

CLEVELAND PUBLIC LIBRARY

Human Resources Committee

October 18, 2022

**RESOLUTION TO ADOPT SECTION 127 EDUCATIONAL ASSISTANCE PLAN AND
AUTHORIZE EXPENDITURES FOR A PROPER PUBLIC PURPOSE**

WHEREAS, The Cleveland Public Library firmly believes that broadening and supporting learning and development opportunities for employees will lead to greater job satisfaction and increased employee retention and advancement; and

WHEREAS, Pursuant to Section 127 of the Internal Revenue Code, employers may adopt a written qualified educational assistance plan under which employees may receive reimbursement for certain educational expenses on a tax-free basis; and

WHEREAS, The Chief Talent Officer recommends that this Board adopt the Section 127 Educational Assistance Plan (the "Plan") in the form attached to this Resolution; and

WHEREAS, The proposed Plan would allow full- and part-time regular employees who have been employed by the Library for at least one continuous year and all pages and substitutes who have been employed by the Library for at least 18 continuous months to receive reimbursement for certain educational courses, such as those offered by institutions of higher education, trade associations, or other professional certification associations; and

WHEREAS, The proposed Plan would be jointly administered by the Chief Financial Officer and Chief Talent Officer, who would determine employee eligibility and would determine the annual per-employee cap on benefits under the Plan based on the availability of funds; and

WHEREAS, Ohio Revised Code 3375.40 states that a Library Board of Trustees has authority to "[e]xpend for library purposes, and in the exercise of the power enumerated in this section, all moneys, whether derived from the county public library fund or otherwise, credited to the free public library under its jurisdiction and generally do all things it considers necessary for the establishment, maintenance, and improvement of the free public library under its jurisdiction;" and

WHEREAS, The Auditor of State Bulletin 2003-005 states that government entities may not make expenditures of public monies unless they are for a valid public purpose and the use of Library funds to promote the Plan requires that the expenditures that the Library makes be for a “proper public purpose,” meaning that the expenditures are required for the good of all inhabitants and that the primary objective of the expenditures is to further a public purpose, even if an incidental private end is advanced; now therefore be it

RESOLVED, That the Board of Library Trustees hereby adopts and approves the attached Section 127 Educational Assistance Plan, which shall be effective as of January 1, 2023, and authorizes the Executive Director, CEO or his designee to execute the plan; and be it further

RESOLVED, That this Board declares the expenditure of funds pursuant to the Section 127 Educational Assistance Plan for the reimbursement of employee educational expenses to be a proper public purpose and authorizes the Library’s Fiscal Officer to expend moneys for these purposes.

CLEVELAND PUBLIC LIBRARY
SECTION 127
EDUCATIONAL ASSISTANCE PLAN

TABLE OF CONTENTS

Article I – PURPOSE, NAME, EFFECTIVE DATE, PLAN YEAR

Article II – DEFINITIONS

Article III – ELIGIBILITY AND PARTICIPATION

Article IV – BENEFITS

Article V – FUNDING

Article VI – CLAIM PROCEDURE AND ADMINISTRATION

Article VII – AMENDMENT OR TERMINATION

Article VIII – GENERAL PROVISIONS

I. PURPOSE, NAME, EFFECTIVE DATE, PLAN YEAR

1.1 PURPOSE

The Cleveland Public Library (the “Employer” or “Library”) recognizes the value of education for its Employees relative to the quality of services it provides to our community. It is the Library’s desire to support educational pursuits that are aligned with the Library’s mission, vision, and goals. In keeping with this philosophy, the Library desires to institute an Educational Assistance Plan (“EAP”) within the meaning of Internal Revenue Code Section 127 (26 U.S.C. § 127, *et seq.*) in order to furnish educational assistance to eligible Employees of the Library.

This Plan is designed to furnish educational benefits in the form of reimbursements for educational courses as part of a college degree, course of study, or other professional or skilled trade certification that will directly increase an Employee’s knowledge, skills, or abilities related to the performance of their job duties or career path within the Library.

It is the Library’s intention that the educational assistance provided under this Plan conform to the requirements of Code Section 127(b) and that any educational assistance provided to an Employee under the Plan be eligible for exclusion from an Employee’s income under Code Section 127(a). The Library presently provides, and will continue to provide, a variety of other benefits to some or all of its Employees, including reimbursements for the costs of certain job-related education, some of which may qualify for exclusion from gross income under provisions other than Code Section 127 (e.g., Section 132). The educational assistance offered under this Plan is provided in addition to such other benefits, which shall not constitute a part of this Plan.

1.2 NAME

This Plan shall be known as the “Cleveland Public Library Section 127 Educational Assistance Plan.”

1.3 EFFECTIVE DATE

The Plan shall be effective as of January 1, 2023.

1.4 PLAN YEAR

The Plan Year shall be a calendar year consisting of a consecutive 12-month period beginning each January 1 and terminating on December 31.

II. DEFINITIONS

2.1 Administrator

“Administrator” means the person or persons appointed by the Library to administer the Plan in accordance with Article VI and applicable Human Resources Department policies and procedures. The Library appoints the Chief Financial and Talent Officers to be the joint Administrators of the Plan.

2.2 Benefits

“Benefits” means the reimbursement of any Covered Costs incurred by an eligible Employee for Educational Courses pursuant to the provisions of Article IV and which is excludable from an Employee’s gross income under Code Section 127.

2.3 Code

“Code” means the Internal Revenue Code of 1986, as now in effect or as it may be amended hereafter, and includes any regulations or rulings issued thereunder.

2.4 Covered Costs

“Covered Costs” means the tuition fees incurred by an Employee in taking an Educational Course. This term does not include payment for, or the provision of, any costs for books, materials, parking, lab charges, online resources, tools or supplies which may be retained by an Employee after the completion of a course of instruction, or meals, lodging, or transportation incurred by an Employee incidental to taking an Educational Course.¹ “Covered Costs” also do not include any payment for, or the provision of any benefits with respect to, any course or other education involving sports, games, or hobbies.

2.5 Educational Course

“Educational Course” means a class or course of instruction taken by an Employee at or through an institution of higher learning accredited by a recognized accrediting body, or a class or course of instruction recognized by a professional or trade association or other professional certification organization. The proposed course curriculum and/or degree course requirements must be relevant to the knowledge, skills, and abilities related to the performance of the Employee’s job duties and/or support educational pursuits that are aligned with the Library’s mission. The term “Educational Course” shall not include any course which instructs the Employee in any sport, game, or hobby.

¹ Notwithstanding this exclusion, in some instances such expenses for tools, supplies, meals, lodging, transportation, etc. may be reimbursable as a job-related working condition fringe benefit outside of this Section 127 Plan. In some instances, the Library may, at its sole discretion, reimburse such expenses not covered under Section 127 from an Employee’s gross income under another Code provision that may apply to the expense (e.g., Section 132).

2.6 Educational Institution

“Educational Institution” means any educational institution which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly conducted. The Educational Institution must be accredited by a recognized accrediting body. For courses involving a trade or skill, such courses must be provided by an educator or entity recognized by a labor union, professional or trade association, or certifying body as providing appropriate training useful to the Employee’s relevant skilled trade.

2.7 Employee

“Employee” means any individual who is a current, active full-time or part-time employee of the Library, including pages and substitutes. An Employee’s potential eligibility for Benefits under the Plan is subject to meeting all eligibility criteria and other conditions in the Plan.

2.8 Employer

“Employer” means Cleveland Public Library.

2.9 Plan

“Plan” means the Cleveland Public Library Section 127 Educational Assistance Plan.

III. ELIGIBILITY AND PARTICIPATION

3.1 Eligibility

All full-time and part-time regular Employees who have been employed by the Library for at least one continuous year or pages and substitutes who have been employed by the Library for at least eighteen (18) continuous months are eligible to apply for Benefits under the Plan. Applicants that are in good standing, as evidenced by performance evaluations and no active discipline, as defined by policy or collective bargaining agreement, will be given priority status if funding resources are limited. Spouses and dependents of Employees are not eligible for Benefits under the Plan.

3.2 Participation

An eligible Employee shall become a participant in the Plan upon the filing of a Tuition Reimbursement Application with the Administrators in accordance with the requirements of Article VI, the approval of the Application, successful completion of the course with the fulfillment of all applicable conditions, and the Library’s payment of Benefits constituting reimbursement for Covered Costs.

3.3 Termination of Participation

An individual will cease to be a participant on the earliest to occur of the following events:

- (a) the date on which he or she ceases to be eligible to participate under Section 3.1; or
- (b) the date on which he or she no longer has any Benefit elections in effect as provided in Article IV and under the conditions necessary for reimbursement.

3.4 Participation During Leaves of Absence

(a) Subject to any specific limitations or conditions for obtaining Benefits, an Employee who is on an approved leave of absence (whether paid or unpaid) shall continue to be eligible to apply for Benefits under the Plan during such leave of absence. However, approval of participation in the Plan and disbursement of any Benefits for otherwise eligible Employees on paid or unpaid leaves of absence is subject to the sole discretion of the Plan Administrators.

(b) Except as otherwise provided in paragraph (a), an Employee's participation shall be suspended: (i) during an unapproved leave of absence or suspension, or (ii) during a period in which he or she ceases to be eligible for a Benefit that he or she has elected, provided that the individual continues to be an Employee during such period.

IV. BENEFITS

4.1 Reimbursement Amount

Each Employee in the Plan may be eligible to receive Benefits under the Plan of Covered Costs incurred by the Employee in any Plan Year. The actual reimbursement amount is subject to available funding and the discretion of the Administrators. The Plan does not guarantee a specific amount of reimbursement to an Employee.

4.2 Benefits Subject to Change

Eligible reimbursement for Covered Costs is subject to change due to the Library's budget, available funds, and the number of Employees submitting claims for reimbursement under the Plan. The amount of Benefits is subject to change at any time during the Plan Year.

4.3 Limitations on Benefits

(a) In no event shall an Employee be entitled to receive any Benefit under this Plan in lieu of cash or any other compensation he or she might otherwise be entitled to receive from the Library.

(b) The Plan shall not discriminate in favor of Employees who are highly compensated employees (within the meaning of 26 U.S.C. § 414(q)) and the Plan will in all respects comply

with the requirements of Code Sections 127(b)(2) and (3) and the underlying Department of Treasury regulations. If, in the judgment of the Plan Administrators, the operation of the Plan in any Plan Year would result in such discrimination, then the Plan Administrators shall select and exclude from participation in the Plan such Employee(s) as shall be necessary to ensure that, in the judgment of the Plan Administrators, the Plan does not discriminate.

(c) Due to available funding for the Plan, reimbursement for payments made by an Employee on existing student loans for education or instruction already obtained is not covered by the Plan.

(d) Recipients of Benefits under the Plan will not be permitted to attend classes or seminars during normal work hours, and all coursework must be completed on the Employee's own time, outside of working hours. An Employee who wishes to attend classes or participate in class work on regularly scheduled work time must request to use vacation time. Any such scheduled time must be identified by the Employee prior to submission of the request for tuition reimbursement and approved per Board policy and/or applicable collective bargaining agreement and by the Employee's direct supervisor and department director. Documentation of such approved, scheduled time must be included in the application packet submitted for reimbursement.

(e) If any Benefit under this Plan becomes taxable, whether as a result of nondiscrimination tests or payment of Benefits in excess of statutory limits, then any employment tax withholding owed with respect to the taxable portion of any Benefit shall be deducted from the Employee's other compensation in the same calendar year in which the Benefit is provided.

4.4 Conditional Benefits

(a) Course Completion and Passing Grade

The Employee must complete the course of instruction for which he or she seeks reimbursement of Covered Costs. The course must be completed with a passing grade. If the course of instruction is graded on a traditional letter grade scale, the Employee must earn a passing grade of "C" or better to obtain reimbursement. If a course of instruction is graded on a "Pass/Fail" basis, the Employee must earn a "Pass" rating or obtain a certification of completion. If a course taken results in a grade lower than a "C" or a non-passing rating, the Benefits will be forfeited, and the Employee will be responsible for payment of all charges associated with the course of instruction.

(b) Other Scholarships, Grants, or Funding

An Employee requesting Benefits under the Plan must declare any and all other sources of scholarships, grants, or other funding that the Employee may receive for tuition assistance. The amount of tuition reimbursed under the Plan will be reduced if the Employee is receiving any other financial assistance (e.g., GI Bill, FAFSA, scholarships, or grants). If an Employee fails to disclose other sources of educational assistance received, the Administrators reserve the

right to deny reimbursement and/or to order an Employee to pay back any already reimbursed funds paid to the Employee under the Plan or to restrict the Employee's future participation in the Plan.

V. FUNDING

5.1 Funding

The Library shall allocate an amount of funds required to pay Benefits under this Plan. Benefits shall be paid to any Employee upon the submission and approval of a claim for Benefits pursuant to the claim procedures set forth in Article VI. Employees are not required to make contributions as a condition of receiving Benefits.

VI. CLAIM PROCEDURE AND ADMINISTRATION

6.1 Plan Administrators

The Plan shall be administered by the Chief Financial and Talent Officers (the "Administrators") on behalf of the Library.

6.2 Administrators' Authority and Powers

The Administrators shall have full authority and power to administer and construe the Plan, subject to applicable requirements of law. Without limiting the generality of the foregoing, the Administrators shall have the following powers and duties:

- (a) To make and enforce such rules and regulations as they deem necessary or proper for the efficient administration of the Plan;
- (b) To interpret the Plan, with the interpretation thereof to be final and conclusive on all persons claiming Benefits under the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any Employee to participate in, and receive Benefits under, the Plan;
- (d) To determine the amount of Benefits available to any Employee under the provisions of the Plan; and
- (e) To appoint such agents, counsel, accountants, consultants, and other persons as may be required to assist in administering the Plan.

6.3 Delegation of Duties

The Administrators may delegate such of their duties and may engage such experts and other persons as they deem appropriate in connection with administering the Plan. The Administrators shall be entitled to rely exclusively upon and shall be fully protected in any

action taken by the Administrators in good faith in reliance upon any opinions or reports furnished them by any such experts or other persons.

6.4 Claim Procedures

(a) Tuition Reimbursement Application, Course Description, Course Cost

To be considered for Benefits under the Plan, an Employee must complete and submit a Tuition Reimbursement Application, as well as the course description and course cost to Human Resources. This documentation must reflect either the actual cost for the course or identify the number of credit hours for the course and the cost per credit hour.

(b) Administrative Review

Applications for tuition reimbursement will be considered based on the order in which they are submitted or by lot depending upon whether the number of requests exceeds budget allocation.

(c) Obtaining Tuition Reimbursement

In order to receive tuition reimbursement for approved coursework, Employees must meet the conditions in Section 4.4 and timely submit their Tuition Reimbursement Application with all supporting documentation. Reimbursement to eligible Employees shall be paid upon the Employee's submission of an official grade report, transcript, or certificate affirming the course completion and final grade as well as an official receipt for the tuition payment. The Employee must also declare receipt of any other form of financial assistance. This documentation must be submitted to the Human Resources Department within thirty (30) calendar days after the end of the course, otherwise tuition reimbursement may be forfeited.

If an Employee does not achieve a passing grade, withdraws, or fails to complete the course, reimbursement of the course will not be paid. In the instance of course withdrawal or the inability to complete the course, the Employee must notify the Human Resources Department at the earliest opportunity so that funds may be released to another applicant. Failure by the Employee to notify the Human Resources Department in a timely manner may jeopardize future tuition reimbursement approval requests.

6.5 Expenses

All expenses incurred that shall arise in connection with the administration of the Plan, including, without limitation, administrative expenses and compensation and other expenses and charges of any actuary, counsel, accountant, specialist, or other person who shall be employed by the Library in connection with the administration of the Plan, shall be paid by the Library.

6.6 Liability

To the extent permitted by law, neither an Administrator nor any other person shall incur any liability for any acts or for any failure to act except for liability arising out of such person's own willful misconduct or willful breach of the Plan or acts manifestly outside the scope of employment or in bad faith.

VII. AMENDMENT OR TERMINATION

7.1 Right to Amend or Modify Plan

The Library and/or the Board of Trustees may at any time and from time to time (and retroactively, if necessary or appropriate to meet the requirements of the Code) modify or amend, in whole or in part, any or all provisions of the Plan.

7.2 Right to Terminate Plan

The Library, by action of its Board of Trustees, may discontinue or terminate the Plan at any time, for any reason.

7.3 Effective Date of Amendment or Termination

Any amendment, discontinuance, or termination of the Plan shall be effective as of the date determined by the Library and/or its Board of Trustees.

7.4 Effect of Termination Upon Pending Claims for Reimbursement

Notwithstanding the foregoing, any amendment or termination of the Plan shall not affect the right of any Employee to claim tuition reimbursement for a course in progress that he or she may have qualified for prior to such amendment or termination, to the extent such amounts are payable under the terms of the Plan as in effect prior to the date on which the Plan is amended or terminated. If the Plan is terminated, the Library will reimburse all approved courses in process prior to termination, subject to the Employee meeting all other required conditions to obtain reimbursement under the Plan. The Library will not reimburse any courses or classes that are undertaken after notification has been given to Employees of the Plan termination.

VIII. GENERAL PROVISIONS

8.1 Notice to Employees

Reasonable notification of the availability and terms of the Plan shall be provided to all eligible Employees. Human Resources shall notify new hires of this Plan and ensure communication of the Plan to Employees using the appropriate channels.

8.2 No Right or Obligation to Continued Employment

This Plan shall not be deemed to constitute a contract between the Library and any Employee nor to be a consideration or an inducement for the employment of any Employee.

Neither the Plan nor any action taken with respect to the Plan shall confer upon any person the right to continue in the employ of the Library. This Plan shall not be deemed to give any Employee the right to interfere with the right of the Library to discharge any Employee at any time regardless of the effect which such discharge shall have upon such person as a participant in this Plan.

This Plan shall not be deemed to give the Library the right to require any Employee to remain in the employ of the Library, or to restrict any such person's right to terminate his or her employment at any time.

8.3 Governing Laws

The terms of this Plan and its administration shall be construed under the laws of the State of Ohio and applicable federal law and administrative regulation. Should the Code or other applicable law be amended and such amendment affect this Plan, this Plan shall automatically adopt the changes on their effective date.

8.4 Severability

The provisions of the Plan are severable. If any provision of the Plan is deemed legally or factually invalid or unenforceable to any extent or in any application, then the remainder of the provision and the Plan, except to such extent or in such application, shall not be affected, and each and every provision of the Plan shall be valid and enforceable to the fullest extent and in the broadest application permitted by law.

8.5 Rules, Regulations, and Procedures

Any rules, regulations, or procedures that may be necessary for the proper administration or functioning of this Plan that are not covered in this Plan shall be promulgated and adopted by the Plan Administrators. This Plan shall be interpreted in conjunction with the policies and procedures promulgated by the Human Resources Department and/or approved by the Library Board of Trustees.

8.6 Entire Agreement

This document sets forth the entire Plan. Except as provided in this Plan, no other employee benefit plan which is, or may hereafter be, maintained by the Library shall constitute a part of this Plan.

IN WITNESS WHEREOF, Cleveland Public Library has adopted this Plan as of the ____ day of _____, 2022.

CLEVELAND PUBLIC LIBRARY

By: _____

Name: Felton Thomas

Title: Director, CEO