

Memorandum of Understanding
Between
Elk Grove Unified School District
and
National Union of Healthcare Workers

RESPONSE TO COVID-19 CORONAVIRUS 2020-2021 SCHOOL YEAR

September 24, 2020

This is a Memorandum of Understanding (“MOU” or “Agreement”) between the Elk Grove Unified School District (“District”) and the National Union of Health Care Workers (“NUHW”), collectively referred to hereinafter as “the Parties” concerning the 2020-2021 school year consistent with District safety guidelines, and State and Local County Public Health Orders.

Recitals

1. This Agreement sets forth the 2020-2021 protocols and terms that the District and NUHW have agreed upon regarding working conditions for NUHW bargaining unit members (which includes all MHTs, BSSs, OTs, PTs, and COTAs) supporting students during the COVID-19 public health emergency.
2. The District and NUHW recognize the importance of maintaining safe learning opportunities and services for the benefit of the students and communities served by the District, certificated staff, and classified staff.
3. The Parties agree that the State of California has determined that educational institutions, including public K-12 schools provide essential government services for students including the provision of educational services, student meals, as well as the performance of other essential functions. As a result of this pandemic, the Parties agree that for the period of this Agreement, exigent and emergency circumstances exist.
4. California Senate Bill (SB) 98 provides statutory direction regarding the re-opening of schools for “in-person” instruction, and when “distance learning” may be provided. SB 98 was impacted by the California Department of Public Health (CDPH) Covid-19 Industry Guidance.

AGREEMENT

Accordingly, in the interest of complying with California and County Department of Public Health Guidance and the Governor's Orders during the 2020-2021 school year and in order to address the working conditions of NUHW unit members, the Parties agree to all of the following:

A. School Closures and Openings

1. The Parties agree that the District shall have the sole and exclusive discretion working in consultation with the State and County Health officials and in compliance with State and County Health orders to determine whether a school is closed, opened under an in-person transitional model, fully reopened to in-person instruction, or reopened after closure.

2. The Parties understand and agree that the Associate Superintendent, Human Resources or designee will communicate decisions regarding proposed changes to working conditions to NUHW in advance of making such changes and with as much advance notice as is possible. If either party desires to do so, both parties agree to negotiate any negotiable effects of decisions related to COVID-19 not addressed in this MOU in advance of implementing such decisions unless it is not practicable to do so, in which case (1) the District agrees to notify NUHW in advance of implementation, and (2) the Parties agree to begin said negotiations within seven (7) days of implementation.

3. Emergency Closure and Reopening. The Parties agree that during the 2020-2021 school year that the following instructional models may transition from one model to another as a result of any State/County/District order:

- a. Student instruction and services through the Distance Learning Model consistent with this Agreement; and
- b. Student instruction and services through the Transitional Learning Model consistent with subsequently negotiated Agreements; and
- c. Student instruction and services through the full In-person Reopen Model consistent with subsequently negotiated Agreements.

B. Safety and Mitigation

1. COVID-19 District Safety and Mitigation Guidelines. The District will inform and train, when applicable, its employees in public health measures, hygiene, and sanitation to help prevent the spread of the virus and will take reasonable measures to ensure that its facilities have the necessary supplies for preventive sanitation measures (such as soap and water, disposable towels, or tissues, and hand sanitizer). The Parties recognize that there have been severe shortages throughout California of supplies recommended by Public Health Agencies, but the District will make all reasonable efforts to obtain the appropriate supplies. The Parties agree that this MOU addresses mitigation protocols as required by Federal, State, and local health officials in order to prevent the spread of illness arising from the coronavirus during the 2020-2021 school year, and/or for the duration of any coronavirus-related orders from public agencies with jurisdiction over the District.

Please see the attached 2020 Sacramento County Public Health Protocols and District Guidelines (Staff Health and Safety Guidelines) which are subject to change as a result of State, Local and Federal orders. [See Attachment A and B]

2. Personal Protective Equipment. The Parties agree that the District shall provide District-approved applicable personal protective equipment (PPE) to ensure that the unit member maintains his or her safety. Absent a State authorized exemption, State-mandated face coverings are required when on all District sites. PPE may include gloves, shields and masks, as is necessary and requested by staff. Where there is disagreement between the District's position on what PPE is necessary and the request of a staff member for PPE (limited to gloves, face shields, face masks, and gowns), the District agrees to provide the PPE requested. Physical distancing protocols shall be followed to the greatest extent possible.

3. Compliance with Safety Orders. The Parties agree that State and County safety orders and guidelines continue to adapt to the conditions of the pandemic. The District will adhere to the attached District guidelines which are based upon State and County orders, and subsequent orders and guidelines which reflect State and local public health safety orders.

a. The District shall provide PPE to unit members.

b. In-lieu of using District-provided PPE, unit members may use their own PPE so long as the PPE complies with public health guidelines and provides equivalent protection to the PPE provided by the District.

c. The Parties agree to meet as soon as possible to negotiate any impacts and/or effects of any revisions or updates to public health and safety guidelines issued by the State and Local County.

4. Compliance with Safety Mitigation Orders. The Parties agree that unit members shall comply with all of the applicable safety mitigation orders from State and County Public Health regarding COVID-19. In addition, the Parties agree that unit members shall comply with the attached "COVID-19 District Safety and Mitigation Guidelines."

5. NUHW and the District will work collaboratively to resolve any public health situations that may arise.

C. Leaves

1. Use of Leaves. The parties agree that unit members who are unable to meet the expectations included in this MOU regarding the performance of unit member duties and availability during contractual hours shall use any sick leave or personal necessity leave entitlement (including FFCRA emergency paid sick leave and expanded family & medical leave) that they may be eligible for consistent with law and the parties' collective bargaining agreement.

The parties agree that all collectively bargained leave provisions will remain in full effect for the duration of the pandemic. Eligible unit members will also be entitled to any new COVID-19 Federal and/or State leave benefits.

2. Federal Families First Coronavirus Response Act (FFCRA). The Parties acknowledge that subject to subsequent legislation, the FFCRA includes several qualifying reasons for Leave. Please see the attached FFCRA posting and check with Human Resources Leave Technicians for more information to apply.

Under the FFCRA, the Federal Department of Labor has stated that certain employees qualify for paid sick time, at different levels of pay depending on the reasons for the COVID-19 leave, if the employee is unable to work (or unable to telework, if applicable) due to a medical diagnosis for the need for COVID-19 leave and:

i. Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19*;

ii. Has been advised by a health care provider to self-quarantine related to COVID-19*;

iii. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis; is caring for an individual subject to an order described in (i.) or self-quarantine as described in (ii.) above;

iv. Is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or

v. Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

The Parties agree (1) that, unless the FFCRA is extended, this subsection (C)(2) of this MOU expires on December 31, 2020, and (2) to reconvene for negotiations over the topics referenced herein on or around December 1, 2020.

[Note 1: The FFCRA qualifying reasons included in sections (i.) through and including (iv.) above do not include general Shelter in Place or Shelter at Home State and County orders that exempt essential service workers including K-12 employees from such orders. For example, a Shelter at Home order alone is not sufficient for eligibility for FFCRA leave. However, an individual NUHW unit member who is placed on quarantine or specifically ordered to self-isolate because of their personal COVID-19 diagnosis, exposure, or medical vulnerability may qualify for FFCRA leave with medical verification.]

[*Note 2: For sections 2(i) and 2(ii) above, the parties agree that a physician's or County public health official's documentation is required.]

[Note 3: Please see attached U.S. Department of Labor Employee Rights Poster regarding FFCRA. (See Attachment C.)]

4. Positive Test. If a District employee, who has worked in person on a District site tests positive for COVID-19, as certified in writing by a licensed health care provider or by a public health official, and if such diagnosis is shared with the District, the District will notify any District employee who may have been in contact with that person, and will separately notify any District employee who may have been in *close* contact with that person.

The District will also immediately notify NUHW should such an event occur. The District shall not share the name of the District employee who tested positive for COVID-19, but will share the number of District employees and NUHW-represented District employees who have tested positive, the dates associated with said positive tests, the employees' location/site of employment, and the number of employees who may have been in *close* contact with persons testing positive. The Parties agree to refer to the then applicable COVID-19 District Safety and Mitigation Guidelines. In addition, the District will comply with State and County Public Health orders.

5. Coordination of Leave with FFCRA. If eligible for FFCRA leave, bargaining unit members may choose to supplement the two-thirds (2/3) pay provisions included in FFCRA with their own sick leave in order to make their pay whole.

D. Calendar and Transitions

1. Work Calendars. The Parties agree that all unit members shall be required to work their assigned work calendar for the 2020-2021 school year.

2. Transitions between Models. The Parties agree that due to safety conditions and/or Federal, State or local orders, movement amongst the following learning models may occur:

- Full Distance
- Transitional
- Full In-Person

E. Evaluation and Supervision

1. Evaluation Timelines. The Parties agree that current collectively bargained timelines and processes for evaluations shall apply for the 2020-2021 school year. Evaluations that were not completed during the 2019-2020 school year, will be completed during the 2020-21 school year. *At the unit member supervisors' discretion, evaluations planned for the 2020-2021 school year will be completed during the 2021-2022 school year.*

2. Administrator Access to Online Platforms. The Parties agree that Administrators shall be provided with access to observe all in-person and virtual platforms utilized by NUHW unit members *in the performance of their duties.*

F. Working Conditions

1. Working Conditions. The Parties agree that unit member working conditions, shall be consistent with (1) California law and local County orders (including SB 98 and any other subsequently adopted state law or order), (2) the applicable Instructional Model (Distance, Transitional or Full In-Person), and (3) this MOU.
2. The Parties agree that consistent with unit member job descriptions, unit members will be performing their duties consistent with the applicable instructional model including but not limited to the full distance learning model, the transitional learning model, and the full in-person instruction model.
3. During the implementation of the Full Distance Learning Instruction Model, unit members may be provided access to Google Classrooms, small group and individual synchronous instructional and service settings and support.
4. The Parties agree that the District shall assign bargaining unit members to perform work that is reasonably related to their job description. This work is understood by the parties to be generally small tasks directly related to the job description.
5. The District's preference is for unit members to work on-site at schools during implementation of the full Distance Learning Instructional Model.

In the pre-Transitional, Transitional Learning, and Full In-Person Instructional and Service Models, unit members may be required to report in-person to their work sites as necessary to meet the needs of the students and the District. If such changes impact working conditions that are not addressed in this MOU, then the provisions of Subsection (A)(2) shall be in effect, requiring that as much advance notice as possible be given and that the Parties, should either party desire, negotiate any negotiable effects of such changes in advance.

When working on school and district sites conducting assessments and/or performing other essential duties, social distancing protocols and PPE will be required and provided by the District. For example, face masks will be worn and six feet of distancing will be maintained to the greater extent possible.

6. The Parties agree that if a unit member is working remotely, during the time that the Distance Learning Instructional Model is implemented by the District, such unit members shall use their own technology to work remotely, except for that technology which has already been provided by the District to unit members or has historically been provided by the District to unit members. If a unit member does not have the ability to work remotely with his/her own technology, the unit member shall notify their supervisor and the supervisor will provide the technology in a space on a school site to enable the unit member work from the school site.
 7. Unit members who are unable to perform their work duties and who are not eligible for leave time, shall be in dock pay status.
 8. The Parties agree that if the option for unit members to work remotely under the Full Distance Learning Model is granted, it will not necessarily be available during the Transitional Instructional Model, and will not be available during the Full In-Person Instructional Model.
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9. Legally Mandated Assessments. The Parties agree that legally mandated special education assessments that require in-person contact with students (i.e. Special Education assessments) are permitted consistent with State and Local County Public Health Services' guidelines regarding Personal Protective Equipment (PPE). [Please see Attachment D, Essential In-Person Assessments.]

H. Hours and Schedules

The Parties agree that all unit members shall report to work either remotely or on-site during the work hours in the Parties' collective bargaining agreement, unless directed otherwise.

I. Mandatory Training

The Parties agree that unit members shall fully participate in and complete the District's Mandatory Training consistent with the deadlines provided by Human Resources.

J. Communications

1. Collaboration, Consultation, and Communications. The Parties agree that unit members may collaborate, consult, and communicate as necessary and appropriate while they are engaged in the performance of their duties in compliance with all laws including, but not limited to compliance with all special education, student privacy, and confidentiality laws. In addition, such meetings will be conducted in a manner that adheres to federal, State and local laws, orders, and guidelines.

2. Email Communications. The Parties agree that unit members shall check District email during the work day. In emergency situations, a meeting may be called, but not required, with less than twenty-four (24) hour notice during the work week.

3. Communications. The Parties agree that unit members shall respond to parent communications within 24 hours during the work week, absent extenuating circumstances.

K. General Terms

1. Reassignment and Transfers. The Parties agree that in order for the District to adapt to the different learning models listed in this MOU, adjustments to staffing levels and unit member assignments/reassignments within programs and classes may be preferable. The Parties agree to abide by all applicable sections of the Parties' collective bargaining agreement regarding such.

2. Alternative School Requirements. In the event that the State of California mandates alternative requirements for schools in response to COVID-19, the Parties agree to immediately initiate negotiations on the impacts.

3. Complete Agreement. The Parties agree that this is the complete agreement between the Parties regarding the District's response to COVID-19 and that there are no other verbal or written understandings in addition to this Agreement, dated prior to the date of this Agreement.

4. Severability. If any provision of this Agreement is held to be void, voidable, or unenforceable, the remaining portions of the Agreement shall remain in full force and effect.

5. Interpretation. This Agreement shall not be construed against any one party, but shall be construed as if jointly prepared by both parties. Any uncertainty or ambiguity shall not be interpreted against any one party.

6. Expiration. The Parties agree that this Agreement shall expire on June 30, 2021, but may be extended by mutual written Agreement.

For NUHW



For EGUSD



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Dated: 09/25/20

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