A G R E E M E N T

between

THE BOARD OF EDUCATION
OF THE CITY SCHOOL DISTRICT
OF THE CITY OF NEW YORK

and

UNITED FEDERATION OF TEACHERS
Local 2, American Federation
of Teachers, AFL-CIO

covering

School Medical Inspectors

October 13, 2007 – October 31, 2009

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Joint Intentions And Commitments

Enhanced student achievement based upon high standards and expectations must be the driving force behind every activity of New York City public schools. To accomplish this, we must reinvent schools so that decision making is shared by those closest to students, including parents, teachers, administrators and other stakeholders. Layers of bureaucratic impediments must be peeled away so that flexibility, creativity, entrepreneurship, trust and risk-taking become the new reality of our schools. The factory model schools of the 1900s must make way for the child-centered schools of this century.

To this end, the Union and the Board mutually agree to join together with other partners in the redesign and improvement of our schools, including closing those that have failed and supporting their restructuring. We must challenge ourselves each day to improve student learning, based upon academic rigor, newfound flexibility, meaningful assessments and true accountability. Roles and responsibilities of parents, staff and other partners must be defined. The standards to which we hold our students must never be lower than those we hold for our own children. To accomplish this, we must focus on both the depth and breadth of each proposed instructional and operational change, each designed to support the children and their teachers, whom we expect to meet these rigorous standards.

Change must be service-oriented, supportive and sufficiently flexible so that each school's educational vision can become a reality. It must be practical, possible, efficient and timely. Respect for each other and for every student must be unconditional if we are to accomplish what we must.

To reach these goals, we commit to working together along with other stakeholders to develop specific recommendations in areas requiring immediate attention. These will include, but not be limited to:

- School Based Budgeting;
- Early Intervention and Prevention of Inappropriate Referrals to Special Education;
- Professional Development;
- Parent Outreach and Support; and
- Workload Standards.

This commitment is our pledge to the children of the City of New York, not just to a promise but to a reality of educational excellence.

AGREEMENT MADE AND ENTERED INTO on the 6th day of November by and between the Board of Education of the City School District of the City of New York (hereinafter referred to as the "Board") and United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO (hereinafter referred to as the "Union".)

Article One
Recognition

The Board recognizes the Union as the exclusive bargaining representative of employees in the title School Medical Inspector, including substitutes, and in any successor title(s) the duties of which are similar to those performed by employees in the unit.

Employees in the unit are referred to as "employees", "school medical inspectors" or "inspectors".

Article Two
Fair Practices

The Union agrees to maintain its eligibility to represent all employees by continuing to admit persons to membership without discrimination on the basis of race, creed, color, national origin, sex, marital status, sexual orientation, handicapping condition or age and to represent equally all employees without regard to membership or participation in, or association with the activities of, any employee organization.

The Board agrees to continue its policy of not discriminating against any employee on the basis of race, creed, color, national origin, sex, marital status, sexual orientation, handicapping condition, age or membership or participation in, or association with the activities of any employee organization.

Article Three
Hours and Work Year

A. Work Week

The workweek for full-time employees covered by this Agreement shall continue to be 15 hours per week. Hourly substitute school medical inspectors may have a shorter work week.

B. Work Year

School medical inspectors shall have a work year beginning September 1 and ending the following August 31. They shall have the holidays established by the Board and/or designated by the Chancellor as holidays on the same basis as other Board employees.

C. Vacation

The vacation entitlement for full-time school medical inspectors shall continue to be 31 days per year.

Article Four
Assignments

School medical inspectors shall retain their present schedule of hours and assignments. Should new assignments or hours become available, incumbent school medical inspectors shall be informed thereof and the senior qualified school medical inspector shall be selected. Seniority as used herein shall include all service as a school medical inspector.

Article Five
Salaries and Pay Practices

A. Salaries

School medical inspectors shall receive salaries as follows:

	Effective 10/13/2007	Effective 5/19/2008
Employees newly employed in title after June 21, 1979	$68,458	$72,109
Incumbents in title as of June 21, 1979	$73,972	$77,918
Hourly employees	$104.17	$109.73

B. Pay Practices

1. Electronic Funds Transfer

The Board has in place an electronic funds transfer (EFT) program without resort to a payroll lag for those bargaining unit members who are regularly scheduled employees in titles paid on the Q Bank and who elect the receipt of their paychecks by electronic funds transfer. Annual enrollments will take place each March as of school year 2007-2008, all newly hired employees of the Board of Education shall have their wages paid through direct deposit.

2. Bi-Weekly Payroll

The parties agree that a biweekly payroll gives employees a date certain for receipt of their pay. Therefore, the Board will convert the pedagogical payroll to a biweekly payroll from a semimonthly payroll as soon as practicable. The parties will make whatever contractual changes are technically necessary to accomplish this goal.

3. Lump Sum Payment

Effective January 1, 2007, a lump sum cash payment shall be paid to all Employees covered by this Agreement ("Eligible Employees").

The lump sum cash payment shall be pensionable, consistent with applicable law, and shall not become part of the Employee's basic salary rate.

Full-time Employees shall be paid $750. Other Eligible Employees shall have the amount of their cash payment pro-rated based on their hours worked during the applicable payroll periods between mid September and mid December compared to the full-time hours of Employees in their title.

C. Performance Incentives Committee

A committee co-chaired by the Chancellor, the President of the UFT and the New York City Commissioner of Labor Relations, or his or her high-ranking designee, shall be established to investigate the viability and desirability of merit pay and to address other compensation issues such as comparability, skills and responsibility, shortage and hard to staff areas and potential career ladder opportunities.

Article Six
Health, Welfare Fund and Other Benefits

A. Choice of Health Plans

The Board will continue to provide for each employee, except hourly substitutes, covered by this Agreement a choice of health and hospital insurance coverage from among designated plans and the Board agrees to pay the full cost of such coverage. Regularly appointed employees who are laid off and who are covered by a health and hospital insurance plan at the time they are laid

off shall continue to be so covered for ninety days from the day on which they are laid off, and the Board will pay the full cost of such coverage.

School medical inspectors serving in a regularly scheduled part-time position (commonly known as F-status) will be entitled to full health and welfare fund benefits if scheduled to work for at least one-half of the regular full-time schedule for that particular title. Inspectors in a regularly scheduled, but less than half-time position are not eligible for health insurance or welfare fund benefits.

The Board, the Union and the City of New York continue to discuss, on an ongoing basis the citywide health benefits program covering employees represented by the Union and employees separated from service. Any program-wide changes to the existing basic health coverage will be expressly incorporated into and made a part of this Agreement.

The parties acknowledge that collective bargaining regarding health benefits is within the purview of negotiations between the Municipal Labor Committee and the City. Cost-containment initiatives and program modifications in the City Health Benefits Program shall be discussed with the Municipal Labor Committee.

B. Supplemental Welfare Fund Benefits

1. The Board will provide funds at the rate of $1,685 effective October 13, 2007 ($1,720 effective October 21, 2009) per year on a pro-rata basis per month on behalf of each employee except hourly substitutes covered by this Agreement, whether a member of the Union or not, for the purpose of making available for each such employee supplemental benefits under a plan to be devised and established jointly by representatives of the Board and of the Union.

2. Domestic partners of covered employees will be provided with welfare fund benefits in the same manner in which covered employees who are married receive such benefits for their spouses.

3. The Board will continue to make payments for supplemental benefits at the rates per year set forth herein on a pro-rata basis per month for ninety days from the day of layoff on behalf of each regularly appointed employee who is laid off.

4. The Union has established a supplemental welfare benefits fund program for employees represented by the Union who have separated from service subsequent to June 30, 1970, who were eligible to receive supplemental welfare benefits and who were covered by a welfare fund at the time of such separation pursuant to a separate agreement between the Board of Education and the certified Union representing such employees, who remain primary beneficiaries of the New York City Health Insurance Program and are entitled to benefits paid for by the City through such program.

5. The Board of Education shall contribute the following annual amounts on a pro-rata monthly basis for each eligible individual for remittance to the Union to such supplemental benefits fund pursuant to the terms of a supplemental agreement to be reached by the parties:

a. Eligible employees separated from service from July l, l970 through September 8, l982:

Effective October 13, 2007……..$1,125
Effective October 21, 2009……..$1,160

b. Eligible Employees separated from service after September 8, l982:

Effective October 13, 2007……..$1,565

Effective October 21, 2009……..$1,600

6. Effective May 1, 2008, there shall be a one-time payment to the welfare fund in the amount of $166.67 on behalf of each covered employee, as defined in the UFT Welfare Fund Supplemental Agreement, who is receiving benefits on May 1, 2008.

7. Employees who are separated from service and thereafter return to active service will be entitled to the same Welfare Fund benefits as other active employees. For the period of their active employment, such employees will not also receive retiree benefits. Accordingly, the Union Welfare Fund will receive only one contribution on behalf of each such employee, which shall be at the applicable contribution rate for active employees.

8. The Health Benefits Agreement, dated July 22, 2005. is deemed to be part of this Agreement. The side letter agreements between the City Commissioner of Labor Relations James F. Hanley, and UFT President Randi Weingarten, dated June 30, 2004 and July 13, 2005, are deemed to be part of this Agreement. Pursuant to those Agreements, the parties have agreed to a series of payments to the Welfare Fund.

9. Pursuant to the Municipal Labor Coalition Benefits Agreement, the Union Welfare Fund shall provide welfare fund benefits equal to the benefits provided on behalf of an active Welfare Fund-covered employee to widow(er)s, domestic partners and/or children of any active Welfare Fund-covered employee who dies in the line of duty as that term is referenced in Section 12-126(b)(2) of the New York City Administrative Code. The cost of providing this benefit shall be funded by the Stabilization Fund.

C. Health Care Flexible Spending Account

1. A flexible health care spending account shall be established pursuant to Section 125 of the Internal Revenue Code. Those employees covered by this Agreement shall be eligible to participate on the same basis as they are eligible to participate in the city-wide health benefits program. Participating employees shall contribute at least $260 per year up to a maximum of $5000 per year. The labor-management health committee which includes Union and City representatives may modify these contributions levels, based on experience of the plan.

2. Expenses covered by the account shall include but not be limited to deductibles, co-insurance, co-payments, excess expenses beyond plan limits, physical exams and health related transportation costs for vision, dental, medical and prescription drug plans where the employee and dependents are covered. In no case will any of the above expenses include those non-deductible expenses defined as non-deductible in IRS Publication 502.

3. An annual administrative fee of $48.00 shall be charged for participation in the program. Pursuant to Section 125 of the Internal Revenue Code, an employee's participation in the account is irrevocable during any plan year and any excess funds in an employee's account at the close of any plan year is retained by the plan and not refundable to the employee.

D. Dependent Care Assistance Program

1. A dependent care assistance program shall be established pursuant to Section 125 of the Internal Revenue Code. Those employees covered by this Agreement shall be eligible to participate on the same basis as they are eligible to participate in the citywide health benefits program. Participating employees shall contribute at least $500 per year up to a maximum of $5,000 per year. The labor-management health committee which includes Union and City representatives may modify these contribution levels, based on experience of the plan.

2. An annual administrative fee of $48.00 shall be charged for participation in the program. Pursuant to Section 125 of the Internal Revenue Code, an employee’s participation in the

account is irrevocable during any plan year and any excess funds in an employee's account at the close of any plan year is retained by the plan and not refundable to the employee.

E. Transportation Benefit Program

Employees are eligible to participate in the NYC Transit Chek program.

The parties agree that the City will expand the current Transit Chek program to offer to eligible employees the ability to purchase a Transit Debit Card through payroll deductions in accordance with IRC Section 132. In addition to the current MTA Surface and Subway lines, the Transit Debit Card may be used to purchase tickets for mass transit commutation only (*i.e.*, LIRR, LI MTA Buses, MetroNorth). The administrative fee for this benefit will be borne by the participants and will be deducted on a prorated basis from the participating employee's paycheck. After one year of experience with this benefit, the City will examine the level of participation and the associated costs of providing this benefit to determine whether or not the administrative fee requires adjustment.

The parties further agree to examine the possible expansion of this benefit to include other regional mass transit carriers.

Article Seven
Cumulative Absence Reserve and Sick Leave

A. Cumulative Absence Reserve

1. School medical inspectors shall be granted absence refunds for illness on application, without a statement from a physician, for a total of no more than 12 days in any work year. School medical inspectors will be allowed to use three of such 12 days of sick leave for personal business provided that reasonable advance notice is given to the Director of the Bureau. Inspectors may use two of the three days allowed for personal business in any school year for the care of ill family members. For the purpose of this provision family members shall be defined as: spouse; natural, step or foster parent; child; brother or sister; father-in-law; mother-in-law, any relative residing in the household; and domestic partner provided such domestic partner is registered pursuant to the terms set forth in the New York City Administrative Code Section 3-240 *et seq*. Personal business days may be used for personal business which cannot be conducted on other than a work day and other than working hours or for attendance at professional workshops, conferences or institutes related to mandatory educational requirements for maintaining licensure as a doctor.

2. Unused sick days shall be cumulative up to a maximum of 200 days.

3. Unused sick days accumulated in another Board or City position shall be transferred to the employee's cumulative absence reserve bank when he/she becomes a school medical inspector. Sick days accumulated as an hourly substitute school medical inspector, or as a regular substitute school medical inspector shall be transferred when the employee's status changes to that of regular substitute or regularly appointed school medical inspector.

B. Additional Sick Leave

Upon the recommendation of the Chief Executive of the Division of Human Resources and the approval of the Personnel Board, regular employees may also be granted sick leave with pay for three months after 10 years of City service, after all credits have been used. In special instances, sick leave with pay may be further extended, with the approval of the Executive Director.

The Chief Executive shall base the determination in this matter on the nature and extent of illness and the length and character of service. Such extension, if granted, may not exceed nine months.

Article Eight
Maternity and Child Care Leaves

The Board will continue its present policies with respect to maternity leave and child care leave.

Article Nine
Leaves Without Pay

A. Leaves of absence without pay may be granted on application for a period of three years or less for the purpose of study, restoration of health, or for other satisfactory reasons.

B. No employee upon return to actual service shall be placed on a salary step or salary level lower than the employee's salary step or salary level immediately prior to the initial date of the leave.

C. Inspectors may be granted a leave of absence without pay of up to two years to adjust personal affairs (such as the winding up of a family business on the death or incapacitation of the family member in charge) in accordance with existing rules and regulations. The inspector may consult with the Union with respect to the matter. Inspectors who are denied such a leave may refer the matter to the Chief Executive of the Division of Human Resources for review and final determination.

Article Ten
Conferences

The Chancellor may, upon application, grant leaves of absence with or without loss of pay and, in the case of leaves of absence without loss of pay, with or without expenses, to school medical inspectors for the purpose of attending conferences, meetings, or conventions.

Article Eleven
Payment for Jury Duty

School medical inspectors who are required to serve on jury duty will receive full salary during the period of such service, subject to their prompt remittance to the Board of an amount equal to the compensation, if any, paid to them for such jury duty.

Article Twelve
Non-Attendance

The following absences by school medical inspectors shall continue to be regarded as non-attendance for which no salary deduction shall be made:

A. Absence due to attendance at the funeral of an associate, provided permission shall have been granted by the Director of the Bureau.

B. Absence on account of the requirements of the Board of Education or of a committee thereof, of the Chancellor, or of the Division of Human Resources.

C. Absence on account of attendance at court or before any public board, commission or officer on business of the Board of Education, or under subpoena as a witness in a case in which

the employee or anyone related to the employee in any way has no financial or personal interest whatsoever either directly or indirectly and where the employee's attendance is not required as a result of any employment, occupation or voluntary act on the part of the employee.

D. Absence with permission on retirement leave of absence.

E. Absence on account of military or naval duty in accordance with the requirements of Section 242 of the Military Law of the State of New York. Entrance into the military service shall be considered leave of absence with pay during the first thirty days of such service unless provision for payment during such military service is otherwise provided. Regular substitute personnel are not included within the provisions of this paragraph.

F. Lateness or absence for less than one-half day, on account of extraordinary delay in transportation, provided the absence shall have been excused for less than one-half day by the Chief Executive of the Division of Human Resources. The Chancellor may excuse absences of more than one-half day, but not more than two days, on account of extraordinary delay in transportation.

G. Absence on account of compliance with quarantine regulations of a public health officer or of a department of health, provided a certificate shall have been secured from a public health officer or a department of health showing the duration of period of quarantine, with the initial and terminal dates.

H. In the case of death in the immediate family, absence on the day of death and all work days within the period of three calendar days immediately following the day of death exclusive of weekends and holidays shall be excused. The "immediate family" includes a parent, child, brother, sister, grandparent, grandchild, spouse or domestic partner, or parent of a spouse or domestic partner, or any other relative or step-relative of staff member, spouse or domestic partner, residing in the personal household. The relationship of the deceased to the applicant, with the date of death and the date of the funeral, shall be shown in the application. In addition thereto, the Chancellor shall have the power to excuse the absence of an employee with pay beyond the time allowed by the Chancellor's regulations when such absence is necessary because of attendance at the funeral of a relative in the immediate family.

I. Absence of not more than one day due to attendance at the funeral of a brother-in-law or sister-in-law, or son-in-law or daughter-in-law, or niece or nephew, or aunt or uncle who is not a member of the immediate household.

J. Absences due to the observance of religious holy days shall be reported as such and shall not be considered in determining the ratings of employees.

K. Absence to receive a degree, to attend graduation of a son, daughter, husband or wife may be excused with pay for one day with the prior approval of the Medical Director and the Chief Executive of the Division of Human Resources. Where the degree to be conferred or the graduation exercises to be held are at a place remote from the City of New York, necessitating travel on school days to and from such place, prior to and following the day on which the exercises are held, not more than two additional days of absence may be excused with pay; provided however, that if the total absence is to be for more than one day, prior approval by the Medical Director and the Chief Executive of the Division of Human Resources must be obtained. In no case shall any school medical inspector be excused for more than three successive calendar days.

Article Thirteen
Retirement and Deferred Compensation

A. Retirement Leave of Absence

Absence from duty on retirement leave of absence with full pay on the part of an employee under regular appointment, who is a member of the Teacher's Retirement System and who will be eligible for service retirement upon completion of said retirement leave, shall be subject to the provisions enumerated herein below:

1. A retirement leave of absence with full pay shall be granted on the basis of one half of the accumulated unused sick leave up to a maximum of one school term, or the equivalent number of school days. For this purpose one school term or the equivalent number of school days thereof shall be defined as "five calendar school months, exclusive of July and August."

2. A retirement leave of absence shall be terminated when:

(a) a member on such leave files an application with the Teacher's Retirement System for immediate retirement;

(b) a member on such leave files an application with the Chief Executive of the Division of Human Resources for reinstatement to active service;

(c) a member on such leave applies to the Chief Executive of the Division of Human Resources for excuse of absence with pay owing to personal illness, provided such application for excuse of absence with pay shall be approved by the Medical Director of the Board of Education.

3. A member who has been on retirement leave of absence and who terminates such leave, shall be entitled to the total accumulated unused reserve for excuse of absence with pay owing to personal illness, minus the number of school days actually used during the period of the retirement leave. Termination pay pursuant to this provision shall be paid in three equal cash installments payable two months, fourteen months and twenty-six months following his/her termination date.

4. No member is eligible at any time to receive retirement leave of absence in excess of a total of five calendar school months for all service in the Board of Education of the City of New York.

5. A substitute may be employed in the place of any member who is on retirement leave of absence.

6. Application for retirement leave of absence shall be made to the Chief Executive of the Division of Human Resources at least one month prior to the initial date of the requested absence on the appropriate form to be provided.

B. Pension Benefits Agreement and Deferred Compensation Plan

1. The Pension Benefits Agreement dated June 6, 2000 is deemed to be a part of this Agreement.

2. The Board and the City shall promptly make available to the employees covered by this Agreement an eligible deferred compensation plan under Section 457 of the Internal Revenue Code in accordance with all applicable laws, rules and regulations.

C. Pension Legislation

The parties have agreed to jointly support pension legislation as set forth in the letter attached as Appendix C.

D. Tax Deferred Annuity Plan

The parties agree to enroll newly-hired employees who do not enroll in a retirement or pension system maintained by the City of New York in the Board's 403(b) Annuity Plan at the time the employee is hired. It is further agreed that such employees will be provided with the option to withdraw from enrollment in the Board's 403(b) Annuity Plan.

Article Fourteen
Safety and Health

A. Safety Plan

The Board shall make reasonable efforts to provide for the personal security of employees working in buildings operated by the Board during the working hours of such employees, and such provisions for their personal security shall be included in the Safety Plan for the building.

B. Assistance in Assault Cases

1. The principal or head of the facility shall report as soon as possible but within 24 hours to the Office of Legal Services, to the Chief Executive of School Safety and Planning and to the Victim Support Program that an assault upon an employee has been reported to him/her. The principal or head of the facility shall investigate and file a complete report as soon as possible to the Office of Legal Services and to the Chief Executive of School Safety and Planning. The full report shall be signed by the employee to acknowledge that he/she has seen the report and he/she may append a statement to such report.

2. The Office of Legal Services shall inform the employee immediately of his/her rights under the law and shall provide such information in a written document.

3. The Office of Legal Services shall notify the employee of its readiness to assist the employee. This assistance is intended solely to apply to the criminal aspect of any case arising from such assault.

4. Should the Office of Legal Services fail to provide an attorney to appear with the employee in Family Court, the Board will reimburse the employee if he/she retains his/her own attorney for only one such appearance in an amount up to $40.00

5. An assaulted employee who presses charges against his/her assailant shall have his/her days of court appearance designated as non-attendance days with pay.

6. The provisions of the 1982-83 Chancellor's Memorandum entitled, “Assistance to Staff in Matters Concerning Assaults” shall apply.

C. Health and Safety Information

The Board will issue a circular advising staff of their rights under the New York State Occupational Safety and Health Act (SOSHA), and post the notices required by law.

D. Citywide Security and Discipline Committee

1. The Union and the Board shall establish a joint committee which shall meet on a regular basis to discuss and consider appropriate means of resolving safety and discipline issues. Other city agencies will be invited to participate when the Union and Board deem it appropriate.

2. The joint committee or joint designees and any experts the Union and/or Board may designate will have access to all schools and other Board workplaces in which staff represented by the Union are assigned for the purpose of investigating and assessing allegedly unsafe working conditions. If possible, such visits shall be made on reasonable notice to the school, and in a manner that minimizes disruption to the school or other workplace.

3. The joint committee, from time to time, may establish sub-committees to deal with special safety/discipline issues. It shall establish a sub-committee to deal with the issues of safety and discipline in special education schools and programs.

E. Environmental Health and Safety Joint Committee

1. The Union and the Board shall establish a joint committee which shall meet on a regular basis to discuss and consider appropriate means of resolving health and safety issues. The School Construction Authority will be invited to participate on issues raised by school capital modernization projects.

2. The joint committee or joint designees, and any experts the Union and/or the Board may designate, will have access to all schools and other Board workplaces in which staff represented by the UFT are assigned for the purpose of investigating and assessing allegedly hazardous working conditions. Such visits will be made upon reasonable notice to the Board's office of occupational safety and health and in a manner that minimizes disruption to the school or other workplace.

F. Safe Environment

1. In recognition of the importance of employee safety and health, the Board agrees to provide the appropriate recognized standards of workplace sanitation, cleanliness, light, and noise control, adequate heating and ventilation. The Board of Education agrees to eliminate recognized hazards that are likely to cause serious physical harm.

2. If the Union believes a situation has arisen that is likely to cause serious physical harm, it may bring it to the attention of the Chancellor or designee who shall immediately assess the situation, including on-site inspection where appropriate, and take such action as the Chancellor deems appropriate. In the event the Union seeks to contest the Chancellor's determination, it may exercise its statutory rights under New York State Labor law Section 27a (PESH) or other legal authority.

3. The Board will issue a circular advising staff of their rights under PESH and other applicable law and post the notices required by law.

G. Renovation and Modernization

The Union and the Board believe that modernization and renovation projects are vital to enable children to receive the educational services to which they are entitled. However, in order to limit any educational disruption that a modernization project can create, and to protect the health and safety of the staff and students that use a school setting undergoing modernization, the Board and Union have agreed to standard procedures to help to ensure that health, safety and educational standards are maintained during school capital modernization projects. These standard procedures will be applied in school capital modernization projects undertaken by the School Construction Authority and will be posted and reviewed with all staff in any school undergoing modernization. Where conditions require it, the standard procedures may be modified after consultation with the Union.

Article Fifteen
Damage or Destruction of Property

A. Employees shall not be held responsible for loss within a school or other Board facility of Board property when such loss is not the fault of the employee. This does not exonerate the employee from responsibility for Board property in his/her charge.

B. The Board will reimburse employees, in an amount not to exceed a total of $100 in any school year, for loss or damage or destruction, while on duty in a school or other Board facility of personal property of a kind normally worn to or brought into a school or other Board facility, when the employee has not been negligent, to the extent that such loss is not covered by insurance.

The term "personal property" shall not include cash. The terms "loss", "damage" and "destruction" shall not cover the effects of normal wear and tear and use.

Article Sixteen
Excessing, Layoff and Recall

1. The BOE may offer excessed personnel who have not secured a regular assignment after at least one year of being excessed, a voluntary severance program in an amount to be negotiated by the parties. If the parties are unable to reach agreement on the amount of the severance payment, the dispute will be submitted to arbitration pursuant to the contractual grievance and arbitration procedure. Such a severance program, if offered, will be offered to all personnel who have been in excess for more than one year.

In exchange for receipt of such severance, an excessed person shall submit an irrevocable resignation or notice of retirement.

2. If a citywide excess condition requires a reduction in the number of school medical inspectors, applicable provisions of law will be followed to determine the school medical inspector to be laid off without fault and delinquency with the understanding that said employee is to be placed on a preferred list for reinstatement to his/her former position.

Article Seventeen
Due Process and Review Procedures

A. Employee Files

Official employee files shall be maintained under the following circumstances:

1. No material derogatory to an employee's conduct, service, character or personality shall be placed in the file unless the employee has had an opportunity to read the material. The employee shall acknowledge that he/she has read such material by affixing his/her signature on the actual copy to be filed, with the understanding that such signature merely signifies that he/she has read the material to be filed and does not necessarily indicate agreement with its content. However, an incident which has not been reduced to writing within three months of its occurrence may not later be added to the file.

2. The employee shall have the right to answer any material filed and his/her answer shall be attached to the file copy.

3. Upon appropriate request by the employee, he/she shall be permitted to examine his/her file.

4. The employee shall be permitted to reproduce any material in his/her file.

5. Members may not grieve material in the file. However, the employee shall have the right to append a response to any letter. If disciplinary charges do not follow, the letter and the response shall be removed from the files three years from the date the original material is placed in the file.

B. Counseling Memos

Supervisors may issue counseling memos. Counseling memos are not disciplinary. Counseling memos provide the opportunity for supervisors, in a non-disciplinary setting, to point out to employees areas of work that the supervisor believes need improvement. Counseling memos should include the supervisor's proposals for how such improvement may be achieved. Any employee who receives a counseling memo may request from the supervisor either suggestions for how to improve or request the supervisor to model such improvement for the employee. Counseling memos are a vehicle for supportive improvement.

1. A counseling memo may only be written to an employee to make him/her aware of a rule, regulation, policy, procedure, practice or expectation. A counseling memo cannot include any disciplinary action or threat of disciplinary action.

a. "Counseling Memo" must appear at the top of the memo in bold print and capital letters.

b. At the conclusion of the memo the following must appear in bold print: "A counseling memo is not disciplinary in any manner and cannot be used in any action against an employee except to prove notice if the employee denies notice." If the language required in a) and b) is not included in the memo, it must be added.

c. A counseling memo must be presented to an employee within one (1) month of the latest incident recounted in the memo. The memo may only reference similar prior incidents that occurred no more than four (4) months from the date of the latest incident.

2. Counseling memos may not be used in any action or evaluation involving an employee in the bargaining unit ("U" rating, per session job, etc.) except to establish that the employee who denies knowledge of a rule, regulation, policy, procedure, practice or expectation was given prior notice of it, or to impeach factual testimony.

a. Counseling memos may not be used in the rating of an employee in the bargaining unit.

b. Counseling memos may not be referred to in, or attached to, any other letter sent to an employee for their official school file.

3. Counseling memos may not be grieved. Any employee who receives a counseling memo shall have the right to answer within one (1) month of receipt of the counseling memo and the answer shall be attached to the file copy of the counseling memo.

4. All counseling memos will be permanently removed from employee's official school files three (3) years after the latest incident referred to in the memo.

C. Summons

1. An employee summoned by the Medical Director to a conference which may lead to disciplinary action for reasons of misconduct may be accompanied, at his/her option, by the chapter leader or a designated alternate.

2. Employees summoned to the Division of Human Resources shall be given two days notice and a statement of the reason for the summons, except where an emergency is present or where considerations of confidentiality are involved.

Whenever an employee is summoned for an interview for the record which may lead to disciplinary action, he/she shall be entitled to be accompanied by a representative who is employed by the city school system, or by an employee of the Union who is not a lawyer, and he/she shall be informed of this right. However, where the Division of Human Resources permits an attorney who is not a member of the city school system to represent any participant in the interview, the employee shall be entitled to be represented by an attorney. An interview which is not held in accordance with these conditions shall not be considered a part of the employee's personnel file or record and neither the fact of the interview nor any statements made

at the interview may be used in any subsequent Board proceeding involving the employee. It is understood that informal conferences, such as those between the Division of Human Resources and an employee, for professional improvement, may be conducted off the record and shall not be included in the employee's personnel file or record.

3. Incidents investigated by the Chancellor or by a governmental investigatory agency must be reduced to writing by the appropriate supervisor within 6 months and 12 months respectively from the date the incident either occurred or should have been discovered by the appropriate school officials. Employees must receive a complete copy of any such writing and an opportunity to answer in writing and to have such response attached. The writing may not be incorporated into the employee's personnel file or record, unless this procedure is followed, and any such writing will be removed when an employee's claim that is inaccurate or unfair is sustained.*

D. Discontinuance of Probationary Service

1. Regular substitutes and school medical inspectors on probation, except as provided in subparagraph 2 below, shall be entitled to the review procedures before the Chancellor as prescribed in Section 4.3.2 of the by-laws of the Board of Education. By-law 4.3.2 procedures for the review of a recommendation by a superintendent for discontinuance of probationary service shall be modified to provide for the following:

a. The 4.3.2 committee shall be a tripartite committee of professional educators, one selected by the employee, one by the Board and a third selected by the other two from a list agreed upon by the Board and the Union.

b. The committee will make an advisory recommendation to the community school board or the Chancellor for central programs within 20 days after the hearing.

c. The costs of the employee's representative shall be paid by the employee. The costs of the Board's representative shall be paid by the Board. The costs of the mutually selected member of the committee shall be shared by the Board and the employee.

2. Employees on probation who have completed at least three years of service on regular appointment in the Bureau shall be entitled, with respect to the discontinuance of their probationary service, to the same review procedures as are established for tenured school medical inspectors under section 3020-a of the Education Law.

3. Inspectors who receive doubtful or unsatisfactory ratings may appeal under Section 4.3.1 of the by-laws of the Board of Education.

E. Suspension

Any employee who is suspended pending hearing and determination of charges shall receive full compensation pending such determination and imposition of any penalty except as set forth in Article 17G5 and 17G6.

F. Rating "Not Applicable"

A rating of "Not Applicable (NA)" is to be used only in situations where a pedagogical employee is reassigned out of his/her regular assignment for disciplinary reasons. The "NA" rating will apply only for the period of reassignment, cannot be used in any proceeding as evidence of wrongdoing and will not otherwise affect any other rights afforded in the Agreement where ratings are an issue.

G. 3020-a Procedures

* The parties disagree as to the applicability of Section 10 of the October 2005 MOA to this Article 17C3

Tenured employees facing disciplinary charges filed, or in the case of Section 1, "Time and Attendance", discipline pursuant to that Section, will be subject to Section 3020-a as modified by paragraphs 1 to 10 below.

1. Time and Attendance

If the Board seeks to discipline a tenured employees regarding absences and/or lateness but seeks a penalty short of termination, the following expedited procedure will apply:

The Board will notify the employee that it intends to bring disciplinary action against the employee pursuant to this section. The Board will include in this notice the employee's attendance record and any other documentation it intends to introduce at the hearing and a statement that pursuant to this section the arbitrator may award any penalty, or take other action, short of termination.

Within 15 calendar days following this notice, the employee must notify the Board in writing of the nature of his\her defense and submit any documentation s\he intends to submit into evidence as well as a medical release for any medical documents related to such defense.

If either party believes that it requires additional documents, it may request a telephonic conference with the arbitrator.

The expedited hearing will occur within one month of the Board's notification to the employee mentioned above. The hearing will be informal and the normal rules of trial procedure and evidence shall not apply. The arbitrator will issue an award and short decision within 15 calendar days of the hearing. The arbitrator's award will be final and binding on all parties. The award may be introduced in a 3020-a hearing and any findings shall be binding on the 3020-a arbitrator.

One arbitrator, agreed upon between the parties, will hear all absence and lateness cases hereunder. The parties may expand the number of arbitrators if necessary. The arbitrator will hear 4 cases per hearing date on a staggered schedule, but in no situation will one case take more than ½ a day. The parties may expand the number of cases heard in a day if they deem it practical

2. Rotational Panel

As discussed and agreed upon, all parties would be served better by the implementation of a permanent arbitration panel. The panel members must be agreeable to both sides. However, if the parties cannot agree to a full complement of 20 panel members, additional impartial arbitrators shall be selected by the parties in accordance with the American Arbitration Association (AAA) procedures (strike and rank method) from list(s) provided by the AAA until the desired number (20) is reached to establish such permanent panel.

Panel members shall serve for a maximum of a one-year term. At the expiration of such term, the parties must agree to have arbitrators continue to serve on the panel, and if not replacement members will be selected by the method outlined above. Removal prior to the end of the one-year term must be for good and sufficient cause upon mutual agreement of the parties.

Any arbitrator who agrees to serve on the rotational panel must agree to the following terms:

a. Each arbitrator selected to serve on this rotational panel must agree to provide five (5) consecutive hearing dates per month for the months of September through June and 2 hearing dates for the months of July and August. Consecutive days may be construed to mean five (5) dates within two (2) weeks unless otherwise agreed.

b. Arbitrators must provide three (3) dates, within ten (10) to fifteen (15) calendar days from the date a case was assigned to him or her, for a pre- hearing conference. One of the dates

shall be at 9:00 a.m. Advocates must accept one (1) of the three (3) dates offered or it will be assumed that the date or dates offered at 9:00 a.m. is (or are) acceptable. Said dates must be in compliance with Education Law Section 3020-a (within 10 to 15 days from the date selected to serve).

c. At the pre-hearing conference, arbitrators must provide and parties must accept five (5) consecutive hearing dates within the statutory timeframe as delineated in Education Law Section 3020-a. Consecutive days may be construed to mean five (5) dates within two (2) weeks unless mutually agreed.

d. The parties are committed to having these cases heard in an expeditious manner. For this reason, absent extraordinary circumstances, arbitrators are not to adjourn hearing dates. It should be noted that normally attorney or party scheduling conflicts are not extraordinary circumstances.

e. In all cases, as delineated in Education Law Section 3020-a the final hearing shall be completed no later than 60 days from the pre-hearing conference and the written decision must be rendered within 30 days from the final hearing date.

f. There is a presumption that charges against the same employee will be consolidated unless the arbitrator finds that to do so would deny a fair hearing. Additionally, in routine matters, any motions must be made and responded to orally. Thereafter, a decision shall be rendered on the issue the same date the motion was made. Should the arbitrator find that written motion practice is necessary, either party reserves the right to respond orally but, in no case, shall motion practice take place outside the scope of the timelines as outlined in Education Law, Section 3020-a.

Failure to abide by these rules shall be "good and sufficient" grounds for removal of an arbitrator.

3. Expedited Hearings

Prior to the pre-hearing conference, the Board shall determine whether the nature of the case would permit offering Respondent expedited arbitration rather than regular arbitration of the case. If the Respondent accepts the offer of expedited arbitration, the hearing shall proceed in accordance with the expedited procedure set forth below and the Board may not seek a penalty to exceed six (6) months or the equivalent monetary penalty. Should the Respondent reject the offer of expedited arbitration, the case shall proceed in accordance with the regular arbitration proceeding and the board may seek any penalty including termination.

Where the offer of expedited arbitration was rejected, the arbitrator (or the arbitration panel) shall not be informed of the offer of expedited arbitration nor that the offer was rejected.

Cases heard under the expedited arbitration procedure shall be completed in three (3) consecutive days. Each advocate shall be provided equal time to present his or her respective case. Cross-examination usually will not go beyond the scope or duration of the direct examination.

During the course of the hearings, should the evidence reveal more serious misconduct than originally charged, the arbitrator, upon his or her initiative, or upon the Board's motion, is empowered for good cause to end the expedited proceeding and order a new, regular arbitration proceeding before a different arbitrator. At the regular arbitration, the Board may seek any penalty including termination. Upon a showing of unavailability during the regular arbitration, the prior record of a completed witness who testified in the expedited arbitration shall be admissible.

4. Investigations

Where the Board conducts an investigation of an employee and the employee has been reassigned to administrative duties pending the outcome of such investigation, the parties agree that the employee will be restored to service no later than 6 months from the date of his or her removal unless 3020-a charges have been preferred against the employee. Should the employee be restored to service, this event does not preclude the Board from subsequently preferring 3020-a charges against the employee. If charges are preferred, the employee shall remain reassigned, at the Board's discretion, pending the outcome of the disciplinary process. This requirement to restore an employee to service after 6 months does not include investigations conducted by the Special Commissioner of Investigation or investigations that are related to criminal prosecutions.

5. Serious Misconduct

The parties agree that certain types of alleged misconduct are so serious that the employee should be suspended without pay pending the outcome of the disciplinary process. Serious misconduct shall be defined as actions that would constitute:

a. the felony sale, possession, or use of marijuana, a controlled substance, or a precursor of a controlled substance or drug paraphernalia as defined in Article 220 or 221 of the Penal Law, or

b. any crime involving physical abuse of a minor or student (Crimes involving sexual abuse of a minor or student are addressed in paragraph 6 below), or

c. any felony committed either on school property or while in the performance of medical inspector duties, or

d. any felony involving firearms as defined in Article 265 of the Penal Law.

If an employee is accused of committing serious misconduct, the employee shall be removed from payroll for a term not to exceed two (2) months after a finding by the "probable cause arbitrator" that there is probable cause to believe that the actions alleged were committed by the employee and that they constitute "serious misconduct" as defined above. Probable cause exists when evidence or information which appears reliable discloses facts or circumstances making it likely that such conduct occurred and that such person committed the conduct. To establish probable cause, the investigator assigned to the matter must be present and testify under oath before the arbitrator. The Board may also be required to produce signed statements from the victim or witnesses, if any. Thereafter, the respondent shall have an opportunity to respond orally to the offer of proof. The arbitrator may ask relevant questions or may make further inquiry at the request of Respondent. The hearing shall not require testimony of witnesses nor shall cross-examination be permitted.

Said probable cause hearing usually shall not exceed one half of a hearing day.

One arbitrator, agreed to by both parties, shall be assigned to hear all probable cause matters for a period of one year. If the parties cannot agree upon one arbitrator, each party shall select one arbitrator who together will select the probable cause arbitrator.

Should the Board meet its burden of establishing probable cause of serious misconduct, the employee shall remain suspended without pay during the pendency of the disciplinary action, but in no event shall such period exceed two months except as set forth herein.

The parties expect that these cases shall be completed within two (2) months. However, where it is not possible to complete the hearing within the two (2) month period despite the best efforts of all parties, and where the arbitrator believes that the evidence already presented tends

to support the charges of serious misconduct, the arbitrator may extend the period of suspension without pay for up to thirty (30) days in order to complete the proceedings.

If the Respondent requests not to have the case proceed for a period of thirty (30) days or more and that request is granted, during the period of this adjournment, the Respondent shall remain in non-paid status. As noted above, however, the parties are committed to having these cases heard in an expeditious manner. For this reason, absent extraordinary circumstances, arbitrators are not to adjourn hearing dates.

While suspended without pay pending the arbitration hearing on serious misconduct charges, the Respondent may continue his or her existing health coverage, except that in no event shall the Respondent be entitled to continue his or her existing health coverage for more than six (6) months while on non-paid status except at the absolute discretion of the Chancellor. In the event that the Respondent is exonerated of all serious misconduct charges, the employee shall be restored to his or her position and be entitled to receive back pay and be made whole for the amount of time he/she remained off payroll. In the event that the arbitrator finds the employee guilty of the serious misconduct and imposes a penalty less than termination, the arbitrator shall decide whether and to what extent a reinstated employee shall be entitled to receive any back pay for the time the employee was suspended without pay.

The parties agree that these types of cases shall receive the highest priority, and, upon the Board's request, hearings may be held on such matters during any days previously committed by a rotational panel to other employees, as set forth above. In other words, hearings for serious misconduct take precedence over other disciplinary matters, and the Board may require adjourning other cases previously scheduled before the assigned arbitrator during that time frame in order for that arbitrator to hear serious misconduct cases within the two-month time frame.

6. Sexual Offenses Involving Students or Minors

A tenured pedagogue who has been charged under the criminal law or under §3020-a of the New York State Education Law with an act or acts constituting sexual misconduct (defined below) shall be suspended without pay upon a finding by a hearing officer of probable cause that sexual misconduct was committed.

A rebuttable presumption of probable cause shall exist where the Special Commissioner of Investigations ("SCI") substantiates allegations of sexual misconduct, or a tenured pedagogue has been charged with criminal conduct based on act(s) of sexual misconduct.

A report from the Chancellor's Office of Special Investigations ("OSI") substantiating allegations of sexual misconduct is relevant evidence of probable cause but does not create a rebuttable presumption of probable cause.

In §3020-a proceedings, a mandatory penalty of discharge shall apply to any tenured pedagogue a) found by a hearing officer to have engaged in sexual misconduct, or b) who has pleaded guilty to or been found guilty of criminal charges for such conduct.

The §3020-a hearing should be completed within two months, but the suspension without pay shall be extended one additional month if the hearing has not been completed, unless the Board has received an adjournment or otherwise delayed the proceeding. The suspension without pay shall also be extended until a criminal action is resolved and any §3020-a proceeding is also completed.

If the §3020-a hearing results in a dismissal of the charges or if the criminal proceeding ends in an acquittal or dismissal (and the Board has decided not to prefer charges), the pedagogue shall be entitled to back pay with interest for the entire period of the suspension without pay.

For purposes of this section, sexual misconduct shall include the following conduct involving a student or a minor who is not a student: sexual touching, serious or repeated verbal abuse (as defined in Chancellor's Regulations) of a sexual nature, action that could reasonably be interpreted as soliciting a sexual relationship, possession or use of illegal child pornography, and/or actions that would constitute criminal conduct under Article 130 of the Penal Law against a student or minor who is not a student.

A letter of agreement dated October 2, 2005 regarding sexual misconduct is attached as Appendix B.

7. Other Felony Offenses

Tenured pedagogues who have been convicted of, or who have pled guilty to, any felony not addressed in paragraph 5, above shall be suspended without pay pending the final outcome of the §3020-a disciplinary proceeding. The 3020-a hearing should be completed within two months, but the suspension without pay shall be extended one additional month if the hearing has not been completed, unless the Board has received an adjournment or otherwise delayed the case.

8. Discovery Procedures

To effectuate the purpose of the statute, the parties agree that Education Law Section 3020-a authorizes the following in advance of the hearing:

Both sides will exchange witness lists, witness statements, and physical evidence (e.g., photographs) at least before the presentation of their direct case and earlier upon motion to the arbitrator.

The Respondent shall receive copies of investigatory statements, notes, other exculpatory evidence, and relevant student records after and subject to *in camera* review.

The Board shall receive evidence and documents from the respondent upon a showing during the hearing that it is relevant.

Additionally, if the case has stemmed from an investigation conducted by the Special Commissioner of Investigation (SCI), the Board will provide the entire SCI file to Respondent, including exculpatory evidence, during the discovery phase of the 3020-a hearing unless such information is privileged. Failure to do so shall form the basis of such evidence being precluded from introduction in the 3020-a proceedings. This provision remains subject to the Family Educational Rights and Privacy Act.

9. Incompetence Cases

The parties agree that in the spirit of progressive discipline, rather than necessarily charge an employee with incompetence, an employee, who receives an unsatisfactory rating for the first time, may be offered the opportunity to enroll in the Peer Intervention Program (PIP) for a term of one year. Refusal to enter the PIP program is admissible in any future disciplinary proceedings. The parties further agree that during the first school term of the intervention, no formal observations will be made. During the second school term, although the employee will still be in the PIP, the administration is free to conduct observations and to rate the employee accordingly. Since the end-of-year rating will be based on these observations, a minimum of two (2) observations shall be conducted during the second school term. PIP may not be invoked by the employee once the disciplinary process has commenced.

10. Attorney Teams

Each Board attorney will be paired with a Union attorney for four (4) consecutive cases. Should one case settle, another case between the same attorneys shall be substituted for the case settled in an effort to utilize the dates set by the parties with the arbitrator.

H. False Accusations

Knowingly false accusations of misconduct against employees will not be tolerated.

If an accusation of sexual misconduct or physical abuse against an employee is found by the Board or Special Commissioner of Investigation to have been knowingly false when made, the Board will take the following actions to restore the falsely accused employee's reputation: removing all references to the charges from the employee's personnel file(s) and adding evidence of the unfounded nature of the charge to departmental files that may have to be maintained to satisfy other legal requirements, if any; and restoring any back pay owed with interest and, at the employee's request, confirming to any regulatory agency the finding that the employee was falsely accused. In addition, where the knowingly false accusation was made by a student of the employee, absent compelling and extraordinary circumstances the student will be permanently reassigned from the employee's class.

I. Medical Review Procedures

1. Requests for Medical Examination

The report of the immediate supervisor requesting examination of an employee pursuant to Education Law Section 2568 shall be made in duplicate. A copy of the report shall be forwarded to the employee.

2. Injury in the Line of Duty

In order to provide for an expeditious handling of injury in the line of duty claims, the following shall apply:

a. Within five working days of a claim of injury in the line of duty requiring a school medical inspector to be absent, the School Medical Director shall make a determination as to whether the accident occurred in the line of duty.

b. Where the employee is in a non-pay status pending a determination of the duration of absence attributable to injury in the line of duty, the determination will be made within ten days of the employee's submission for the required physical examination to a physician ("panel doctor") from the panel of doctors established pursuant to Section 3 of this Article.

3. Medical Report and Review

a. The report of the panel doctor on a school medical inspector who was called for medical examination shall, upon written request of the employee, be sent to the employee and/or his/her physician within 25 days after the examination.

b. Upon the school medical inspector's request to the Medical Bureau, he/she and/or his/her physician shall have the right to examine his/her medical file.

c. A regular school medical inspector shall have the right to an independent evaluation by a medical arbitrator selected from rotating panels of doctors to be selected by mutual agreement of the Board and the Union if the finding of the panel doctor to the Chancellor has resulted in:

1. Placement of the inspector on leave of absence without pay for more than one month; or
2. Termination of the inspector's services; or
3. A recommendation for disability retirement; or
4. A denial of a leave with or without pay for more than one month.

A request for an independent evaluation of the finding of the panel doctor shall be submitted in writing by the inspector to the Division of Human Resources within 10 working days of receipt of notice from the Division of Human Resources that he/she has been placed on leave of absence without pay for more than one month, or that his/her services have been terminated, or that he/she has been recommended for disability retirement, or that he/she has been denied a

leave with or without pay for more than one month. The Board and the Union may agree on a case by case basis to permit, in special circumstances, an independent medical evaluation to employees who do not otherwise qualify for one under this Agreement.

The medical arbitrator shall examine the inspector and consult with the inspector's physician and the Board's physician. The arbitrator's authority shall be limited to determining the medical aspects of the inspector's claim. The arbitrator's decision shall be rendered within 10 days after he/she has completed the evaluation of the inspector, and if made within his/her authority under this Agreement shall be accepted as final and binding by the Board and the employee.

The fee of the medical arbitrator shall be shared equally by the Board and the employee.

Article Eighteen
Complaint and Grievance Procedure

It is the policy of the Board to encourage discussion on an informal basis between a supervisor and an employee of any employee complaint. Such discussion should be held with a view to reaching an understanding which will dispose of the matter in a manner satisfactory to the employee, without need for recourse to the formal grievance procedure. An employee's complaint should be presented and handled promptly and should be disposed of at the lowest level of supervision consistent with the authority of the supervisor.

In order to accomplish its stated purpose, a grievance conference must be attended by those individuals who may be able to promote resolution or, if resolution is not possible in a particular case, to provide the necessary information for a fair determination of the grievance. At the Chancellor's level, the head of the Bureau will be expected to attend or to have a suitable representative present at the conference. Failure to attend may result in sustaining the grievance on procedural grounds.

Upon request to the head of the school or facility, a Union staff representative shall be permitted to meet with employees in the unit during their non-working time, within the facility, for the purpose of investigating complaints and grievances, under circumstances which will not interfere with the program or activities in the facility. When necessary, any employee in the unit who is a chapter leader in the facility in which the aggrieved employee is assigned will be given time off to represent the employee in the presentation of his/her grievance.

A. Informal Complaint Procedure

It is desirable that any employee having a complaint should discuss it informally with his/her immediate supervisor or with any other appropriate level of supervision at the facility.

The employee should request an opportunity to discuss the matter and the supervisor should arrange for the discussion at the earliest possible time. At such informal discussion, the employee may be accompanied by a Union representative. The Union representative shall be a chapter leader. The objective should be to dispose of the majority of employee complaints in this manner.

B. Formal Grievance Procedure

If the matter has not been disposed of informally, an employee having a complaint concerning any condition of employment within the authority of the Board of Education may, within a reasonable period of time following the action complained of, present such complaint as a grievance in accordance with the provisions of this grievance procedure.

If a group of employees has the same complaint, a member of the group may present the grievance in the group's behalf under this procedure.

The Union has the right to initiate or appeal a grievance involving alleged violation of any term of this Agreement. Such grievance shall be initiated with such Board official as may be appropriate.

Complaints against supervisors will be considered in an expeditious manner in accordance with procedures set forth in Article 23 (Special Complaints) of the Teacher Agreement.

Following is the procedure for presentation and adjustment of grievances:

The employee shall initiate the grievance at Step 1 with the head of the Bureau.

If the grievance is not resolved as Step 1, the Union may appeal from the decision at Step 1 to the Chancellor within 10 working days after the Step 1 decision is received. When a grievance is appealed to the Chancellor at Step 2, the Union may advise the arbitrator of that appeal, in order to expedite possible scheduling before the arbitrator in the event that the grievance is subsequently appealed to the arbitrator.

C. Representation

At Step 1 the employee may be accompanied by a Union representative. At Step 1, the Union representative shall be the chapter leader at the facility or a staff representative of the Union. At Step 2 the employee shall be accompanied by a Union staff representative.

D. Conferences and Decisions

At each step of this grievance procedure, a conference shall be arranged by the Board representative, or his/her designee, with the aggrieved employee and his/her Union representative if any. Conferences held under this procedure shall be conducted at a time and place which will afford a fair and reasonable opportunity for all persons entitled to be present to attend. When such conferences are held during working hours, employees who participate shall be excused with pay for that purpose. Every attempt should be made to reach a mutually satisfactory resolution of the grievance at the conference held under this procedure. If the grievance is not resolved at the conference, then a decision must be rendered by the Board representative. The decision at each step should be communicated to the aggrieved employee and his/her Union representative within the following time limits:

1. At Step 1, within five working days after the grievance is initiated;
2. At Step 2, within ten working days after the appeal is received.

If a satisfactory resolution is not reached or if a decision is not rendered within the time limit at Steps 1 or 2, the grievance may be appealed to the next higher step.

E. Appeals to Arbitration (Step 3)

A grievance which has not been resolved by the Chancellor at Step 2 may be appealed by the Union to arbitration. A grievance may not be appealed to arbitration unless a decision has been rendered by the Chancellor at Step 2, except in cases where the decision on the grievance has not been communicated to the aggrieved employee and his/her Union representative by the Chancellor within the time limit specified for Step 2 appeals.

The appeal to arbitration shall be filed within ten working days after receipt of the decision of the Chancellor. Where no hearing has been held, or no decision has been issued, within ten working days following receipt of the grievance by the Chancellor at Step 2, the appeal to arbitration shall be filed within ten working days following the expiration of the ten-day period.

A panel of seven arbitrators shall be designated by mutual agreement of the parties to serve for any case or cases submitted to them in accordance with their ability to promptly hear and determine the case or cases submitted.

Any costs relating to the participation of the arbitrator shall be shared equally by the parties to the dispute.

With respect to grievances which involve the application or interpretation of the provisions of this Agreement the arbitrator shall be without power or authority to make any decision:

1. Contrary to, or inconsistent with, or modifying or varying in any way, the terms of this Agreement or of applicable law or rules and regulations having the force and effect of law;

2. Involving Board discretion under the provisions of this Agreement, under Board by-laws, or under applicable law, except that the arbitrator may decide in a particular case whether the provision was disregarded or applied in a discriminatory or arbitrary or capricious manner so as to constitute an abuse of discretion, namely whether the challenged judgment was based upon facts which justifiably could lead to the conclusion as opposed to merely capricious or whimsical preferences or the absence of supporting factual reasons.

3. Limiting or interfering in any way the powers, duties and responsibilities of the Board under its by-laws, applicable law, and rules and regulations having the force and effect of law.

With respect to grievances which involve the application or interpretation of the provisions of this Agreement the decision of the arbitrator, if made in accordance with his/her jurisdiction and authority under this Agreement will be accepted as final by the parties to the dispute and both will abide by it.

With respect to all other grievances, if the grievance is not resolved at the conference, then a report and recommendation of the arbitrator shall be transmitted by the arbitrator to the Chancellor. Within ten school days after the date that the report and recommendation are received by the Chancellor, he/she shall indicate whether he/she will accept the arbitrator's recommendation. Unless the Chancellor disapproves the recommendation within ten working days after the date it is received by him/her, the recommendation shall be deemed to be his/her decision.

A recommendation of the arbitrator which has been approved by the Chancellor, or which has not been disapproved by the Chancellor within the ten day limit specified above, shall be communicated to the aggrieved employee and the Union. If the Chancellor decides to disapprove a recommendation of the arbitrator, he/she shall notify the aggrieved employee and the Union of his/her decision.

Article Nineteen
Exclusive Check-Off

The Board will honor, in accordance with their terms, only such written authorizations as are properly executed by employees in the unit covered by this Agreement for the deduction of their dues in behalf of the Union.

The Board will honor individual written authorizations stating they are irrevocable until the following June 30, and automatically renewable for another year unless written notice is given to the Board between June 15 and June 30.

Article Twenty
Agency Fee

The Board shall deduct from the wage or salary of employees in the bargaining unit who are not members of the UFT the amount equivalent to the dues levied by the UFT and shall transmit the sum so deducted to the UFT, in accordance with Section 208(3)(b) of Article 14 CSL. The

UFT affirms it has adopted such procedure for refund of agency shop deduction as required in Section 208(3)(b) of Article 14 CSL. This provision for agency fee deduction shall continue in effect so long as the UFT establishes and maintains such procedure.

The Union shall refund to the employees any agency shop fees wrongfully deducted and transmitted to the Union.

The Union agrees to hold the Board harmless against claims arising out of the deduction and transmittal of agency shop fees where there is a final adjudication by a court or arbitrator or by PERB that said agency shop fees should not have been deducted and/or transmitted to the Union.

The agency shop fee deductions shall be made following the same procedures as applicable for dues check-off, except as otherwise mandated by law or this Article of the Agreement.

Article Twenty-One
Political Check-Off

The Board will arrange for voluntary payroll deduction contributions for federal political contests in accordance with Title 2, Section 44lb of the U.S. Code.

Article Twenty-Two
Conformity to Law-Saving Clause

If any provision of this Agreement is or shall at any time be contrary to law, then such provision shall not be applicable or performed or enforced, except to the extent permitted by law and any substitute action shall be subject to appropriate consultation and negotiation with the Union.

In the event that any provision of this Agreement is or shall at any time be contrary to law, all other provisions of this Agreement shall continue in effect.

Article Twenty-Three
Return to Former License of Appointment

To open more opportunities to serve in the New York City public schools, and to encourage the use of shortage area licenses, the parties have agreed to the following system for license reversion, which supplements the existing procedure. This new system requires application and approval to revert to a former license and appointment. Except in unusual cases, approval will not be given to change from a shortage to a non-shortage license area. However, pedagogues serving in agreed-upon shortage areas may apply under Section 248 of the Chancellor's Regulations to revert to a former license and appointment.

Except for pedagogues serving in agreed-upon shortage areas, pedagogues who have been previously appointed under different license(s) may apply to serve under any such license(s) according to the following guidelines:

1. The former license was validated by serving one year satisfactorily under that license and is still valid, and
2. The most recent three years of active service have been rated satisfactory, and
3. A vacancy in the school, district or city exists in the former license.

A pedagogue whose application to return to a former license is approved will be placed at the next reorganization in a vacant position in the same school or program in which he/she is serving. If no such vacancy exists he/she will be placed in a vacancy in the same community school district or superintendency. If no vacancy exists in the community school district or

superintendency, the Division of Human Resources will place the pedagogue in a vacancy in the city.

For the purpose of this provision, a vacancy is defined as an unencumbered position, an anticipated vacancy, or a position currently held by a substitute.

A pedagogue who returns to a former license must serve a minimum of two school years in the license before being eligible to apply again under this provision.

A pedagogue who reverts to a license in an agreed-upon shortage area pursuant to this provision has the right to return to the license from which he/she reverted after at least two years of service in the shortage area.

Except for those serving in agreed-upon shortage areas, pedagogues may apply for positions posted on the transfer plan for their current license and/or one other license provided that their most recent three years of active service in the former license were satisfactory and they are eligible to revert to that license pursuant to this provision. A pedagogue whose transfer to a position in a former license is effectuated hereunder will revert to the license pursuant to which he/she is transferred.

Article Twenty-Four
No-Strike Pledge

The Union and the Board recognize that strikes and other forms of work stoppages by employees are contrary to law and public policy. The Union and the Board subscribe to the principle that differences should be resolved by peaceful and appropriate means without interruption of the school program. The Union therefore agrees that there shall be no strikes, work stoppages, or other concerted refusal to perform work by the employees covered by this Agreement, no any instigation thereof.

Article Twenty-Five
Notice - Legislative Action

The following Article is required by the Public Employees' Fair Employment Act, as amended by Section 204a, approved March 10, 1969.

It is agreed by and between the parties that any provision of this Agreement requiring legislative action to permit its implementation by amendment of law or by providing the additional funds therefor, shall not become effective until the appropriate legislative body has given approval.

Article Twenty-Six
Duration

This Agreement shall become effective as of June 1, 2003 and shall continue in full force and effect through October 12, 2007.

Appendix A
Health Insurance

In accordance with the LOBA determination and award in Case No. IA-l-85, the following shall apply:

l. Effective July l, l983 and thereafter, the Employer's cost for each contract for each Employee under age 65 and for each retiree under age 65 who selects either HIP/HMO or Blue Cross/GHI-CBP 21 day plan coverage (or a replacement plan) shall be equalized at the community rated basic HIP/HMO plan payment rate as approved by the State Department of Insurance on a category basis of individual or family, e.g., the Blue Cross/GHI-CBP payment for family coverage shall be equal to the HIP/HMO payment for family coverage.

2. If a replacement plan is offered to Employees and retirees under age 65 which exceeds the cost of the HIP/HMO equalization provided in Section l the City shall not bear the additional costs.

3. The Employers shall contribute on a City employee benefits plan program-wide basis the additional annual amount of $30 million to provide a health insurance stabilization reserve fund which shall be used to continue equalization and protect the integrity of health insurance benefits.

4. The health insurance stabilization reserve fund shall be used: to provide a sufficient reserve; to maintain to the extent possible the current level of health insurance benefits provided under the Blue Cross/GHI-CBP plan; and, if sufficient funds are available, to fund new benefits.

5. The health insurance stabilization reserve fund shall be credited with the dividends or reduced by the losses attributable to the Blue Cross/GHI-CBP plan.

Appendix B
Procedures for Probable Cause Hearings

On October 2, 2005 the following understanding was reached regarding probable cause hearings:

The UFT will conduct a meeting of lawyers who represent UFT members at 3020-a proceedings to inform them about the new procedures regarding offenses involving sexual misconduct with a student or a minor not a student. During that meeting there will be a discussion of what could constitute probable cause, including that we agree that in a probable cause hearing the hearing officer may accept hearsay as evidence of probable cause, and that a criminal complaint and corroborating affidavit or the SCI report is sufficient evidence to create a rebuttable presumption of probable cause.

APPENDIX C

Pension Legislation

October 17, 2007

Randi Weingarten
President
United Federation of Teachers
52 Broadway – 14th Floor
New York, NY 10004

Dear Ms. Weingarten:

This letter will confirm certain mutual understandings and agreements of the parties.

The parties agree to jointly support legislation to amend current pension provisions that will contain the following elements in order to implement an optional "25/55" retirement program for current employees in the Teachers Retirement System (TRS) and the below listed UFT-represented members in the Board of Education Retirement Systems (BERS) and to provide a revised retirement paradigm for newly-hired employees in TRS and newly-hired UFT-represented members in BERS listed below. The UFT-represented BERS titles to be included are: all nurse and therapist titles, substitute vocational assistants, all non-annualized adult education titles, directors and assistant directors of drug and alcohol programs, sign language interpreters, all military science instructor titles, and all education officer and analyst titles.

The legislation will incorporate the following:

(1) An "opt-in period" of six months in which any incumbent employee who wishes to participate in this optional program must affirmatively submit a written election to participate.

(2) Additional Member Contributions (AMC) – in addition to all currently required statutory contributions, an Additional Member Contribution (AMC) of 1.85% shall be paid by those employees electing to participate in this optional program as well as by all newly-hired employees participating in the TRS and newly-hired UFT-represented above listed members participating in BERS retirement systems. These additional member contributions shall become effective on the first business day after the enactment of this enabling legislation.

(3) Current incumbent employees including those on leave who elect to participate in this optional program and who pay the requisite AMC shall be eligible to retire at age 55 with 25 years of credited service with immediate payability of pension benefits

without any reduction. Assuming the legislation is effectuated in the 2007-08 school year, those who elect this pension will be eligible to retire 6/30/2008 or later.

(4) Employees hired after enactment of this enabling legislation shall be eligible to retire at age 55 with 27 years of service and receive immediate payability of pension benefits without any reduction. This will not be construed to change the eligibility for retiree health insurance benefits (i.e., ten years of credited service and pension payability) as determined by the City and Municipal Labor Committee and in accordance with the Administrative Code.

(5) To the extent the parties have not captured all of the necessary elements required to be enacted with enabling legislation (e.g., loan provisions, refund rules, etc.), the intent is that those elements shall be analogous to those comparable provisions contained in Chapter 96 of the Laws of 1995. Should the parties be unable to agree on those specific terms in a timely fashion, they agree that the City Actuary, in consultation with the Law Department's Pension Division and the UFT, shall determine the final language for the proposed legislation consistent with the parties' mutual understandings.

If the above accords to your understanding, please execute the signature line below.

Very truly yours,

James F. Hanley

Agreed and Accepted By:

_____
Randi Weingarten
President
United Federation of Teachers

October 17, 2007
Date