



Board Office Use: Legislative File Info.	
File ID Number	20-1894
Introduction Date	9/23/2020
Enactment Number	WITHDRAWN
Enactment Date	

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Josh Daniels, General Counsel
Jenine A. Lindsey, Executive Director of Labor Relations & ADR

Board Meeting Date September 23, 2020

Subject Sideletter of Agreement between American Federation of State, County, and Municipal Employees ("AFSCME") and Oakland Unified School District ("District") Regarding the impacts of the COVID-19 (Coronavirus) pandemic and the Governor's Pandemic Plan for Learning and Safe Schools for the 2020-2021 school year, the California Department of Public Health Framework for K-12 Schools (guidance regarding distance learning and in-person instruction) and other federal state and local guidelines.

Action Requested Approval by the Board of Education of Sideletter of Agreement between American Federation of State, County, and Municipal Employees ("AFSCME") and Oakland Unified School District ("District") regarding school closures during the COVID-19 Pandemic.

Background On July 17, 2020, Governor Gavin Newsom announced his plan for learning and safe schools ahead of the 2020–2021 school year, as the California Department of Public Health ("CDPH") issued the COVID-19 and Reopening Framework for K-12 Schools in California ("CDPH July 17 Framework"). The CDPH Framework addresses when and how schools should reopen for in-person instruction as the 2020-21 school year approaches. The CDPH guidance ties the ability of school districts to offer in-person instruction to overall disease conditions in its county, as tracked by the [State's County Monitoring List](#). Alameda County was placed on the State's Monitoring List on July 12, 2020.

On August 25, 2020, the CDPH issued important cohorting guidance. Under the new guidance, school Districts otherwise prohibited from providing in-person instruction under the CDPH July 17 Framework are now explicitly authorized to offer small-group, in-person "specialized services, targeted services and support" for students. This applies to both elementary and secondary schools.

On September 9, 2020, the bargaining teams for AFSCME and the District concluded negotiations of the impacts of the school closures and guidance issued by state local and federal authorities described above resulting in the subject MOU. The MOU is effective September 9, 2020 and expires on March 31, 2021.



Fiscal Impact

Funding source(s): Any cost associated with the MOU will be covered by the existing budgets allocated for additional compensation (i.e. custodial and food service worker overtime) for AFSCME bargaining unit members. Such cost will be captured in the District's Interim Reports and in the closing of the District's accounting books at year end closing.

Attachments

Sideletter of Agreement between American Federation of State, County, and Municipal Employees ("AFSCME") and Oakland Unified School District ("District") regarding the impacts of the COVID-19 (Coronavirus) pandemic and state, local and federal guidelines regarding distance learning and in-person instruction.

**Side Letter of Agreement
Between
Oakland Unified School District
and
American Federation of State, County, and Municipal Employees, Local 257**

This is a Side Letter of Agreement (Agreement) between Oakland Unified School District (District) and American Federation of State, County, and Municipal Employees, Local 257 (AFSCME), collectively “Parties” related to the impacts of the COVID-19 (Coronavirus) pandemic and the Governor’s Pandemic Plan for Learning and Safe Schools, the 2020-2021 school year California Department of Public Health Framework regarding Distance Learning and guidelines regarding in-person instruction, District’s Learning Continuity and Attendance Plan (pursuant to AB 77 and SB 98) and other federal state and local authorities guidelines.

The District and AFSCME recognize that our State, Nation and local communities are experiencing extraordinary events in the challenge to contain the COVID-19 virus. The Parties recognize the importance of maintaining clean and safe facilities, providing instructional support to students, servicing students with medical needs, and providing meal services to children in need. Therefore the District and AFSCME agree as follows:

I. Health, Safety and Mental Health

- A. The District agrees it will provide a safe and healthy workplace and to correct any and all unsafe conditions, including but not limited to COVID-19 protocols and safety/health hazards. This includes the District’s commitment to comply with all federal, state and local laws, guidelines rules and regulations. The District agrees to investigate all hazards, unsafe conditions and accidents brought to its attention with urgency, without delay, and to promptly remedy all hazards and unsafe conditions as found in its investigation.
- B. The District recognizes that COVID-19 not only impacts the safety and physical health of unit members, but also their mental health. To help unit members navigate through this crisis and manage stress, anxiety and depression during this difficult time, the District is committed to providing support to its employees, including sharing information about the resources and services offered through District benefits and it’s Employees Assistance Program (EAP).
- C. To minimize the spread of COVID-19, unit members will follow all safety procedures and protocols established by the District. The District shall consult with AFSCME on any new procedures established.

II. Training and Tools, Equipment and Technology Devices

The District agrees to provide AFSCME bargaining unit members with training to perform their jobs safely, including instruction in proper work methods, use of protective equipment, and safe maintenance, handling and use of materials, tools, equipment, and devices. Unit members will not be required to work, operate, use any tools, equipment and/or any devices until the unit member has been fully trained. Unit members shall be paid to attend such trainings. In addition, the District agrees to provide unit members with the proper tools, equipment, and technology devices necessary to perform their job. If unit members are required to use their own personal tools, equipment or devices, the unit member may submit a request to be reimbursed subject to Board Administrator Regulation 4156.3 and all applicable state and federal law.

III. Personal Protective Equipment (PPE)

The District shall ensure appropriate precautions (i.e. social distancing) and agrees to provide AFSCME bargaining unit members with PPE which includes but not limited to face masks/shields, eye protection, gloves, hand sanitizer, protective clothing such as coveralls, gowns, aprons and other safety and protective equipment as required or recommended by the Centers for Disease Control and Prevention (CDC), Cal/OSHA and other local, state, and federal authorities.

IV. Special Assignments

The District and AFSCME recognize that the implementation of the District's Learning Continuity and Attendance Plan (pursuant to AB 77 and SB 98) and other federal state and local authorities requirements during the COVID-19 Pandemic period may warrant new temporary "Special Assignments" to mitigate learning loss which include tasks above, beyond and outside the scope of current classifications that are most appropriately performed by AFSCME bargaining unit members as defined below. The parties agree to meet and confer to discuss these new job responsibilities and additional compensation for Special Assignments when appropriate. The District and AFSCME recognize that in person learning is optimal for the academic, social and emotional success of students. In recognition of the critical work needed to support transitioning students from distance learning to in person learning, custodians, paraeducators, 504 technicians, LVNS, and nutrition services workers shall receive a Special Assignment pay as outlined below. In order to be eligible for the Special Assignment payment, unit members must be physically at work, performing the essential functions of their classification, and additional duties specific to the Special Assignment as determined by the District. Additionally, the transfer and assignment provisions of the CBA are waived for the classifications listed in sections A-E below upon execution of this Agreement to ensure flexibility to meet programmatic needs and adequate coverage District-wide:

A. Custodial Services

To ensure high traffic areas are cleaned, sanitized and disinfected in compliance with requirements set forth by the Centers for Disease Control and Prevention (CDC), Cal/OSHA and other local, state, and federal authorities, custodians shall complete training and perform duties as required for compliance. Such duties shall include a shared responsibility in noting inventory of safety supplies at school sites. Custodians shall receive a \$1,200 one time off schedule payment no later than December 15, 2020 on a separate pay warrant.

B. Nutrition Services

Cafeteria Managers: To ensure Administration of Check of Assessments and Monitoring Safe Work Practices of Nutrition Services staff, Cafeteria Managers shall receive a one time \$900.00 off schedule payment no later than December 15, 2020 on a separate pay warrant.

Nutrition Services Workers: Front-line workers who may be in contact with the public for the purpose of ensuring that food distribution to students remains intact despite the COVID-19 school closures shall receive a \$450.00 off schedule payment no later than December 15, 2020 on a separate pay warrant.

C. Licensed Vocational Nurses (LVNs)

Small Cohort Leads (in person): To support learning loss of students with disabilities identified as having skill regression, LVNs requested to provide daily, in-person services to students in cohorts shall receive a \$150 per week, on a rotational basis. Such LVNs must complete mandatory training and be selected by the Special Education Department prior to placement. The District shall consult AFSCME on relevant mandatory training and the selection process.

D. 504 Technicians

Small Cohort Leads (in person): To support learning loss of students with disabilities identified as having skill regression, 504 Technicians requested to provide daily, in-person services to students in cohorts shall receive a \$150 per week, on a rotational basis. Such 504 Technicians must complete mandatory training and be selected by the Special Education Department prior to placement. The District shall consult AFSCME on relevant mandatory training and the selection process.

E. Paraeducators

- 1) Release Day Leads: To ensure academic, social and emotional success of students, Paraeducators assigned to self-contained Special Day Class programs shall receive a one time \$900.00 off schedule payment on or before December 15, 2020, payable in a separate pay

warrant. The bonus shall be applicable for all Paraeducators who are asked to undertake the following special assignment tasks:

- i. Lead live, synchronous instruction in the absence of a teacher on the one day per month teacher release day (for preparation and planning) per month October 2020 through December 2020. (e.g. or personal illness). The minimum number of minutes delivered to students shall be as set forth by the Special Education Department in consultation with the teacher;
 - ii. Collect, share and/or upload teacher-created materials via an online learning platform (e.g. Google Classroom, Seesaw);
 - iii. Modify or adapt general education-created materials to meet the needs of assigned students with disabilities.
- 2) Small Cohort Leads (in person): To support learning loss of students with disabilities identified as having skill regression, paraeducators requested to provide daily, in-person services to students in cohorts shall receive a \$600 per month stipend. Such paraeducators must complete mandatory training and be selected by the Special Education Department prior to placement. The District shall consult AFSCME on relevant mandatory training and the selection process.

V. Working Conditions

The District will determine essential job duties consistent with a unit member's job description. The Parties understand and agree that the Superintendent and/or her designee will communicate proposed changes to working conditions to the AFSCME Business Agent and President. The District agrees to meet and negotiate impacts to wages, hours of employment, leaves, transfers, reassignments, safety conditions and all other working conditions governed by statute. Due to the unique circumstances presented by the COVID-19 pandemic that qualifies as an emergency, as defined Article 7.10 and Article 9.03 of the parties CBA, assignment changes and/or transfers will occur pursuant to the CBA, but may from time to time in cases of emergency occur with minimal notice to AFSCME. Minimal notice in this section is defined as the District providing advance notice to AFSCME as soon as it knew a change was necessary based on the then emergency circumstances. Assignment changes may include changes in location and/or hours (shifts). However, no assignment change and/or transfer shall be for arbitrary and capricious reasons and shall not cause an undue hardship to the unit member. The District and AFSCME shall meet on a bi-weekly basis, or needed, to discuss staffing and other conditions of employment and if needed negotiate the impacts identified.

VI. Professional Development

Parties share a mutual interest in training and professional development of unit members. To invest in retention and quality staff, the District shall work in collaboration with AFSCME in the development of training opportunities. The District shall offer an opportunity for up to 10 unit members to enroll in a District approved Career Technical Education (CTE) Program by submitting an application to the Labor Relations department within three (3) business days of execution of this agreement by the Parties.

VII. Working Remotely

The District is committed to safety first and is dedicated in working to prevent and slow the spread of COVID-19. For these reasons, unit members who want to work from home or another suitable location, unrelated to any pre-existing medical condition, may request to work from home or another suitable location for the duration of this MOU. Requests are to be submitted to the District Human Resources/Talent Department. The request shall be granted provided the District determines that the unit member can perform the essential duties of their job classifications while working remotely. Unit members must be available to meet with their site administrator/supervisor, colleagues and/or parents or students as required by their job classification. If at any time a site administrator/supervisor can show cause that a unit member is unable or is not meeting the needs of students/families or performing essential job duties, the unit member will be required to report to their site or department. Working remotely shall not result in a unit member suffering the loss of pay and benefits.

VIII. Leaves

If a unit member is ill and therefore unable to work, the employee shall be allowed to use leave and extended sick leave pursuant to the CBA between the parties, the California Education Code, Family Medical Leave Act ("FMLA") and any other applicable state or Federal provisions.

IX. COVID-19 Related Absences

- A. In the event a AFSCME bargaining unit member is diagnosed as having contracted COVID-19 while on duty or is unable to report to work as a result of a District required quarantine based on a confirmed positive case exposure to COVID-19 while performing duties, the unit member shall receive full pay and benefits and will not be charged sick leave, vacation, or docked pay for the required quarantine period, up to 14 days, or until the unit member has medical clearance.
- B. Unit members belonging to populations deemed as uniquely vulnerable to effects of coronavirus, such as those who are 65 and over, staff of any age, as well as staff caring for children with underlying health conditions (e.g. high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune system is compromised such as by chemotherapy for cancer and other conditions requiring such therapy), shall be allowed to self-quarantine at no loss of pay, benefits and leaves.
- C. Unit members whose dependent child(ren)'s school or daycare is closed due to COVID-19 will be permitted to work remotely without loss of pay, benefits and leaves.

X. Filling Vacant Positions and Withdrawal of Claims

The District recognizes the importance of filling custodian and nutrition service worker vacancies during the COVID-19 pandemic. The District also agrees that no AFSCME unit member shall be paid less than and/or the same hourly rate of pay as a substitute employee (unrepresented). The AFSCME unit member shall be placed on the AFSCME salary schedule at a range/step which provides for a salary greater than the substitute employee.

The District shall adhere to the collective bargaining agreement and all federal, state, and local laws regarding the AFSCME bargaining unit and bargaining unit members including, but not limited, to layoffs, employee leaves, and posting and filling vacant positions. AFSCME shall be invited to serve on hiring panels.

In light of the COVID-19 pandemic, the District agrees to schedule a meeting with AFSCME no later than September 30, 2020 to discuss the addition/restoration of the 3.5 FTE custodial positions to support transition to in person/blended learning.

Within three (3) days of execution of this Agreement by the Parties, AFSCME shall withdraw all complaints associated with vacation payout and personal leave and the following grievances:

- 1. September 2, 2020 Grievance Regarding Nutrition Services Vacancies*
- 2. September 2, 2020 Grievance Regarding Custodial Services Vacancies*
- 3. September 3, 2020 Grievance Regarding Central Kitchen Vacancies*

XI. Assignment During Distance Learning

AFSCME unit members will continue to perform the essential duties of their job classification including maintain clean and safe facilities, provide instructional support to students, support students health and well check assessments, provide case identification, and provide meal service to students as follows:

- 1. Paraeducators:** Paraeducators will continue to provide instructional support to special education students. (See Attachment A)
- 2. LVNs:** LVNs will continue to provide well checks to students. (See Attachment B)
- 3. 504 Technicians:** 504 Technicians will continue to provide case identification to students. (See Attachment B)
- 4. Nutrition Services:** Food Services unit members will continue to provide meal services to students. (See Attachment C)
- 5. Custodial Services:** Custodians will continue to clean, disinfect, and sanitize schools/facilities. (See Attachment D).
- 6.** The parties recognize that the COVID-19 Public Health Emergency is an evolving situation and that modifications to this MOU may be necessary. The parties therefore reserve the right to reopen this

Agreement to address any issues that may arise after this Agreement has been signed that impact the Distance Learning and/or the response to COVID-19 as well as changes in law, regulations, or guidance issued by a local, state, or federal official.

7. This is a non-precedent setting agreement to remain in effect through Distance Learning period and shall sunset unless otherwise agreed upon by the parties. This Side Letter entered into by the Parties on the 3rd day of September, shall expire in full on March 31, 2021.

AFSCME LOCAL 257:


Melisha Linzie (Sep 4, 2020 00:18 PDT)

Melisha Linzie, President

DISTRICT:


Jenn Blake (Sep 4, 2020 08:40 PDT)

Jennifer Blake, Executive Director Special Education


Jo Bates (Sep 4, 2020 00:30 PDT)

Jo Bates, Business Agent


Jenine A. Lindsey (Sep 9, 2020 08:48 PDT)

Jenine Lindsey, Ex. Director Labor Relations

Attachment A - Special Education

Paraeducators	<p>I. Scope of Work During Distance Learning</p> <p>A. For the duration of the District’s distance learning plan due to reopening school closures in the wake of COVID-19, paraeducators are expected to participate in the following tasks and duties:</p> <ol style="list-style-type: none"> 1. Participate in instructional sessions led by general or special educators; 2. Work with specific students in “breakout rooms” during online instructional sessions; 3. Participate in virtual staff meetings with school personnel; 4. Engage in online professional learning; 5. Support teachers in preparing or adapting instructional materials based on teacher-created lessons; 6. Contact students and families for the purposes of conducting well checks; 7. Be available during work hours via email and phone. 8. Paraeducators will continue in their supportive instructional role during this time and will not be expected to: 9. Create lesson plans or instructional materials independently; 10. Deliver instructional services to students independently outside of the guidance and direction of a certificated instructor; 11. Purchase any computer programs or instructional materials; <p>B. If a paraeducator is serving a caseload in the absence of a teacher, and the para is asked by the administrator to serve as primary instructor on a temporary basis, the paraeducator will be entitled to “move up” pay pursuant to Article 26 of the parties CBA upon completion and submission of the appropriate form to their supervisor.</p> <p>II. Examples of Paraeducator Instructional Roles by Program/Service Type</p> <p><i>The following descriptions are meant to be illustrative examples of the roles paras can serve and may vary based on teacher and school site instructional schedules and plans.</i></p> <p>A. Inclusion-based programs:</p> <ul style="list-style-type: none"> • Review instructional materials for general education content sessions. • Provide “push in” support during general education content sessions held online to support individual students or small groups to ensure students receive the accommodations possible in a virtual setting (e.g. encouragement, on-task reminders, language scaffolds);

- Contact families via phone or online platforms to provide ‘well checks’ and report information back to classroom teacher;

B. Self-contained, mild-moderate:

- Review instructional materials in advance each week and create adaptations or modifications to them as directed by special education teacher.
- Provide “push in” support during special education content sessions held online to support individual students or small groups, including working with students in virtual breakout rooms;
- Contact families via phone or online platforms to provide ‘well checks’ and report information back to classroom teacher.

C. Self-contained, moderate-intensive programs:

- Review instructional materials in advance each week, including the online core replacement curriculum.
- Provide “push in” support during special education content sessions held online to support individual students or small groups, including working with students in virtual breakout rooms;
- Create short videos of common classroom activities or routines (e.g. morning meeting) under direction of the special education teacher and share with the teacher to send to families.
- Contact families via phone or online platforms to provide ‘well checks’ and report information back to classroom teacher.
- Participate in group phone calls with families and the special education teacher to provide support and offer strategies and suggestions for ways to engage students at home;

D. Community-based programs:

- Review instructional materials provided by special education teacher in advance each week.
- Provide “push in” support during special education content sessions held online to support individual students or small groups, including working with students in virtual breakout rooms;
- Collaborate with special education teacher to develop activities that can be done at home to support students’ self help and independent living skills;
- Maintain contact with assigned group of adult students to ensure they are well and engaging in teacher-created lessons;

III. Hours of Work

- Hours of work will remain the same as indicated in the bargaining agreement between OUSD and AFSCME. [Cite contract section here]
- Paraeducators will not be asked to work outside of their duty day or to perform work-related tasks on evenings and weekends.

- C. Paraeducators retain their contractually-required breaks during this time. [Cite contract here]
- D. To limit the potential impacts associated with extended screen time, paraeducators will not be asked to participate in online activities for more than 4:5 4 hours per workday, and no individual meeting or session shall have a duration of longer than 90 minutes.

IV. Dedicated Time for Professional Learning

To ensure that there is uninterrupted time for paraeducators to further develop their skills and competencies, time within their paid duty day shall be set aside for online professional development activities. These may include, but are not limited to:

- A. Career Technical Education Teaching Credential
- B. School site-provided online professional learning;
- C. Self-paced sessions through Keenan Safe Schools;
- D. Accessing disability-related modules on IRIS and AFIRM

V. Support Provided from OUSD Central Office and School Sites

- A. OUSD will make the online training opportunities available to paraeducators to assist them in performing their core roles during distance learning, including primers on the use of Zoom and Google Hangouts.
- B. Paraeducators will have access to the OUSD Teacher Central website to access webinars specific to Google Classroom, online learning tools, and resources by grade level and content area.
- C. The OUSD Special Education Department will be available to provide support to paraeducators via email and video chat.
- D. School site administrators will consider the technology needs of paraeducators as it pertains to distance learning. After Chromebooks are distributed to students, site administrators will engage with paraeducators and develop a plan to distribute remaining devices to paraeducators who require such a Chromebook to support the online instruction of the students to which they are assigned.

→ [AFIRM Modules](#): Appropriate for paras and ISSs who work with students with Autism and related communication/developmental disabilities.

→ [IRIS Modules](#): Online professional learning across a variety of topics, including behavior, assistive technology, accommodations, IEP basics, and instructional strategies.

Attachment B - Health Services

LVNs and 504 Technicians	All staff are required to work remotely during their normal work hours (unless sick and using sick leave or have a previously approved personal leave), check OUSD email daily and be available via district cell phone to answer any questions. If a staff member needs to access their office at one of their sites, please consult with the Health Services Program Manager and your principal directly.
LVNs	LVNs are expected to work on the following: <ol style="list-style-type: none">1. Catch up on paperwork/documentation (i.e. LEA billing, Aeries entries)2. Case management3. Immunization checks and follow-ups4. Attend weekly trainings with health services
504 Technicians	504 Technicians are expected to work on the following: <ol style="list-style-type: none">1. Catch up on paperwork/documentation (i.e. billing, Aeries entries)2. 6th grade Tdap/Varicella project (CAIR look up, saving yellow card and documenting in Aeries)

Attachment C - Nutrition Services

Nutrition Services	<p>Nutrition Services employees will work alternate assignment hours and school sites on a temporary basis in order to provide meal services on Mondays and Thursdays to OUSD students. Meals will be served following the CDE guidelines at the Central Kitchen (Prescott) and the 22 school sites:</p> <ol style="list-style-type: none">1. Elmhurst2. CCPA3. Madison4. Fremont5. Oakland High6. Bret Harte7. Manzanita8. Frick9. Horace Mann10. WOMS11. Sankofa12. Hoover13. Life14. Bella Vista15. Castlemont16. Allendale17. Garfield18. New Highland19. Esperanza20. Cleveland21. La Escuelita22. International Community
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Attachment D - Custodial Services

Custodial Services

Custodians work assignments hours may be adjusted during the Distance Learning period as follows:

- Central Office: Custodians to work regular hours as authorized by the Field Supervisor
- Head/Lead Custodian: Resume regular work hours (no change)
- Day Custodian: Resume regular work hours (no change)
- Night Custodian: Work hours 1:00PM - 8:30PM (change)
- CDC Custodian: Work hours 1:00PM - 8:30PM (change)

Food Distribution Working Hours for Custodial Operations

Custodians will continue to support the Food Distribution Program at their sites. In the event your site is short staffed, please notify the Field Supervisor for custodial coverage.

Cleaning protocol at Food Distribution Sites (See Food Distribution Sites in Attachment C above):

Note: Cleaning may vary based on site, as the priority is to provide a clean and safe environment.

- Wipe high touch areas every 2 hours
- Wipe high touch areas in restroom(s) a minimum of 3 times per day and remove trash.

Williams Compliance Inspections

Annual Williams Compliance inspections will start August 17, 2020. In preparation of inspection, custodians are to check all custodial and fire compliance items. Inspections dates are as follows:

Unscheduled/Unannounced Site Inspections

- Grass Valley
- Bridges Academy
- Esperanza and Korematsu
- Prescott/PLACE
- MLK
- Madison
- Roosevelt
- Fremont

Announced Site Inspections and Scheduled Dates

- August 17 - Oakland High, Garfield and Emerson
- August 19 - Oakland High, Brookfield and Melrose
- August 20 - Rise, New Highland
- August 21 - Life Academy, United for Success
- August 24 - Coliseum College Prep
- August 25 - Community United/Futures
- August 26 - East Oakland Pride and Reach Academy
- August 28 - Elmhurst
- September 1 - Hoover and International Community

Supplies: Order supplies prior to having low inventory - submit your order request to Custodial Services. If in need of emergency supplies, notify your Field Supervisor.