

**Memorandum of Understanding K
to the Agreement by and between
Lake Washington Institute of Technology
District No. 26
and the
Lake Washington Federation of Teachers
Local 3533
Effective July 1,2020**

This Memorandum of Understanding is supplemental to the above-referenced Agreement by and between the College and the Federation (hereafter referred to as the “agreement” and incorporated herein by reference).

Article 29

Program Viability

Section 29.1 The Vice President of Instruction will form a Program Viability Taskforce when the need arises to review college programs for closure or major revision due to conditions outlined in Section 29.4 or other circumstances, in spite of earlier interventions.

Section 29.2 The Program Viability Taskforce conducting the viability analysis includes the following members:

- Program Department Chair or Director
- Program Faculty
- Division Dean
- Dean of Instruction – Assessment and Curriculum Development
- President of the Union or designee
- Faculty Peer from Division
- Advisory Committee Chair (or other member)
- Others determined by the Vice President of Instruction

Section 29.3 The Department Chair or Director, program faculty, and division dean prepare initial responses to each of the questions in Section 29.4. They do so with support from the Office of Institutional Research and the Dean of Instruction – Assessment and Curriculum Development as needed. They may also call on other members of the Program Viability Taskforce, college community, and industry. They present the results at a convening of the full Program Viability Taskforce.

Section 29.4 All programs should be continually reviewed for their effectiveness in meeting the training needs of industry, as well as in fulfilling the mission of the college. Programs failing to meet these needs may be subject to review for viability. The outcome of the review may involve program revision or elimination. Many factors are considered during this process:

1. Is enrollment adequate? Is there a long-term trend of declining or persistently low enrollment? Each program has a designated annual FTE target that is determined by the college in collaboration with the faculty, program director, and advisory committee. Analysis of the program may include: curriculum needs, facility and equipment availability, safety factors, and the optimal number of students that the instructor(s) can successfully manage at one time. Is this designated annual FTE target being met?

2. Is the student to faculty ratio at or below 10:1? Or, is it below the ratio recommended for a particular program by the Dean or Vice President of Instruction, if one exists?
3. Does the program meet industry standards? Are the industry-validated competencies being successfully met by program graduates? If industry certification/formal recognition exists, has the program achieved such?
4. Are there sufficient employment opportunities for program graduates, and are graduates obtaining employment in the field?
5. Is the supply and demand gap in industry and from regional colleges adequate to support the program's graduates obtaining employment in the field?
6. Do entry level wages exceed 120% of minimum wage?
7. Are there career advancement opportunities available for those graduates who perform successfully on the job?
8. Is the program advisory committee positively affecting and supporting the program?
9. Is the program cost-effective/economically supportable?
10. Other factors that may be determined during the process that may impact program viability.

During the review, up to five years of data may be analyzed. While enrollment is a key factor considered in the review process, all factors listed above are important considerations and any of them could be a determinant for program viability even though adequate enrollment may exist.

Section 29.5 The first taskforce meeting, convened by the Dean, is dedicated to describing the viability analysis procedure and primary reasons for beginning that process, as well as the roles and expectations for those involved in the analysis.

The second convening of the taskforce includes the presentation of the initial results of the viability analysis to the team. The team asks questions, seeks clarification, etc. The team determines that additional information is needed and assigns retrieval of that information to team members, or the team determines that enough information has been provided and plans for a third convening after a short period of time (e.g., 1 or 2 weeks).

The third convening of the taskforce (or fourth if additional information was necessary) is focused on discussion of the results and formulation of a recommendation for program closure or continuance with major revision.

This recommendation is presented to the Vice President of Instruction by the Division Dean. This meeting may also include the peer faculty or President of the union or designee. The Vice President of Instruction will inform the Taskforce and affected faculty of his/her decision.

If the program is determined to be unviable and is to be closed, the department chair/director and/or division dean will develop a teach out plan. The Dean of Instruction – Assessment and Curriculum Development notifies the SBCTC of program closure.

If the program is determined to be viable with major revisions, the department chair/director and faculty develop the new curriculum and submit it for approval through the regular curriculum review process.

Section 29.6 Faculty in the affected program, or the Federation, may appeal the program viability decision of the Vice President of Instruction in writing to the College President within 14 calendar days.

Section 29.7 If faculty positions are impacted by the Program Viability decision; the College will follow the seniority steps described in Section 31.

Article 30 Reduction in Force

Section 30.1 When the College President first becomes aware of a situation that may cause a reduction in force of probationary and/or tenured faculty, written notice of a potential reduction in force and the extent thereof shall be given to the Federation. Such reduction in force may be caused by lack of funds, changing labor market, inoperative facilities, or declaration of an emergency as provided in RCW 28B.50.873. This notice shall include the basis for the President's conclusions.

Section 30.1.1 Within five (5) days of the date of this notice, a three (3) member committee of the Federation, which shall include the Federation President, shall be provided with an opportunity to meet with the College's Vice President of Instruction regarding the situation. Such meeting(s) shall include:

- A. An examination of the College's course offerings to support the determination of least impact on students' access to the College's certificate and degree programs.
- B. Exchanges of information concerning the potential need to implement a reduction in force and potential alternatives or options either party feels are reasonably available.
- C. Exchange of information concerning the potential need to close an instructional program due to the college's inability to afford to continue its operations.
- D. Alternative(s) or options may include savings that may be found following an examination of the College budget, or the use of other courses as a regular part of the academic year to provide full-time, tenured faculty full-time employment.
- E. An examination of the effect on morale of the students and faculty and what steps can be taken to reduce this effect.

In applying the above, strong consideration shall be given to the continuation of required courses and sequential courses needed for student certification, A.A.S. degrees or BAS degrees.

During these discussions the Vice President of Instruction shall document his or her findings by supplying data that reasonably may be produced. Such meetings shall conclude within fifteen (15) work days from the date of the first meeting between the Vice President and the Federation committee.

Section 30.1.2 Should the College determine, after conferring with the Federation as provided in Section 17.1.1 above, that a reduction in number of Associate Professors, Assistant Professors and/or Professors is necessary, it shall determine the number of faculty and job classifications to be reduced. Should such reduction in force be implemented, the procedure defined in Section 18.1, for Associate Professors, Assistant Professors and/or Professors shall apply.

Section 30.1.3 The College President shall determine which sections or courses to discontinue based upon recommendations provided by the Vice President of Instruction.

Article 31 Lay-off process due to Program Viability or Reduction in Force

Section 31.1 In the event of faculty lay-off due to Program Viability or Reduction in Force, the College will follow procedures based on faculty position and seniority.

Section 31.2 The College shall use the following criteria, which are arranged in order of priority, in selecting the faculty members for lay off:

- A. Adjunct Professor,
- B. Senior Adjunct Professor,
- C. Assistant Professor,
- D. Associate Professor
- E. Professor.

Section 31.3 The College shall use College seniority to determine which faculty member(s) within the groups identified in Section 31.2 (C) through (E) above to lay off, and shall first lay off those least senior.

Section 31.4 If Assistant Professors, Associate Professors and/or Professors are identified for layoff, and an identical section or course is to be operated on a self-support, grant-funded, or contracted basis, then the, Assistant Professors, Associate Professors and/or Professors may be offered a like section or course in favor of the non-tenured, grant-, contract-, or self-supported faculty member unless it can be shown that the reason for existence of the section or course is due to specialized marketing activities conducted by, or specific skills or industry reputation possessed by the Assistant Professor, Associate Professor, or Professor -employed under the grant-, contract-, or self-supported program. These additional courses are not intended to maintain their status as full-time faculty.

Section 31.5 The notice of layoff to Professors shall explain that the laid off faculty member will be placed in a recall pool for two (2) years provided the faculty member notifies the College's Human Resources office in writing within thirty (30) days of delivery of such notice that he/she wishes to be placed in such recall pool. If not recalled within two (2) calendar years from date of layoff, Professor shall be terminated. Such notice shall also provide reference to the Professor's right to an appeal pursuant to provisions of the Administrative Procedure Act, chapter 34.05 RCW. If Professors accept a buy-out offer from the College, they waive their right to be placed in a recall pool.

Section 31.6 Associate Professors whose employment is not renewed in accordance with RCW 28B.50.857 due to a layoff will have the following recall rights: The notice of layoff to Associate Professors shall explain that the laid off faculty member will be placed in a recall pool for one (1) year provided the faculty member notifies the College's Human Resources office in writing within thirty (30) days of delivery of such notice that he or she wishes to be placed in such recall pool. If not recalled within one (1) calendar year from date of layoff, the Associate Professor member shall be terminated. Section 30.1 shall not apply to part-time faculty as identified in Section 30.1.4(A) above. If Associate Professors accept a buy-out offer from the College, they waive their right to be placed in a recall pool.

Section 31.7 Professors and Associate Professors shall be recalled to positions for which they are qualified in reverse order of layoff. Upon recall, such faculty shall retain all benefits, such as sick leave, tenure, and seniority which had accrued to the date of lay off. Associate Professors recalled to a tenure track position shall re-enter the tenure process without loss of probationary status accumulated prior to lay off.

Section 31.8 If requested, the College will provide to faculty laid off in accordance with this Section, 18.1, such support in their pursuit of new employment opportunities as is reasonable and has been customary at the College.

Section 31.9 A faculty member may qualify for assignment to a secondary job classification if he or she has taught the curriculum provided in the secondary job classification within the previous five (5) years, or if fifty percent (50%) of the curriculum contained in the secondary job classification is the same as that contained in the primary job classification to which he or she is assigned. Application for assignment to a secondary job classification may be made in writing to the College's Human Resources office.

In the event a tenured faculty member is laid off as a result of a reduction in force or program viability, the College will reimburse that faculty member for tuition and applicable program fees for up to three quarters of retraining at any community or technical college within the state of Washington. The purpose of such retraining shall be to assist in the preparation of the laid-off faculty member to qualify for other employment with the College.

In the event a tenured faculty member is laid off as a result of a reduction in force or program viability, the College will provide the laid-off faculty member first right of refusal to teach part-time courses for which that faculty member is qualified to teach. Such first right of refusal shall

not include the right to “bump” another faculty member assigned a part-time contract or contracts for such course or courses.

Section 31.10 A list of job classifications in effect at the time of ratification of this Agreement is contained in Appendix E. Newly created classifications may be added as they are created. Job classifications will be reviewed with the Federation and updated each year by the College at its discretion by the first day of fall quarter. At such time as job classifications are added, deleted, or modified, a revised and dated Appendix E shall be distributed to the faculty.

Section 31.11 Should the President or designee determine that one or more sections or courses must be cancelled after part-time faculty have signed and returned their contracts, seniority shall not be a factor in determining which part-time faculty shall be retained. Should the President or designee determine that one or more sections or courses will not be scheduled, seniority shall be a factor in assigning part-time faculty to scheduled sections or courses.

Section 31.12 The primary classification for faculty shall be designated upon hire in writing by the President or designee. In the event that a faculty member qualifies for an additional classification it can only be conferred in writing by the President or designee. Primary classification confers seniority rights; additional classification do not. In the event that a program or department is being reduced but not eliminated, and two faculty members have the same level of seniority, secondary classification shall be considered in addition to seniority in the primary classification in determining RIF order in that program.

Article 32

Dismissal

Section 32.1 Reasons for Dismissal of a Faculty Member: A Professor shall not be dismissed from his or her appointment except for sufficient cause, nor shall Associate Professors be dismissed prior to the written terms of the appointment except for sufficient cause, following formal inquiry and investigation by the College per College Procedure Article Section 5.4-5.6. Sufficient cause shall include, *but not be limited to:* Incompetence in the performance of professional duties; neglect of duties; malfeasance; willful violation of college rules and regulations; gross misconduct; sexual or other harassment or abuse of a student or staff; substance abuse; theft or embezzlement of state property; or willful insubordination. The President reserves the right to dismiss a faculty member for any of these reasons.

Article 33

Appeals for faculty separation due to either Program Viability, Reduction in Force, or for Dismissal

Section 33.1 In the event of an appeal, a five (5) member Separation Appeal Committee shall be created for the express purpose of hearing lay-off or dismissal cases as needed.

The members shall include one employee appointed by the President or designee, one full-time student chosen by the Associated Student Government in such manner as the members thereof shall determine, and three (3) faculty members representing the faculty who shall be selected by a majority of the faculty acting in a body.

Section 33.2 The Separation Appeal Committee shall select one of its members to serve as chairperson.

Section 33.4 In no case shall a member of the committee sit in judgment of her or his own case, or in instances of potential conflict of interest.

Section 33.5 In the case of a vacancy on the committee, a replacement shall be selected within fifteen (15) days of the vacancy in the manner outlined above.

Section 33.6 Formal Procedure: In the case of dismissal, (excluding reduction-in-force and program viability applications), reasons to consider the dismissal of a faculty member shall be documented by letter to the faculty member. The President shall discuss the letter with him or her in a personal conference. The matter may be settled by mutual consent at this point. The President shall place the letter in the employee's personnel file unless mutually agreed otherwise.

Section 33.7 After determining that Separation Appeal Committee proceedings should be initiated, the President shall specify in writing the grounds constituting sufficient cause in the case of dismissal, or the justification for faculty positions being eliminated due to program viability or reduction in force, to the affected employee and provide copies to the Separation Appeal Committee. The notice shall include:

- A. A statement that the employee has a right to a hearing.
- B. A statement of the legal authority and jurisdiction under which the hearing is to be held.
- C. A reference to the particular rules of the College that are involved.
- D. A short and plain statement of the matters asserted. In the case of a reduction in force or program viability, this shall include a statement of both the grounds for reduction in force or program viability, and the basis for selection of the affected employee.

Section 33.8 The affected employee(s) shall have ten (10) calendar days from the date of service of the notice of lay-off or dismissal to make a written request to the President for a hearing. If the employee fails to respond within the ten (10) calendar days provided herein, such failure to request a hearing shall constitute acceptance of dismissal or lay-off, and a waiver of any rights to a hearing. The decision of an employee not to have a hearing shall be communicated to the Separation Appeal Committee and President.

Section 33.9 Procedural Rights of Affected Employees: An affected employee who has requested a hearing shall be entitled to one formal hearing pursuant to the Administrative Procedures Act, chapter 34.05 RCW, and shall have the following procedural rights:

- A. The right to confront and cross-examine adverse witnesses.
- B. The right to be free from compulsion to divulge information which he or she could not be compelled to divulge in a court of law.
- C. The right to be heard in his or her own defense and to present witnesses, testimony, and evidence on all issues involved.
- D. The right to the assistance of the hearing officer in securing the witnesses and evidence pursuant to chapter 34.05 RCW.
- E. The right to a representative of her or his choosing who may appear and act on her or his behalf at the hearing.
- F. The right to have witnesses sworn and testify under oath.

Section 33.10 Responsibilities of Separation Appeal Committee: The responsibilities of the committee shall be:

- A. To review the case of the proposed separation of faculty.
- B. To attend the hearing and, at the discretion of the hearing officer, to call and/or examine any witness(es).
- C. To hear testimony from all interested parties, including but not limited, to other faculty members and students, and review any evidence offered by same.
- D. To arrive at its recommendations in conference on the basis of the hearing. Within ten (10) days after the conclusion of the formal hearing, the written recommendations of the committee will be presented to the President and the affected academic employee.

Section 33.11 Hearing Officer Appointment and Duties: Upon receipt of a request for a hearing from an affected employee, the President shall notify and request the Board appoint an impartial hearing officer. The Federation shall be consulted prior to such appointment.

It shall be the role of the impartial hearing officer to conduct the hearing in accordance with chapter 34.05 RCW and this Article. The duties of the hearing officer include but are not limited to:

- A. Administering oaths and affirmations, examining witnesses, and receiving evidence. No person shall be compelled to divulge information which he or she could not be compelled to divulge in a court of law.
- B. Issuing subpoenas.
- B. Taking or causing depositions to be taken.
- D. Regulating the course of the hearing.
- E. Holding conference(s) for the settlement or simplification of the issues by consent of the parties.
- F. Disposing of procedural requests or similar matters.
- G. Making all rulings regarding the evidentiary issues presented during the course of the Separation Appeal Committee hearings.
- H. Appointing a court reporter, who shall operate at the direction of the hearing, and record all testimony, receive all documents and other evidence introduced during the course of the hearing, and record any other matters related to the hearing as directed by the hearing officer.
- I. Allowing the Separation Appeal Committee to hear testimony and any oral argument(s) from all interested parties, including but not limited to faculty members and students, and review any evidence offered by same.
- J. Prepare findings of fact, conclusions of law, and a recommended decision. As soon as reasonably practicable, but in no event longer than thirty (30) calendar days after the hearing, except that this shall be ten (10) calendar days in the case of reduction in force for reasons of declared financial emergency, the written recommendation of the hearing officer will be presented to the President, the Separation Appeal Committee, and the affected employee.
- K. Preparing and assembling a record for review by the Board shall include the following:
 - 1. All pleadings, motions and rulings.
 - 2. All evidence received or considered.
 - 3. A statement of any matters officially noted.
 - 4. All questions and offers of proof, objections, and rulings thereon.

5. The proposed findings, conclusions and recommended decision.
 6. A copy of the recommendations of the Separation Appeal Committee.
- L. Deciding, with advice from the Separation Appeal Committee, whether the hearing shall be open to the educational community, or whether particular persons should be permitted or excluded from attendance.
 - M. Assuring that a transcript of the hearing is made, if necessary, and that a copy of the record or any part thereof is transcribed and furnished to any party to the hearing upon request and payment of costs.
 - N. Consolidating individual reduction in force or program viability hearings into a single hearing which shall be held and concluded within the time frame set forth herein.

Section 33.12 Final Decision by the Board of Trustees: Board review shall be based on the record of the hearing, recommendations from the Separation Appeal Committee, and recommendations from the hearing officer. Such data shall be transmitted by the President to the Board.

The final decision to separate a faculty due to reduction in force, program viability or dismissal for cause shall rest with respect to both the facts and the decision, with the Board after giving reasonable consideration to the recommendations of the Separation Appeal Committee and the hearing officer. The Separation Appeal Committee's recommendations and the findings, conclusions and recommended decision of the hearing officer shall be advisory only and in no respect binding in fact or law upon the decision maker, the Board. The Board shall, within a reasonable time following the conclusion of its review, notify the affected faculty member in writing of its final decision and the effective date of dismissal.

Section 33.13 Appeal from Board of Trustees' Decision: Pursuant to chapter 34.05 RCW as now existing or hereafter amended, any party shall have the right to appeal the final decision of the Board within thirty (30) days after service of the final decision to the superior court in accordance with RCW 34.05.542. The filing of appeal shall not stay enforcement of the decision of the Board.

Section 33.14 Effective Date: The effective date of a dismissal for sufficient cause, reduction in force or program viability shall be such date subsequent to notification of the Board's final written decision as determined in the discretion of the Board (e.g., immediately, end of any academic quarter, expiration of the individual employment contract, etc.). In the case of a reduction in force due to a declared financial emergency, failure to request a hearing shall cause separation from service on the effective date stated in the notice, regardless of the duration of any individual employment contract.

Section 33.15 Suspension: Suspension by the President during the administrative proceedings (prior to the final decision of the Board) is justified if immediate harm to that affected employee, others, or the educational program is threatened by his or her continuance. Any such suspension shall be with pay.

This memorandum takes effect July 1, 2020.

Lake Washington Federation of Teachers,
Local 3533

Dated: 06/22/2020

By: *Andrea Westman*
Andrea Westman, President

Lake Washington Institute of Technology
District No. 26

Dated: 06/22/2020

By: *Amy M. Morrison*
Dr. Amy Morrison, President