will consider some or all of the criterion below when determining which non-contract personnel ("staff") within an affected job category (e.g. office personnel) will be recommended for complete or partial termination in order to implement the RIF. This process shall only be required when the employees being considered for termination are employees with three or more consecutive years of service with NAS-LC.

1. Specialized Qualifications. Specialized training, certification or licensing directly related to the job duties of the affected position (e.g. electrician's license; computer certifications) may be allocated up to five (5) points.

2. Relevant Skills and Experience. Skills and/or experience directly related to the ongoing operations and administration of the NAS-LC's program(s) (e.g. computer skills, student information management, etc.), may be allocated up to five (5) points. The Administrator shall enumerate the specific skills and experiences that are relevant to the NAS-LC's programs in the Plan.

3. Performance. The Administrator considers and rates the relative performance of such person in the positions to be eliminated on a rating form to be prepared by the Administrator if evaluation forms are not available. Performance may allocate up to (20) points.

⁵ NMSA 1978 §§22-10A-1, et seq.

If the Administrator is not the affected staff member's immediate supervisor, the Administrator may assign the performance rating process to the supervisor and/or consult with such individual(s) who are most familiar with the affected staff member's performance.

4. Length of Service. Affected staff member(s) will be awarded one (1) point for each complete NAS-LC year of full-time service during the most recent period of uninterrupted service with NAS-LC up to a maximum number of points equal to the number of years the charter NAS-LC has been in operation. Periods of extended leave of absence without pay will not be included. Where cumulative scores are equal, the individual who has served longest at the charter NAS-LC will be retained.

5. Other Criteria. The Administrator may add any other criteria that he or she deems relevant to assessing the necessary qualifications such as, technical skills, areas of training for which endorsements or licensure are not awarded, transferability of job skills/versatility, personal strength and teamwork.

6. Weight. The Administrator may determine whether any or all of the criteria should be assigned a different weight and shall describe such weighting criteria and rationale for the different weight allocation in the Plan.

B. *Selection Based on Scores.* The Principal will total the points for the criteria selected. The person with the lowest score will be the person who is released. The computations of the Administrator, plus the rating forms on the persons considered for release, will be available for review by the person released. The person with the lowest score will be the person who is released by termination unless such action would have a serious and detrimental effect on the total educational program. In such event, the Administrator may select a higher scoring person for termination or discharge but will prepare a written justification for such action in the best interests of the NAS-LC, along with the rating sheets for such positions. The computations of the Administrator, plus the rating forms on the persons considered for release, will be available for review by the person released.

C. *Transfer/Reassignments.* If, as a result of the application of the selection criteria, a person is selected to be released from the affected program, but such person is a long-term staff member (i.e. has worked for NAS-LC for more than three consecutive years) and qualifies for another position within NAS-LC where a vacancy exists, that person will be considered for transfer/reassignment to the other program.

D. *Termination.* Each staff member terminated pursuant to this policy will be entitled to the procedural rights provided pursuant to the New Mexico NAS-LC Personnel Act, applicable regulations and the NAS-LC's policies. The written decision of the Governing Body, to the extent required by statute and regulation, will clearly specify that the termination or discharge resulted from a RIF and not from any cause personal to the person released.

E. *Appeal.* Appeals to an independent arbitrator from termination or discharge pursuant to this policy are governed by the provisions of NMSA 1978, § 22-10A-25 and any applicable regulations of the New Mexico Public Education Department.

V. PROVISIONS APPLICABLE TO ALL EMPLOYEES AFFECTED BY RIF

A. *Recall of Released Employees.* For a period of one year after the effective date of the discharge or termination of any employee pursuant to this policy, the Administrator will offer to such person any position(s) which becomes available for which such person is licensed and/or qualified, provided that such person has complied with the following requirements:

1. Interest to be recalled. If an opening occurs, the terminated employee must file with the Administrator, within thirty (30) days after the effective date of the discharge or termination, a written statement indicating a desire to be considered for recall and providing an

address at which the person may be contacted. The employee shall be responsible for keeping his/her contact information current.

2. Competing applicants. If more than one person who was discharged or terminated within the calendar year prior to recall is qualified for the position by experience, training, and/or licensure to which a person will be recalled, the selection criteria of this policy will be applied to determine which person is to be recalled. The points accrued for "Service at NAS-LC" and "Performance," if any, will be the same as when the persons were discharged or terminated. Additional points for qualified education earned after the discharge or termination which is directly related to NAS-LC educational program will be credited and considered.

3. Response to Offer of Recall. Any person selected for recall hereunder will receive written notification of the recall, by certified mail, at the address provided. The recalled person must accept the position offered in writing within fifteen (15) calendar days from the date of mailing the notice to the person. Rejection of the offer, in writing or by failure to timely respond, will result in forfeiture by the recalled person of any further recall rights under this policy. Thereafter, an offer of recall will be made to the next person qualified to be recalled, or if there is none, the position will be filled by another qualified applicant.

4. Restoration of leave upon rehire. Any person recalled pursuant to this policy will have all accrued but unused sick leave restored and will be given credit for all years of actual service at NAS-LC for salary purposes. However, whether the employee is restored to his/her prior salary or level of benefits is at the discretion of the Administrator consistent with the NAS-LC's budget and current NAS-LC policies.

5. Expiration of rights to recall. After the one-year recall period has expired, any person discharged or terminated under this policy will no longer have any right to be recalled. Such persons who wish to be reemployed thereafter will file applications for employment and will be treated as would any other applicant for a vacant position.

B. *Modification of this Policy.* The Governing Council may amend this policy from time to time at its sole discretion. Any modification to the policy shall be effective immediately.

C. *Mandated Reductions in Force.* If legislation is passed which requires the NAS-LC to reduce licensed NAS-LC personnel, for any reason and such legislation alters the policy and procedures described herein, NAS-LC will follow the legislative procedures, in lieu of this policy.

Countervailing valid orders of the Secretary of the New Mexico Public Education Department will override this policy. Unless a different procedure is mandated by law, the termination or discharge of NAS-LC employees shall be in compliance with the New Mexico NAS-LC Personnel Act, NMSA 1978 §§22-10A-1, *et seq.* as amended.

Adopted: _____
Date

President

Secretary

Vote: _____yes;_____no;_____abstain