

**Memorandum of Understanding
between Cupertino Union School District
and Service Employees International Union, Local 521**

February 23, 2021

2020-2021 School Year – Phases 1 through 4

The Cupertino Union School (“District”) and Service Employees International Union, Local 521 (“SEIU”) (collectively “Parties”) enter this Memorandum of Understanding (“MOU”) setting forth the following terms and conditions regarding reopening of schools for the 2020-2021 school year.

The District acknowledges and appreciates the continued dedication and professionalism of our employees during this challenging and unprecedented time caused by the COVID-19 pandemic. The District and SEIU recognize the importance of maintaining safe facilities and operations for the benefit of the students, staff and communities served by the District. The Parties further acknowledge that unit members may need to self-quarantine/self-isolate, become quarantined/isolated, and/or the District may need to close a learning cohort or close school(s) or department(s) on an emergency basis to slow the spread of infection and illness arising from COVID-19 during the 2020-2021 school year.

Unless otherwise as noted below, the provisions of this MOU shall supersede any provisions of the Collective Bargaining Agreements (“CBA”) between the Parties that are in conflict for the duration of this MOU, or until modified by mutual agreement of the District and SEIU. The Parties affirm the obligation to comply with all provisions of the CBA not in conflict with this MOU. Further, the Parties affirm that all provisions of the Educational Employment Relations Act (“EERA”) *California Government Codes 3540 et seq.* apply and remain in effect.

A. Definitions

1. *Face Coverings* – Face coverings or masks as recommended by the California Department of Public Health Department (CDPH) or the Santa Clara County Public Health Department (SCCPHD).
2. *Hand Sanitizer* – this product must contain at least 60% alcohol. Ethyl alcohol is preferred and should be used when there is the potential of unsupervised use by children. Isopropyl alcohol hand sanitizers are more toxic and can be absorbed through the skin. Hand sanitizers containing methanol are toxic and shall not be used.
3. *Personal Protective Equipment* (“PPE”) – equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses as recommended by CPHD and/or SCCPHD.
4. “Common Equipment” – is any office or school equipment or structures that are designed to be used or shared by more than one individual. This includes, but is not limited to, technology, computers, desks, machines in kitchens, etc.

B. Safety – Safety Equipment, Personal Protective Equipment (“PPE”), and Social Distancing

The District will follow and implement the most current COVID-19 health and safety guidelines provided by CDPH, SCCPHD, Centers for Disease Control and Prevention (“CDC”), the California Department of Industrial Relations Division of Occupational Safety and Health (“Cal-OSHA”), and other California government public health agencies.

The Parties agree to the following:

1. The District will notify all SEIU unit members on protocols in writing (and a full day of training) prior to students returning to in person service.
2. The District shall, based on the SCCPHD guidance, provide PPE, which include, but not limited to, face coverings, face shields, gowns and gloves, as appropriate, to unit members on site who interface with others or whose duties require the use of PPE. Unit members will be provided a face shield upon request.
 - a. The District shall maintain a three (3) month supply of PPE
3. All adults and students will wear face coverings at all times while at a District worksite, school campus, school bus, or academic enrichment center both indoors or outdoors, except while eating or drinking. Face coverings are not required when an adult is alone in an office, classroom, or other space.
4. Face coverings must cover the nose and mouth to be effective.
5. Face coverings shall not be required for students or staff if there is a medical or behavioral contraindication verified in writing from a medical professional.
6. For unit members who have a medical exemption regarding wearing a face covering, such employees shall be authorized to wear face shields with neck drapes tucked into the shirt. Masks and face shields may not be required for students with medical apparatus which prevents or obstructs the use of the apparatus.
7. In-lieu of using District-provided face coverings, unit members may bring their own face coverings so long as the face covering complies with public health guidelines and provides equivalent protection. Unit members shall not be required to bring their own face coverings, and no unit member shall be disciplined or evaluated negatively for not bringing their own face coverings.
8. To the extent practicable, physical distancing of six (6) feet shall be maintained between students, between staff and students, and between all staff during lunch period(s), in cafeterias, on buses, and food service areas.
9. The District agrees to install physical barriers, such as sneeze guards and partitions, at Point of Service (POS) and other areas where maintaining physical distance of six (6) feet is difficult.
10. In locations with a staff break room, capacity while maintaining physical distancing requirements shall be determined and posted on all entrances to the staff break rooms.

- a. Since staff is encouraged to eat their lunches outdoors while socially distanced, the District shall provide an outside area (protected from the outside weather elements) except for the District Office which is not a District-owned property.
11. The Parties recognize that frequent hand washing for a minimum of 20 seconds minimizes the spread of COVID-19.
12. Staff working onsite will have access to hand sanitizer and/or sinks with soap.
13. All individuals shall wash their hands or use hand sanitizer with 60% alcohol upon entering District sites and every time a classroom is entered.
14. The District shall comply with the following hand washing requirements:
 - a. Non-classroom workspaces, and indoor spaces where soap and water is not readily available, shall be provided hand sanitizer with 60% alcohol.
 - b. All hand washing/hand sanitizing supplies noted above or otherwise provided shall be checked and restocked as needed.
15. All staff meetings, professional development, and committee meetings shall be done virtually to the extent feasible.
16. Any in-person meetings will be held in compliance with the SCCPHD guidelines.
17. Unless it is a function of their position or unless notice is provided in advance/negotiated to add duties, unit members shall not be assigned to monitor ingress and egress locations in order to minimize the number of different people with whom a unit member interacts.
18. Only essential visitors will be allowed on campus and they must have an appointment or be approved in advance by the school site administration.

C. Reporting Unsafe Conditions

1. 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 SEIU representative) stating what has been done or will be done to make the condition safe.
2. The District will comply with all aspects of AB 685, including but not limited to:
 - Notification of employees who were at the same worksite during the infection period with a person who tested positive for Covid-19 and their union of potential Covid-19 exposure, within 24 hours of notice to the District. Such notification will include information related to Covid-19 benefits and applicable leaves. If working on District premises, employees must notify the District of Covid-19 positive diagnosis. This information will be maintained as confidential.
 - Notify all employees and their union representative of the District's Reopening Plan.

D. Screening

1. Staff working onsite will self-screen and self-report symptom results daily prior to arriving at school utilizing a screening tool provided by the District in accordance with CDPH public health guidelines. The purpose of this onsite screening is to remind all District employees not to enter the worksite if they are experiencing any of the possible covid-19 symptoms and thus protect all District employees. The District will inform employees of the purpose for this and reassure them that they will not be unfairly punished or disciplined for not coming to work when they may not be feeling well.

E. Testing and Tracing

1. The District will explore options for monthly onsite COVID-19 testing at no charge, prioritizing those employees reporting to the worksite, and provide information to employees related to COVID-19 testing. Unit workers will also be allowed to get their COVID-19 test done with their healthcare provider.
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. When such notification is provided to unit members, the District will notify the SEIU President and the SEIU representative of the site where an employee tested positive for COVID-19 and the number of SEIU 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. SEIU agrees to cooperate with the District in any necessary public health actions, such as contact tracing of infected individuals.
4. The District will comply with testing and tracing in accordance with CDPH public health guidance.

F. Leaves of Absences/Reasonable Accommodations

1. The District recognizes that some unit member(s) may request time off due to COVID-19 related reasons, such as the unit member's own unique underlying health condition, or to care for children and/or health-compromised family members at home (e.g. closure of child's school, closure of child's caregiver provider, etc.). The District shall authorize the use of available, accrued sick leave.
2. Unit members shall have access to an additional ten (10) days paid sick leave for COVID-related illness that prevents the unit member from working, 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.
3. If a unit member is ill, they may use sick leave. If the unit member exhausts their sick leave, they may apply for additional leave from the catastrophic sick leave bank.

4. In the event a unit member is unable to return to in-person instruction or work duties because they are at high risk for COVID-19 as defined by SCCPHD, CDPH, and CDC, the Human Resources Department will engage with the unit member to discuss potential options, which may include: exploring various options to allow the employee to continue to work, including working remotely; potential leave options, including under FMLA and/or CFRA; and if applicable, and applying the Americans with Disabilities Act.
5. Absences Due To Exposure to COVID-19 Directly Traced to Work: This section only applies to unit members who are physically reporting to a District worksite. To the extent that a unit member's exposure to COVID-19 or diagnosis with COVID-19 is traced back to their assignment for the District – via contact tracing conducted by the SCCPHD or in conjunction with the SCCPHD – and if the District is not able to offer the unit member an alternative assignment - including working remotely - the District will place the unit member on a paid medical leave for up to 10 workdays. Such time will, if applicable, run concurrently with any leave rights under the CBA or applicable law, including the FMLA/FFCRA, but the employee will not be required to use any available, accumulated sick leave or extended sick leave to remain in paid status.
6. Any unit member who cannot perform their duties as a result of COVID-19 illness, quarantine, or a health department order to close a classroom or school shall not have their pay reduced for the entirety of that period off from work.
7. The District will explore options for employees who may need child care for school age children due to the COVID-19 pandemic.
8. Unit members continue to have all leave rights as provided in Article 8 of the CBA.
9. Unit members who have exhausted all paid leave and must be absent due to coronavirus, including to care for family or household members or to meet a childcare emergency, shall also be permitted to take unpaid leave.

G. Work Environment

1. The District will employ the interactive process to provide support for any unit member who is prohibited from working from the school site due to their own underlying health condition, the underlying health condition of a family living in their household, or an inability to secure child care due to COVID-19. These situations will be addressed on a case-by-case basis.
2. The District will explore options for unit members who may need child care for school age children due to the COVID-19 pandemic.
3. Employees may only use their personal cell phone voluntarily.

H. Flexibility in Assignment

1. The District shall maintain specific plans on how to follow CDC and County Office guidelines with current staffing levels or added positions. The District will inform SEIU prior to implementing any possible changes to current staffing levels or added positions, in accordance with the MOU.

2. The District and SEIU acknowledge that California Education Code §45101(a) requires that all classified positions have set duties. However, due to the current unforeseen and unprecedented nature for the current conditions, SEIU and the District recognize that some SEIU bargaining unit positions may be asked to perform duties not currently contained within their current job description. The District will present additional job duties needed to be completed by classification to SEIU to reach mutual agreement. If parties do not reach agreement then it will be proposed in negotiations.
3. The District and SEIU agree this is a temporary solution to a current need and shall not be considered a waiver of SEIU's rights to negotiation the transfer of duties as required by law. This also shall not be considered precedent setting for either party. All temporary transfer of duties shall be negotiated.
4. SEIU unit members performing duties that are not in their job description will continue to be paid at their regular rate unless they are primarily performing the job duties of a higher-range job classification in which case they will be compensated at the higher pay range consistent with the rules for non-permanent assignments in the collective bargaining agreement.
5. Due to reduced transportation duties during Phase 1-3, Bus Drivers may be asked to provide additional support as outlined in Section 5.12 in Article 5 of the CBA. Bus Drivers will be provided at least 24-hour advance notice of the assignment.
 - a. All Bus Drivers shall be afforded an opportunity to bid on new, incoming routes, by seniority; however, once the route has been bid, it will not be bid again during the 2020-2021 school year.
 - b. New routes will be emailed to all Bus Drivers at least 24 hours or more prior to conducting the bid.
 - c. All Bus Drivers will be provided with all the cleaning supplies required to clean and sanitize the bus properly. Bus Drivers will also be provided with instructions and locations as to where they can replenish these supplies.
 - i. Personal bottles of cleaner spray
 - ii. Personal bottle of disinfectant spray
 - iii. Supply of paper towels
 - iv. Individual size hand sanitizer and a refill larger container to everyone. Must be stored safely inside the bus
 - d. All Bus Drivers will be required to sanitize the bus after each run and at the end of the day. Drivers shall be provided with sufficient time (15 minutes each time) to clean and sanitize these buses.
 - e. The District will provide a flip phone by request for use by bus drivers to be contacted while working on District property on standby through Phase 3 of reopening process.
 - f. All department meetings are to be held virtually and not prior to 8:30 a.m. and not beyond 4:00 p.m.
 - g. All Bus Drivers will be provided with thermometers to check temperatures of students prior to entering the bus. The District shall check the temperatures of all Bus Drivers as they arrive on site daily.

- h. Bus Drivers shall have the right to refuse transporting a visibly ill student (runny nose, flush, pale, vomiting, etc.)
 - i. Bus Drivers shall be informed, in advance, if a child has a medical note which exempts them from being required to wear a mask. If a Driver is assigned to transport a student who has an exemption from wearing a mask, the District must provide the PPE as recommended by SCCPHD including adult disposable N95 masks, reusable masks and disposable masks, gloves, gowns, and face shield.
 - i. Students may not enter the bus if they are experiencing the following: fever, cough, diarrhea, headache, muscle aches, shortness of breath, and unexplained loss of taste or smell. If a student has a fever, he/she must be three (3) days fever free with no medication.
 - ii. If a student exhibits any of the above symptoms while they are at school, they will be required to wait in an isolation area and will be required to be transported home. Unit members shall not be expected to supervise sick students for more than two (2) hours.
 - iii. If a student is experiencing allergies, a doctor's note is required for student's file.
 - j. Due to COVID-19 and social distancing, Bus Drivers are discouraged from sitting in the building between routes. Therefore, Bus Drivers may sit in their car, or leave the site after consultation with supervisor in between routes to eliminate the possibility of Bus Drivers gathering in groups at the site or in the building.
6. The District and SEIU agree that this is a temporary solution to a current need and shall not be considered a waiver of SEIU's rights to negotiate the transfer of duties as required by law. This also shall not be considered precedent setting for either party. All temporary transfer of duties shall be negotiated.
7. The District will reimburse up to \$55.00 per year for all cafeteria workers for closed toed slip resistant outsole shoes. If the allowance is used, wearing of the shoes becomes requirement of the job. (This provision does not expire on June 30, 2021 but continues as part of the CBA.)

Due to the new surge in COVID-19 cases, the District shall work with the union leadership to try to reduce any potential exposure in the work-place by staggering shifts and/or adjusting the hours to be focused on the essential tasks, during the largest surges.

All components of the negotiated Agreement between the District and SEIU not addressed by the terms of this MOU shall remain in full effect. This MOU is a non-precedent setting and expires on June 30, 2021.

The Parties understand the coronavirus (COVID-19) pandemic situation is very fluid and mutually agree to review the provisions of the MOU, as necessary.

This MOU resolves the negotiable effects of opening the 2020-2021 school year with all students attending Distance Learning as directed by SCCPHD due to the COVID-19 pandemic. The District or SEIU reserves the right to negotiate any additional impacts related to COVID-19 and the return to in-person instruction.

I. Enforcement

1. Any misinterpretation or misapplication of this MOU and attachments shall be subject to the grievance procedure as outlined in Article 12.

J. Signatures

Cupertino Union School District

Susan A. Mau

Signature

J. Henderson

Signature

March 26, 2021

Date

Service Employees International Union, Local 521

Jason Bay

Signature

Jimmy Alpert

Signature

4/2/2021

Date