

## **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 6<sup>th</sup> day of November 2006 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 directors and assistant directors of alcohol and substance abuse programs (referred to herein as "directors" or "assistant directors" or "employees") and in any successor title(s) the duties of which are similar to those performed by employees in the unit.

**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  
SALARIES**

**A. Salary Levels and Salary Adjustments**

1. During the term of this Agreement the minimum annual salary rate applicable to employees in the unit, other than those covered by Subsection 2 of this Section, shall be:

<b>Title</b>	<b>Effective October 13, 2007</b>	<b>Effective May 19, 2008</b>
Director Level II	\$86,817	\$91,158
Director Level I	\$78,791	\$82,730
Assistant Director	\$62,737	\$65,874

2. Employees in the unit who are serving pursuant to a pedagogical license other than one in the Education Administrator series shall have the salary, salary increases, and benefits applicable to other employees of the Board serving pursuant to the same license, except with respect to their annual leave allowance, which shall be as set forth below in Article Six.

3. Incumbents, other than those covered by Subsection 2 of this Section, shall have salary adjustments equal to the percentage increases in the minimum rates.

4. Effective September 16, 1998 (May 19, 2008 for the five-year longevity increment) or on such date thereafter as the requirements shall be met, longevity increments shall be payable as follows to appointed Directors and Assistant Directors with the requisite years of pedagogical service in the New York City public schools:

**Longevity Increments**

<b>Years of NYC Public School Service</b>	<b>Effective October 13, 2007</b>	<b>Effective May 19, 2008</b>
5 but less than 20		\$1,000
20 but less than 22	\$3,623	\$3,804
22 or more	\$5,586	\$5,865

## **B. Initial Appointment or Assignment**

1. An employee newly assigned or newly appointed as a Director or Assistant Director shall have the applicable minimum salary set forth in Section A-1 of this Article unless he/she is covered by Section A-2 of this Article or by Subsection 2 or 3 of this Section.

2. An employee newly assigned or newly appointed as a Director or Assistant Director from a Board position where the salary he/she received was above the applicable minimum salary set forth in Section A-1 shall, upon appointment or assignment, receive a salary equal to his/her salary prior to such appointment or assignment, but not more than \$15,724 (\$16,511 effective May 19, 2008) in the case of Assistant Directors, or \$18,932 (\$19,879 effective May 19, 2008) in the case of Directors above the applicable minimum salary set forth in Section A-1 of this Article.

3. A Director who moves from Level I to Level II shall receive an assignment increase of one-half the difference between the minimum of Level I and the minimum of Level II, or he/she shall receive the minimum salary of Level II, whichever is greater.

## **C. Electronic Funds Transfer (EFT) Program**

1. 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 are each March.

2. As of school year 2007-2008, all newly hired employees by the Board of Education shall have their wages paid through direct deposit.

## **D. Biweekly 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.

# **ARTICLE FOUR HEALTH AND WELFARE FUND BENEFITS**

## **A. Choice of Health Plans**

The Board will continue to provide for each employee 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.

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.

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 provisions of Appendix A (Health Insurance) shall apply as modified herein.

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 Benefits**

The Board will provide funds at the rate of \$1,685 (\$1,720 effective October 21) per year on a pro-rata basis per month on behalf of each employee in the unit, for the purpose of making available for each such employee welfare benefits under a plan to be devised and established jointly by representatives of the Union and of the Board.

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.

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 employee who is laid off.

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.

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 reached by the parties:

1. Eligible Employees separated from service from July 1, 1970 through September 8, 1982  
Effective October 13, 2007 .....\$1,125  
Effective October 21, 2009 .....\$1,160
  
2. Eligible Employees separated from service after September 8, 1982  
Effective October 13, 2007 .....\$1,565  
Effective October 21, 2009 .....\$1,600

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.

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.

The Health Benefits Agreement, dated July 22, 2005 is deemed to be part of this Agreement. The side letter agreement 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.

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 (ers), 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 has been 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**

a. A dependent care assistance program has been 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.

b. 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.

**F. 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.

**G. 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.

**ARTICLE FIVE  
HOURS**

**A. Work Week**

Employees covered by this Agreement shall have a thirty-seven and one-half (37 ½) hour workweek exclusive of a daily thirty (30) minute lunch period

**B. Work Year**

Directors and Assistant Directors shall have a work year beginning September 1 and ending the following August 31.

Employees will be paid for all Board of Education holidays and all other days on which their office is closed for special observance or emergency pursuant to action of the Chancellor or community superintendent.

**ARTICLE SIX  
ANNUAL LEAVE**

A. Except as otherwise provided in Sections A-1, B and C of this Article, employees in the unit hired by the Board or City prior to September 9, 1985, shall have an annual leave allowance as follows:

<u>Years of Continuous Board and/or City Service</u>	<u>Monthly Accrual Rate</u>	<u>Annual Leave Allowance</u>
Less than 8 years	1 <sup>2</sup> / <sub>3</sub> days	20 work days
8 to 15 years one additional day in December	2 days plus	25 work days
15 years or more	2 <sup>1</sup> / <sub>4</sub> days	27 work days

The annual leave allowance for employees hired by the Board or City on or after September 9, 1985 shall accrue as follows:

At the beginning of the employee's 1st year	10 work days
At the beginning of the employee's 2nd year	13 work days
At the beginning of the employee's 3rd year	13 work days
At the beginning of the employee's 4th year	15 work days
At the beginning of the employee's 5th year	20 work days
At the beginning of the employee's 8th year	25 work days
At the beginning of the employee's 15th year	27 work days

B. Incumbent employees entitled to 31 days or more of vacation or annual leave prior to September 9, 1980 shall continue to earn annual leave at the rate of 31 days per year based on a monthly accrual rate of two and one-half (2<sup>1</sup>/<sub>2</sub>) days per month, plus one additional day (3<sup>1</sup>/<sub>2</sub> days) for the month of December.

C. Directors and Assistant Directors serving under a pedagogical license other than Education Administrator shall have an annual leave allowance of 31 days per year on the same basis as heretofore provided for such employees.

D. In calculating years of continuous service for purposes of annual leave allowance under Sections A and A1 of this Article, credit shall be given for all active City service, including pedagogical and non-pedagogical service in the Board of Education and service in City agencies. Continuity of service shall not be deemed to be interrupted except by separation from service for more than a continuous period of one year and one day.

E. Up to two years' annual leave allowance may be accumulated by an employee in the unit and carried over from one workyear to another.

F. For good reason, employees in the unit may request and the appropriate community or high school superintendent may permit the use of up to ten days of annual leave allowance before it is earned.

G. Use of accrued annual leave shall be scheduled by mutual agreement of the employee and his superior. The employee's preference shall not be unreasonably denied. If an employee's request to use annual leave is denied, he shall be entitled to carry over that portion of his annual leave allowance so denied for one additional work year, notwithstanding that his accrual of annual leave may thereby exceed two years' entitlement.

H. The minimum unit of charge against annual leave allowance shall be one hour.

I. For the earning of annual leave allowance under Sections A and A1, a full month's allowance shall be earned by an employee who had been in full pay status for at least 15 calendar days during that month, provided that: (a) where an employee had been absent without pay for an accumulated total of more than 30 calendar days in the workyear, the employee shall lose the annual leave allowance earnable in one month for each 30 days of such accumulated absence, even though in full pay status for at least 15 calendar days in each month during this period; and (b) if an employee loses annual leave under this rule for several months in the workyear because the employee has been in full pay status for fewer than 15 days in each month, but accumulated during said months a total of 30 or more calendar days in full pay status, such employee shall be credited with annual leave earnable in one month for each 30 days of such full pay status.

**ARTICLE SEVEN  
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 Directors and Assistant Directors for the purpose of attending conferences, meetings or conventions.

**ARTICLE EIGHT  
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 NINE  
SICK LEAVE**

A. A sick leave allowance of one day per month of service shall be credited to employees covered by this Agreement and shall be used only for personal illness of the employee. Effective September 2002, employees covered by this Agreement may use two of the sick days allowed per year for the care of ill family members. For the purpose of this provision, family member shall be defined as spouse; natural, foster or step 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.

B. Sick leave allowance is cumulative up to 200 days.

C. Proof of illness may be required for absences of more than three consecutive workdays.

D. The normal unit of charge against sick leave allowance is one-half day. However, the employee's immediate supervisor may approve the use of units of one hour.

E. In the calculation of sick leave allowance, a full month's credit shall be given to an employee who has been in full pay status for at least 15 calendar days during that month, provided that:

(1) where an employee has been absent without pay for an accumulated total of more than 30 calendar days in the workyear, he/she shall lose the sick leave credits earnable in one month for each 30 days of such accumulated absence even though in full pay status for at least 15 days in each month during this period, and,

(2) if an employee loses sick leave allowance under this rule for several months in the workyear because he/she has been in full pay status for fewer than 15 days in each month, but accumulated during said months a total of 30 or more calendar days in full pay status, the employee shall be credited with the sick leave allowance earnable in one month for each 30 days of such full pay status.

F. Where an employee is hospitalized on annual leave, the period of such verified hospitalization shall be charged to sick leave and not to annual leave. Where an employee is

seriously disabled but not hospitalized while on annual leave and providing the employee submits proof of such disability satisfactory to the Executive Director of the Division of Human Resources, written approval of the Executive Director may be given to charge such leave time to sick leave and not to annual leave at the employee's option.

G. Sick leave allowances accumulated in another Board or City position shall be transferred to the employee's bank when he/she becomes a Director or Assistant Director.

H. At the discretion of the Executive Director of the Division of Human Resources and upon the recommendation of the appropriate superintendent,

(1) Employees who have exhausted all earned sick leave and annual leave balances may be permitted to use unearned sick leave allowance up to the amount earnable in one year of service, chargeable against future earned sick leave; and

(2) 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 of Human Resources. The Executive Director of the Division of Human Resources 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 TEN MATERNITY AND CHILD CARE**

Employees will be covered by the maternity and child care regulations applicable to pedagogical employees.

## **ARTICLE ELEVEN NON-ATTENDANCE**

The following absences by Employees 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 their supervisor.

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 school 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, 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. Absences 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 employee's immediate supervisor 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 employee's immediate supervisor and the Chief Executive of the Division of Human Resources must be obtained. In no case shall any member of the teaching and supervisory staff, et al, be excused for more than three successive calendar days.

## **ARTICLE TWELVE MILITARY SERVICE PAY**

### **A. Excuse for Selective Service Examination**

Employees called for selective service physical examination shall be excused without loss of pay for such purpose.

### **B. Pay During Military Service**

Employees on regular appointment who enter the military service shall be on leave of absence with pay during the first 30 days of such service unless the Board is otherwise required to make payment of salary during such military service.

## **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 Teachers' 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 Teachers' 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 leaves 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. 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 agree to jointly support the legislation as set forth in the letter attached as Appendix E entitled "Pension Legislation".

### **D. Tax Deferred Annuity Plan**

The parties agree to jointly support legislation and to obtain any other necessary regulatory approval, 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  
JURY DUTY PAY**

Employees 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 them for such jury duty.

**ARTICLE FIFTEEN  
LEAVE 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 on the same basis as apply to other pedagogical employees.

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. Employees 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 employee may consult with the Union with respect to the matter. Employees 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 SIXTEEN  
ABSENCE WITHOUT NOTICE**

Employees who are absent for twenty consecutive working days without notice shall be deemed to have resigned unless they have reasonable cause for failure to notify. The issue of the reasonableness of the cause and the penalty if any, shall be subject to the grievance procedure, including binding arbitration, set forth in Article Twenty-Two.

**ARTICLE SEVENTEEN  
VESTED BENEFITS**

All annual leave, sick leave, sabbatical leave, compensatory and cumulative absence reserve time balances to the credit of an employee as of March 31, 1979 shall remain to the employee's credit. Such balances may be used in accordance with leave regulations and to the extent not used are applicable toward terminal leave, leave in lieu of sabbatical and/or separation or termination from employment.

## **ARTICLE EIGHTEEN SAFETY AND HEALTH**

### **A. 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. 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 excused without charge to sick leave or annual leave balances.

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

### **B. Safety Plan**

#### **1. Board Obligation**

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 the employees.

#### **2. School Safety Plan**

While working in a school or other Board facility, employees will be covered by the safety plan developed for the facility and by the appeal procedure as described below:

The principal is charged with the responsibility of maintaining security, safety and discipline in the school. To meet that responsibility he/she shall develop in collaboration with the Union chapter committee and the parents association of the school a comprehensive safety plan, subject to the approval of the Chief Executive of School Safety and Planning. The safety plan will be updated every year using the same collaborative process, and reports of any incidents shall be shared with the chapter leader. A complaint by an employee or the chapter leader that there has been a violation of the safety plan may be made to the principal as promptly as possible. He/she will attempt to resolve the complaint within 24 hours, after receiving the complaint.

If the employee or chapter is not satisfied, an appeal may be made to the Chief Executive of School Safety and Planning who will arrange for a mediation session within 48 hours. If the employee/chapter is not satisfied with the results of the mediation, an appeal may be made by an expedited arbitration process, to be developed by the parties.

### **C. 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.

### **D. 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.

### **E. 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 actions 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.

### **F. 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 NINETEEN CHECK-OFF**

### **A. 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 on behalf of the Union.

The Board will honor individual written authorizations for the deduction of Union dues in accordance with their terms, including 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.

### **B. Political Check-Off**

The Board will arrange for voluntary payroll deduction contributions for federal political contests in accordance with Title 2, Section 441b of the US Code.

## **ARTICLE TWENTY AGENCY FEE DEDUCTION**

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 employee 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 DUE PROCESS AND REVIEW PROCEDURES**

### **A. Employee Files**

1. No material derogatory to an employee's conduct, service, character or personality shall be placed in the employee's 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 the file.

4. The employee shall be permitted to reproduce any material in the file.

5. Employees may not grieve material in the file except that if accusations of corporal punishment or verbal abuse against a UFT-represented employee are found to be unsubstantiated, all references to the allegations will be removed from the employee's personnel 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 program 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. An employee summoned to the office of a community or high school superintendent, executive director or 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 an attorney who is not a member of the city school system is permitted 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 a Board official 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 government 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 it is inaccurate or unfair is sustained..<sup>1</sup>

### **D. Board Procedures**

Employees are entitled to the due process and review procedures set forth in sections 4.3.1 and 4.3.2 of the Board by-laws as applicable to them in accordance with the terms of the by-laws.

### **E. 3020-a Procedures**

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 1-10 below.

#### **1. Time and Attendance**

If the Board seeks to discipline a tenured employee 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.

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<sup>1</sup> The parties disagree as to the applicability of Section 10 of the October 2005 MOA to this Article 21 C 3.

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 the duties of a director or assistant director of alcohol and substance abuse programs, 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 employee 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 employee 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 D.

#### **7. Other Felony Offenses**

Tenured employees who have been convicted of, or who have pled guilty to, any felony not addressed in paragraph 6, 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.

Pursuant to, and as further described in Article 21 J “Peer Intervention Plus Program” of the Teachers contract, during their participation in the Peer Intervention Plus Program (“PIP Plus”), participating employees shall not be charged with incompetence pursuant to Education Law §3020-a. The fact that an employee has declined to participate or that the BOE has denied a request to participate or has not offered the employee an opportunity to participate in the programs will be admissible in §3020-a proceedings. Observation reports of the consulting employees will be admissible in §3020-a proceedings.

### **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.

### **F. False Accusations<sup>2</sup>**

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

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<sup>2</sup> See Appendix F entitled “False Accusations”. This Article 21F is the same as Article 21H of the Teachers’ contract mentioned in Appendix E.

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.

## **G. Medical Review**

### **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 an employee to be absent, the community or assistant superintendent 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 by the Medical Bureau of the duration of absence attributable to injury in the line of duty, the Medical Bureau will make its determination within ten days of the employee's submitting to the required physical examination.

### **3. Medical Report and Review**

a. The report of the Medical Bureau on an employee who was called for medical examination shall, upon written request of the employee, be sent to the employee's physician within 25 days after the examination. Upon the employee's request to the Medical Bureau, his/her physician shall have the right to examine his/her medical file.

b. An employee 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 Medical Bureau to the Chancellor has resulted in:

- (1) Placement of the employee on a leave of absence without pay for more than one month; or
- (2) Termination of the employee'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 Medical Bureau shall be submitted in writing by the employee 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 employee and consult with the employee's physician and the Board's physician. The arbitrator's authority shall be limited to determining the medical aspects of the employee's claim. The arbitrator's decision shall be rendered within 10 days after he/she has completed the evaluation of the employee, 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 TWENTY-TWO GRIEVANCE PROCEDURE**

It is the declared objective of the parties to encourage the prompt and informal resolution of employee complaints as they arise and to provide recourse to orderly procedures for the satisfactory adjustment of complaints. A resolution should occur at the earliest possible step in every case that can reasonably be resolved.

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 superintendent 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.

### **A. Definition**

A "grievance" shall mean a complaint by an employee in the bargaining unit (1) that there has been as to him/her a violation, misinterpretation or inequitable application of any of the provisions of this Agreement or (2) that he/she has been treated unfairly or inequitably by reason of any act or condition which is contrary to established policy or practice governing or affecting employees, except that the term "grievance" shall not apply to any matter as to which (1) a method of review is prescribed by law, or by any rule or regulation of the State Commissioner of Education having the force and effect of law, or by any by-law of the Board of Education or (2) the Board of Education is without authority to act.

As used in this Article, the term "employee" shall mean also a group of employees having the same grievance.

### **B. Adjustment of Grievances**

#### **1. Informal Resolution**

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. In the case of Assistant Directors, such informal discussion should be with the Director.

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 the Chapter Leader or a Union staff representative.

#### **2. Formal Resolution**

##### **a. Step 1: Community or High School Superintendent**

A formal grievance shall be initiated in writing with the appropriate community or high school superintendent within thirty working days after the grievant has knowledge of the act or condition which is the basis of the complaint. The grievance shall set forth specifically the act or condition and the grounds on which the grievance is based, the contractual provision which is

alleged to have been violated and the remedy sought. A Step 1 grievance form such as the one set forth in Appendix B (Grievance Forms) shall be used, but failure to use the form will not result in forfeiture of the grievance. A grievance which is technically flawed at Step 1 may be promptly amended or refiled without regard to the stated time limitations.

The community or high school superintendent or his/her designee shall meet and confer with the aggrieved employee on the grievance with a view to arriving at a mutually satisfactory resolution of the complaint. The aggrieved employee and his/her representative, if any, shall be given at least two working days notice of the conference and an opportunity to participate. The employee may appear alone or may be represented by the Union. The employee shall be present at the conference, except that he/she need not attend where it is mutually agreed that no facts are in dispute and that the sole question before the community or high school superintendent is one of interpretation of a provision of this Agreement, or of what is established policy or practice.

Where the employee is not represented by the Union at this step, the community or high school superintendent shall furnish the Union with a copy of the grievance together with notice of the date of the Conference. In such cases, the Union may be present and state its views whenever the decision on the grievance would involve the application or interpretation of the terms of this Agreement, or would affect the working conditions or welfare of the employees in the bargaining unit.

The community or high school superintendent shall communicate his/her decision in writing, together with the supporting reasons, to the aggrieved employee and to any Union representative who participated in this step, within ten working days after receiving the appeal. The Union shall receive a copy of any decision at this step.

#### **b. Step 2: Chancellor**

If the grievance is not resolved by the community or high school superintendent, the Union may appeal from the decision to the Chancellor within 15 working days after the decision of the community or assistant superintendent has been received. The appeal shall be in writing, shall set forth specifically the reasons for the appeal, and shall be accompanied by a copy of the appeal and the decision of the community or high school superintendent. It shall also state the name of the employee's Union representative.

The Chancellor or his/her designated representative shall meet and confer with the Union representative and the aggrieved employee with a view to arriving at a mutually satisfactory resolution of the complaint. The Union representative and the aggrieved employee shall be given at least two working days notice of the conference and an opportunity to be heard. The Union representative shall be a representative designated by the Union grievance department.

Notice of the conference shall also be given to the community or high school superintendent. The community or assistant superintendent will be expected to attend the conference or to have a suitable representative present at the conference in order to promote resolution of the grievance or, if resolution is not possible to provide the necessary information for a fair determination of the grievance.

The Chancellor shall communicate his/her decision in writing, together with the supporting reasons, to the aggrieved employee and to the Union representative who participated in this step, within 20 working days after receiving the appeal.

The community or high school superintendent shall also receive a copy of the decision at this step. The Union shall also receive a copy of any decision at this step.

### **3. Special Procedures for Grievances Relating to Salary and Leave Matters**

Any grievance relating to salary and leave matters shall be filed by the Union directly with the Chief Executive of the Division of Human Resources. In such cases, the provisions of the general procedures relating to Step 2 shall apply to the presentation and adjustment of the grievance at the level of the Chief Executive except that (1) the grievances shall be filed within a reasonable time not to exceed three months after the employee has knowledge of the act or condition which is the basis of the complaint and (2) the employee need not be present at the conference. The Chief Executive shall render a decision on behalf of the Chancellor and such decision shall be considered a decision at the level of the Chancellor under this Article.

#### **4. Priority Handling of Grievances**

The Board and the Union will consult periodically on the priority of handling grievances pending at Step 2 with a view to expediting the processing of grievances which require prompt disposition.

#### **5. Initiation or Appeal of Special Types of Grievances or Complaints**

a. Grievances arising from the action of officials other than the community or assistant superintendent may be initiated with and processed by such officials in accordance with the provisions of Step 1 of this grievance procedure. Where appropriate, such grievances may be initiated with the Chancellor by the Union.

b. Where a substantial number of employees have a complaint arising from the action of authority other than the community or high school superintendent, the Union, upon their request, may initiate a group grievance in their behalf.

c. The Union has the right to initiate or appeal a grievance involving alleged violation of the Agreement. Such grievance shall be initiated with the appropriate community or high school superintendent or, where appropriate, with the Chancellor.

d. 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.

#### **6. Appearance and Representation**

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 Board of Education working hours, all persons who participate shall be excused without loss of pay for that purpose.

#### **7. Time Limits**

a. Failure at any step of this procedure to communicate the decision on a grievance within the specified time limits shall permit the aggrieved employee to proceed to the next step. Failure at any step of this procedure to appeal a grievance to the next step within the specified time limits shall be deemed to be acceptance of the decision rendered at that step.

b. The time limits specified in any step of this procedure may be extended, in any specific instance, by mutual agreement.

### **C. Arbitration**

A grievance dispute which was not resolved at the level of the Chancellor under the grievance procedure may be submitted by the Union to an arbitrator for decision if it involves the application or interpretation of this Agreement.

A grievance may not be submitted to an arbitrator unless a decision has been rendered by the Chancellor under the grievance procedure, except in cases where, upon expiration of the 20 day time limit for decision, the Union filed notice with the Chancellor of intention to submit the

grievance to arbitration and no decision was issued by the Chancellor within five working days after receipt of such notice.

The proceeding shall be initiated by the Union filing with the Board a notice of arbitration. The notice shall be filed within 15 working days after receipt of the decision of the Chancellor under the grievance procedure or, where no decision has been issued in the circumstances described above, three days following the expiration of the five working day period provided above. The notice shall include a brief statement setting forth precisely the issue to be decided by the arbitrator and the specific provision of the Agreement involved. The parties shall jointly schedule the arbitration hearings.

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 availability to promptly hear and determine the case or cases submitted.

The parties agree to enter into a stipulation of facts whenever possible in advance of the hearing.

The parties seek the most expeditious decisions in arbitrations and will not normally file briefs or order transcripts. If either or both parties order transcripts, it shall be on an expedited basis. The parties may agree to file post-hearing briefs. However, if a party unilaterally files a brief, it shall be filed within five working days of the hearing or receipt of the transcript, if one is ordered. The other party shall have the right to file a reply brief within five working days of receipt of the brief.

The voluntary labor arbitration rules of the American Arbitration Association shall apply to the proceedings insofar as they relate to the hearings and fees and expenses.

The arbitrator shall issue his/her decision not later than 30 days from the date of the closing of the hearings or, if oral hearings have been waived, then from the date of transmitting the final statements and proofs to the arbitrator. The decision shall be in writing and shall set forth the arbitrator's opinion and conclusions on the issues submitted. The arbitrator shall limit his/her decision strictly to the application and interpretation of the provisions of this Agreement and he/she shall be without power of 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 or regulations having the force and effect of law;
2. Involving Board discretion under the provisions of this Agreement, or under applicable law, except that he/she may decide in a particular case whether the provisions 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 with 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.

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 and both will abide by it.

The arbitrator may fashion an appropriate remedy where he/she finds a violation of this Agreement. To the extent permitted by law, an appropriate remedy may include back pay. The arbitrator shall have no authority to grant a money award as a penalty for a violation of this Agreement except as a penalty is expressly provided for in this Agreement.

The arbitrator's fee will be shared equally by the parties to the dispute.

The Board agrees that it will apply to all substantially similar situations the decision of an arbitrator sustaining a grievance and the Union agrees that it will not bring or continue, and that it will not represent any employee in, any grievance which is substantially similar to a grievance denied by the decision of an arbitrator.

**D. General Provisions as to Grievances and Arbitration**

1. The filing or pendency of any grievance under the provisions of this Article shall in no way operate to impede, delay or interfere with the right of the Board to take the action complained of, subject, however, to the final decision on the grievance.

2. Nothing contained in this Article or elsewhere in this Agreement shall be construed to permit the Union to present or process a grievance not involving the application or interpretation of the terms of this Agreement on behalf of any employee without his/her consent.

3. Nothing contained in this Article or elsewhere in this Agreement shall be construed to deny to any employee his/her rights under Section 15 of the New York Civil Rights Law or under the State Education Law or under applicable Civil Service Laws and Regulations.

4. a. Procedural arbitrability objections based upon the asserted: untimeliness of a grievance or appeal, or failure to follow or properly adhere to contractual grievance procedures will, normally, be raised at the Chancellor's level. In instances where the employer could not reasonably have been able to raise such a claim at the Chancellor's level, but intends to raise such a claim at the arbitration level for the first time, the employer shall communicate to the Union within one week prior to the scheduled hearing of such intent.

b. These guidelines are not intended to be applied to preclude a party from raising an arbitrability objection at a hearing where such preclusion would appear to be unfair or substantially prejudicial to a party's interest in the ultimate outcome of a case.

c. Nothing contained herein shall be construed as a waiver of any substantive arbitrability objection or to preclude any other resort to judicial proceedings as provided by law.

**ARTICLE TWENTY-THREE  
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-FOUR  
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 therefore, shall not become effective until the appropriate legislative body has given approval.

**ARTICLE TWENTY-FIVE  
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 shall 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, nor any instigation thereof.

**ARTICLE TWENTY-SIX  
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.

Effective for school year 2005-06 pedagogues may apply to transfer, pursuant to the open market transfer system, to positions in their current or former license areas. 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-SEVEN  
TRANSFERS**

Effective school year 2005-2006, principals will advertise all vacancies. Interviews will be conducted by school-based human resources committees (made up of pedagogues and administration) with the final decision to be made by the principal. Vacancies are defined as positions to which no pedagogue has been appointed, except where a non-appointed pedagogue is filling in for an appointed pedagogue on leave. Vacancies will be posted as early as April 15 of each year and will continue being posted throughout the spring and summer. Candidates (pedagogues wishing to transfer and excessed pedagogues) will apply to specifically posted vacancies and will be considered, for example, through job fairs and/or individual application to the school. Candidates may also apply to schools that have not advertised vacancies in their license areas so that their applications are on file at the school should a vacancy arise.

Selections for candidates may be made at any time, however, transfers after August 7th require the release of the pedagogue's current principal. Pedagogues who have repeatedly been unsuccessful in obtaining transfers or obtaining regular pedagogical positions after being excessed, will, upon request, receive individualized assistance from the Division of Human Resources and/or the Peer Intervention Program on how to maximize their chances of success in being selected for a transfer.

**ARTICLE TWENTY-EIGHT  
VOLUNTARY SEVERANCE FOR PERSONNEL  
EXCESSED MORE THAN ONE YEAR**

The DOE 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.

**ARTICLE TWENTY-NINE DURATION**

This Agreement and each of its provisions shall be effective as of October 13, 2007 and shall continue in full force and effect through October 31, 2009.

**SIGNATORIES**

United Federation of Teachers Local 2,  
AFT, AFL-CIO

The Board of Education, as Employer

B  
y: \_\_\_\_\_  
Randi Weingarten  
President

B  
y: \_\_\_\_\_  
Joel Klein  
Chancellor

Adopted by The Board of Education

\_\_\_\_\_

B  
y: \_\_\_\_\_  
Joel Klein  
Chairman of the Board

## **APPENDIX A HEALTH INSURANCE**

In accordance with the LOBA determination and award in Case No. IA-1-85, the following shall apply:

1. Effective July 1, 1983 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 I 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  
GRIEVANCE FORMS  
STEP ONE GRIEVANCE**

School: \_\_\_\_\_ District: \_\_\_\_\_

Name of Grievant \_\_\_\_\_

Title (teacher, school secretary, etc.): \_\_\_\_\_

File Number: \_\_\_\_\_

Date Grievance Occurred \_\_\_\_\_

Set forth specifically the act or condition and the grounds on which the grievance is based:

Specific contractual article and section alleged to be violated:

Specific remedy sought:

\_\_\_\_\_  
(Signature of Grievant)

\_\_\_\_\_  
Date Filed:

**GRIEVANCE CONFERENCE**

Date: \_\_\_\_\_

Attendees \_\_\_\_\_

Name	Title
------	-------

Decision including supporting reason:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date:

**APPENDIX C**  
**NEW CONTINUUM DISPUTE RESOLUTION**

**MEMORANDUM**

**TO:** All Superintendents, Executive Directors, Principals, Assistant Principals, UFT District Representatives, UFT Chapter Leaders, CSA Chairpersons

**FROM:** Francine B. Goldstein, Chief Executive, School Programs and Support Services

**SUBJECT:** Special Education Services Dispute Resolution Process

Special education reform and the adoption of a revised Continuum of Special Education Services by the Board of Education will over time have a positive effect upon the number of students with disabilities participating in general education settings or less restrictive settings when special education services are required. In our efforts to reform the system, however, we must be mindful of our legal and regulatory responsibilities to consider each child individually and preserve the procedural safeguards provided for in Commissioner's Regulations.

In order to resolve issues that arise regarding special education services, we have agreed with the UFT on a dispute resolution process to resolve issues at the local level, if appropriate. The issues that are appropriate for this dispute resolution process are:

- Failure to provide services in accordance with the student's IEP;
- Actions inconsistent with State regulation and Board policy regarding referral of students for special education multidisciplinary assessment;
- Movement of a student(s) to different special education services without the prior mandated IEP meetings as required by law;
- IEP teams being denied access to SBST input, if requested by the IEP team;
- IEP teams members and SBST members being inappropriately influenced to recommend specific services, group size and/or location of services for individual students;
- The placement of an inappropriate number of students with IEPs whose management needs are severe and chronic requiring intensive, constant supervision, a significant degree of individualized attention, intervention and intensive behavior management in a general education class with one teacher;
- Educationally inappropriate distribution of IEP students in general education classes with one teacher, on a grade level and subject area; and,
- Teachers being denied their request for an expedited review for a student who they suspect is educationally inappropriate for their general education class.

It is important that if issues arise, they be resolved as locally and expeditiously as possible and, therefore, it is expected that issues particular to a specific school will be brought to the building principal. The principal will schedule a meeting within five school days of being presented with the issue in dispute with a view toward resolving the matter at the school level.

At this meeting, the staff member(s) may be accompanied by a UFT member of his/her choice. The principal will resolve the matter at the school level within five school days. If, however, the matter cannot be resolved at the school level within five school days, the issue can be brought to the Superintendent utilizing the enclosed form.

The superintendent or designee will schedule a meeting within five school days with the requestor(s), the UFT district representative, the UFT Functional Chapter Chairperson, if appropriate, the principal/designee and district staff as selected by the superintendent. The issue will be resolved at the meeting or, if necessary, within two school days. If resolution does not take place, the Union may request a meeting with the Chief Executive for School Programs and Support Services in order to finally address the matter. That meeting will take place within five school days of the request and copies of the resolutions will be made available to the parties

Please find enclosed a form which must be utilized for requesting the principal's or superintendent's intervention. Please make school staff aware of these procedures. Thank you. This dispute resolution process will remain in effect until the parties agree to change it. Labor management meetings will be convened to resolve implementation issues that may arise upon request of either party.

FBG:jc  
Enclosure  
c: Harold O. Levy; Judith A. Rizzo; Randi Weingarten, UFT; Jill Levy, CSA

N.B. Questions regarding special education policy and procedures attendant to the Continuum of Special Education Services may be addressed by referring to the following documents:

- Special Education Services as Part of a Unified Service Delivery System (The Continuum of Services for Students with Disabilities)
- 'Getting Started' (Implementation Guidelines for the Continuum of Services)
- Creating a Quality IEP
- Ensuring Appropriate Referrals to the Committee on Special Education
- A Parent's Guide to Special Education for Children Ages 5-21

**APPENDIX D  
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 E  
PENSION LEGISLATION**

October 17, 2007

Randi Weingarten  
President  
United Federation of Teachers  
52 Broadway – 14<sup>th</sup> 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

**APPENDIX F  
FALSE ACCUSATIONS**

Joel I Klein  
Chancellor  
Department of Education  
52 Chambers Street  
New York, NY 10007

December 17, 2007

Randi Weingarten  
President  
United Federation of Teachers  
52 Broadway  
New York, NY 10002

Dear Ms Weingarten,

Notwithstanding any provision of the Teacher CBA (and corresponding provisions in other UFT contracts) to the contrary, the parties agree that grievances may be initiated under Article 21H (False Accusations) of the Teacher agreement (and corresponding provisions in other UFT contracts) for the purpose of securing implementation of its specific provisions, including removal of material from the employee's personnel file.

Sincerely,

Joel I Klein