

**MEMORANDUM OF UNDERSTANDING BETWEEN  
CUPERTINO UNION SCHOOL DISTRICT AND  
CUPERTINO EDUCATION ASSOCIATION**

**REOPENING SCHOOLS FOR THE 2020-2021 SCHOOL YEAR  
FOR IN-PERSON INSTRUCTION  
February 11, 2021**

Cupertino Union School District (“District” or “CUSD”) and Cupertino Education Association (“Association” or “CEA”) (collectively “Parties”) enter into this Memorandum of Understanding (“MOU”) regarding the negotiable impacts of transitioning to in-person forms of instruction in a COVID-19 environment. “In-person forms of instruction” is defined to include but not be limited to hybrid models (Phase 3 of the “CUSD Reopening of Schools Framework” [“Framework”]), small group instruction, and a return of all students by school, grade level or District-wide for the 2020-2021 school year (Phase 4 of the Framework).

The District and Association will follow federal and state Declarations of Emergency, and applicable Executive Orders from the Governor. The District will continue to follow the “COVID-19 and Reopening In-Person Instruction and Public Health Guidance for K-12 Schools in California, 2020-2021 School Year” (“Industry Guidance”) issued by the Governor, Cal/OSHA and the California Department of Public Health (“CDPH”) on January 14, 2021, Santa Clara County Public Health (SCCPH) guidance, directives, resolutions, and orders (“County Orders”), and any other applicable guidelines or orders issued by pertinent governmental entities during the term of this MOU.

The Parties recognize the need to address the District’s learning environment and instructional model given the continuing pandemic. It is in the mutual interest of the Parties to abide by the recommendations contained in the Industry Guidance and County Orders to prevent illness and contain the spread of the virus.

The District and Association share a joint goal of implementing Education Code section 43504 by offering in-person instruction to the greatest extent possible as conditions become safe for students and staff.

**I. Implementation of In-Person Instruction:**

Unit members will return to campuses to implement Phase 3 of the Reopening Framework when either of the following events occur, whichever comes first:

- A. Santa Clara County is in the **Red Tier**, and all staff at the school site have had the opportunity (eligibility and access) to be vaccinated at the recommended dosage and waiting period;

1. The District will make every effort to accommodate unit members' vaccination appointments (e.g., by working with principals to schedule asynchronous instruction as necessary).
2. Both Parties will make every effort to receive vaccinations as soon as possible to promote schools opening as close together in time as possible, understanding that some schools may be able to open sooner than others.
3. The District will consult with the Association President regarding the availability of vaccines (which is unknown at this time) and a timeline by which unit members should be expected to have been vaccinated for purposes of scheduling the reopening of schools. The District will provide unit members with any relevant information regarding vaccination availability, locations, etc.

**or**

- B. Santa Clara County is in the **Orange or any lower Tier**, regardless of the availability of vaccines.
- C. The District shall provide at least ten (10) work days' notice to all unit members to prepare for the return of students to their classroom for in-person instruction. The three (3) days immediately preceding the return of any students for in-person instruction shall be used as follows:
  1. One (1) day for staff training on safety protocols and procedures, etc.
  2. Two (2) days to allow unit members to prepare their classroom spaces for in-person learning. Unit members shall be required to have a morning meeting or check-in with their students to meet SB 98 legal requirements; otherwise, the balance of the day for students shall be asynchronous learning.
- D. Unit members may return to their site at any time preceding the return of students for the purpose of and according to the conditions in section I.C.2. above. Unit members shall notify the site principal when they will return to the site to avoid undue congregation or interference with cleaning/sanitization measures and other preparatory activities.

Each site shall establish and communicate to unit members the process to use for the request for or removal of equipment, furniture and materials etc. necessary for the successful delivery of instruction in the Phase 3 environment.

Unit members at each site shall have equitable access to outside spaces in which to deliver instruction should they so choose.

- E. The District will continue to advertise on-site care options for both preschool and school-age children of unit members and will make every effort to expand to more campuses if needed.
- F. Both parties agree to continue to confer and consult to determine the most appropriate instructional methods and schedules to support long term academic rigor and the social-emotional stability and well-being of both students and teachers.

## **II. Safety Provisions**

- A. All individuals (including parents, students, and employees) will be required to complete the District Self-Assessment survey, temperature checks and other measures as appropriate to promote a safe workplace before reporting to the worksite/school site or prior to entering the worksite/school site. Unit members shall have available clear means of communication (e.g., through a calendar), regarding when and where groups of students and unit members will be present on campus.
- B. The distance between teacher/staff desks and student desks and between student chairs shall be at least six (6) feet. In addition, students shall be assigned stable seating arrangements to ensure that close contacts within classrooms are minimized and easily identifiable.
- C. Student desks (at all grade levels) should face one way (no desks facing each other).
- D. Student stable groups in all grades shall not exceed a number that would violate Industry Guidance/County Orders physical distancing requirements given classroom size limitations.
  - a. As used in this MOU, a “stable group(s)” is defined as “a group with fixed membership that stays together without mixing with any other groups for any activities.” (CUSD and Industry Guidance, pp. 18-19.) This avoidance of mixing groups applies to classrooms, lunch, recess and other non-classroom spaces. (Guidance, pp. 22-23.)
- E. Where possible, after determination of how many students will be on campus and where they will be placed physically, all individuals will be assigned an ingress and egress point for use when coming to school for in-person learning.
- F. Use of staff facilities during break times shall be designed and marked to maintain physical distancing requirements. Staff will be encouraged to use break rooms for storing and preparing food. If deemed necessary, a schedule for use of space will be determined by the site supervisor.
- G. The District shall provide each student with sufficient supplies and equipment in order to eliminate the sharing of high-touch materials.

H. Personal Protective Equipment (“PPE”)

1. The District shall provide PPE (at least equivalent to disposable 3-ply surgical masks) to all unit members and disposable or reusable face coverings for students for every day that unit members or students are required to report to school sites.
2. In lieu of using District-provided PPE, unit members may, but shall not be required to, bring their own PPE so long as the PPE complies with Industry Guidance (including no respiratory function that expels air) and provides at least equivalent protection to the PPE provided by the District.
3. Staff whose duties require working with students in proximity closer than six (6) feet, and potential exposure to bodily fluids, will be provided with enhanced PPE such as disposable aprons or gowns, disposable gloves, and face shields. In addition, staff working in specialized services shall be provided with other sanitary supplies such as trash bags and absorbent liners.
4. Each site shall establish and communicate to unit members the process to use for requesting PPE necessary for the safe delivery of instruction in the Phase 3 environment.

I. Face Covering Requirements

1. Face coverings are required to be worn properly at all times by all individuals on a school worksite, outdoors or indoors, except when unit members are alone in their classrooms, subject to the most current Industry Guidance and County Orders.
2. Face masks shall not be required for staff if there is a medical contraindication verified in writing from a medical professional according to the Industry Guidance. Such unit members shall use face shields with neck drapes (provided by the District) tucked into the shirt.

J. The District website shall provide comprehensive information covering all of the safety measures contained or referred to in this MOU and will continue to be updated as governmental guidelines and orders change. For convenience, links to these resources are listed below:

- [Cal/OSHA COVID-19 General Checklist for Schools and School-Based Programs](#)
- [CUSD Prevention Protocols for COVID-19](#)
- [CUSD Special Education Distance Learning Assessment Plan - Health & Safety Guidelines](#)
- [Santa Clara County Free COVID-19 Testing Sites](#)
- [CUSD Injury and Illness Prevention Plan](#)
- [CUSD Reopening Plan](#)

- [COVID-19 Prevention Program \(CPP\)](#)
- [COVID-19 School Guidance Checklist](#)

K. Hand Washing Requirements

1. The District will follow Industry Guidance and County Orders related to frequently reminding individuals to wash their hands or use medically effective hand sanitizer.
  - a. Such Guidance provides in part: “Students and staff should wash their hands frequently throughout the day, including before and after eating; after coughing or sneezing; after classes where they handle shared items, such as outside recreation, art or shop; and before and after using the restroom.” (Guidance at p. 24.)
2. The District will provide hand washing soap and/or medically effective hand sanitizer in all classrooms, workspaces and common spaces. Hand sanitizer shall contain at least 60% ethyl alcohol and not contain methanol. Hand sanitizer should only be used if soap and water are not available.
3. The District shall ensure that all hand washing/hand sanitizing supplies noted above or otherwise provided shall be checked and restocked as needed and prior to the beginning of each day that staff are on campus.

- L. In the interest of protecting community and workplace health, any unit member may report, in writing, any unsafe condition in the working environment to the immediate supervisor. The supervisor shall, within two (2) working days, respond in writing to the employee (and copy the Association President) stating what has been done or will be done to make the condition safe.

### III. Testing, Notification, and Contact Tracing

- A. District will identify and inform unit members of testing resources related to a return of unit members to sites to provide services according to this MOU. The District will comply with testing and tracing in accordance with CDPH public health guidance.
1. The District shall provide at a minimal monthly onsite COVID-19 testing at no charge to unit members and information to employees related to COVID-19 testing. Unit members will also be allowed to get their COVID-19 test done with their healthcare provider. The District shall make more frequent testing available upon request to unit members who have been identified as a close contact.
  2. Upon notification that an employee has been infected with COVID-19, the District shall initiate contact tracing at the impacted work site(s) in consultation with local health

department officials. All persons who came in contact with the infected individual which the District learns through contact tracing at the work site(s) shall be notified within one (1) business day. When such notification is provided to unit members, the District will notify the CEA President of the site where an employee tested positive for COVID-19 and the number of CEA unit workers who will be informed of possible exposure. The District shall be held harmless when information was not provided related to contact and employees could not be notified.

3. CEA agrees to cooperate with the District in any necessary public health actions, such as contact tracing of infected individuals.
- B. Staff who exhibit any symptoms consistent with COVID-19 shall isolate immediately and notify their supervisor and the Human Resources Department. They must stay home and follow Industry Guidance and County Orders. The County Orders on Home Isolation and Quarantine Guidelines are linked below for convenience:
- [COVID-10 Home Isolation Guidelines](#)
  - [COVID-10 Isolation and Quarantine Decision Tree](#)
- C. Staff and students who exhibit any symptom(s) consistent with COVID-19 or who have had close contact with a person with COVID-19 as defined by Industry Guidance and County Orders shall notify their supervisor or teacher, stay home or, if on a school/work site, shall be sent to an isolation room on site pending travel home or to a medical facility.
- D. Upon notification that an employee, parent, student, or anyone entering a school site has received a confirmed positive test for COVID-19, the District shall follow the “Immediate Actions” and “Communication” steps pursuant to Industry Guidance, County Orders, and [AB685](#).

#### **IV. Leaves of Absence**

- A. Unit members continue to have all leave rights as provided in Article 5 of the Collective Bargaining Agreement (“CBA”). Unit members who have exhausted accumulated sick leave (5.1.1) and require additional leave for COVID-19 illness and quarantine, may access extended sick leave (5.1.2) and catastrophic sick leave according to the requirements in section 5.15 of the CBA.
- B. Industrial Accident Leave/Workers’ Compensation – Section 5.11 of the CBA pertaining to Industrial Accident Leave and/or Workers’ Compensation remain in effect with regard to COVID-19 illness contracted during the course and scope of employment.

- C. Unit members shall have access to an additional ten (10) days paid sick leave for COVID-related illness that prevents the unit member from teaching in-person or remotely, to be utilized prior to using accrued sick leave, including but not limited to, mandated isolation/quarantine and reactions to a vaccine. If the FFCRA is renewed or succeeding similar legislation is enacted during the term of this MOU to provide additional paid sick leave days for COVID-related illness, the additional paid sick leave days provided in this section shall be subsumed within the number of paid leave days provided in such legislation.

## **V. Reassignment and Transfer**

- A. The District shall make remote teaching assignments to the greatest extent possible given the number of available positions based on “the legitimate, educationally-related needs of the District” (6.5.1) and the criteria set forth in section 6.3.4.1 with voluntary transfers considered prior to involuntary transfers.
- B. For purposes of this MOU, “the legitimate, educationally-related needs of the District” shall take into account the efficacy of any distance learning program, and those unit members in high-risk groups, as appropriately verified by medical personnel, due to their own circumstances or based on those for whom they provide care consistent with the prioritization in section D below.
- C. The District shall prioritize optimizing the number of students who remain with their same teacher assignment upon a change to an in-person instruction model, in the interest of minimizing the disruption to both families and teachers from changing teachers midyear.
  - 1. If students need to be moved to accommodate full-time distance learning unit members, the District shall adhere to contractual class sizes and will do their best to minimize disruptions to students and teachers.
- D. Priority shall be given to requests for available remote assignments in the following order:
  - 1. Unit members in high-risk groups regarding COVID-19, as appropriately verified by medical personnel, due to their own circumstances
  - 2. The presence of someone in a unit member’s household, or care who is at high risk of contracting COVID-19 as appropriately verified by medical personnel due to their household circumstances.
  - 3. If, after giving the foregoing priority of assignment to unit members there are additional remote assignments available, the remaining assignments shall be filled by unit members who make general requests in accordance with the criteria in section V.1. above

- E. Requests for remote assignments shall be submitted via email to the Human Resources Department. Only requests based on high risk status shall include the reasons for the bargaining unit member's request as well as supporting documentation. General requests not based on high risk status need not have reasons or supporting documentation beyond that required by the CBA
- F. If the number of remote assignments exceeds the number of unit members placed through the voluntary transfer process set forth above, the District may make involuntary transfers according to the provisions of section 6.5 of the CBA (Employer Initiated Transfer (Administrative)) insofar as such provisions apply practicably to a change to a remote assignment. Section 6.5.4 shall not apply to transfers under this section
- G. Upon expiration of this MOU, unit members transferred voluntarily or involuntarily shall be deemed to have returned to their previous site and position for purposes of application of Article 6

All components of the current CBA between the District and the Association not addressed by the terms of this MOU shall remain in full effect.

This MOU is a non-precedent setting document. This MOU resolves the negotiable effects of implementing the transition to and implementation of in-person instructional models due to COVID-19 for the 2020-2021 school year. The District and/or Association reserve the right to negotiate any additional negotiable impacts not already covered by the CBA or this MOU related to COVID-19.

This MOU shall be effective upon signature and whatever subsequent ratification process, if any, is used by either party. This MOU will expire in full without precedent on June 30, 2021 (unless extended by written agreement), or until Industry Guidance or County Orders permit students to return to full day in class instruction on school campuses following the traditional school schedules (Phase 4 of the Framework). Both parties will continue to consult/confer throughout through any phase transitions.

Cupertino Union School District



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Leslie Mains, Associate Superintendent, HR  
Date: February 11, 2021

Cupertino Education Association



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Kate Lee, Lead Negotiator, CEA  
Date: February 11, 2021