

MEMORANDUM OF AGREEMENT entered into this day of October 2009 by and between the State of New York (the "State") and the United Federation of Teachers, Local 2, AFT, AFL-CIO (the "Union") containing the economic agreement that will be the basis of a final agreement between the State and the Union. That final agreement will include agreements in the areas set out more particularly below and will also include agreements listed in Section 10 below that have been or are being negotiated between the Union and the New York State Office of Children and Family Services ("OCFS") but are not set out with particularity herein.

IN WITNESS THEREOF NOW, THEREFORE, it is mutually agreed as follows:

1. INTRODUCTION

On May 8, 2007, Governor Eliot Spitzer issued Executive Order #12, which was continued by Governor David A. Paterson through Executive Order #9 issued on June 18, 2008. The Executive Order recognizes the right of child care providers to organize themselves for the purpose of discussing with the State the stability, funding and operation of child care programs; expansion of quality child care; and improvement of working conditions. The unit encompassing all family day care home providers, group family day care home providers, and legally-exempt child care providers who provide care in a residence in New York City who are paid from funds administered by New York City pursuant to Social Services Law § 410-u, hereinafter referred to as "Covered Child Care Providers", selected the Union as its representative, as certified by the State Employment Relations Board in case #SE 60115, for the purposes of the Executive Order. The discussions that have been held between the Union and the State have resulted in the following agreements which will be memorialized in an agreement between the Union, OCFS, the New York State Department of Health (DOH) and the New York State Division of the Budget.

2. DURATION

The term of the Agreement shall be from October 1, 2009 through September 30, 2013 except where a different time period is specifically indicated herein..

3. MARKET RATES

In accordance with the emergency regulations filed by OCFS with the Department of State, for the period from October 1, 2009 through September 30, 2011, the market rates for licensed group family day care home and registered family day care home providers will be based on the 75th percentile

of the actual cost of care as reflected in the responses to the market rate survey conducted by OCFS in the Spring of 2009. The standard reimbursement rate for legally-exempt family and in-home child care providers will be based on a 65% differential applied to the applicable market rates established for registered family day care home providers.

4. HEALTH INSURANCE

It is the goal of this agreement that all Covered Child Care Providers will have health insurance and that this goal will be advanced from year to year, with the goal to have all providers covered by the end of State fiscal year 2013-14 consistent with State fiscal resources available and fiscal constraints existing at that time and the provisions of this Section.

- a. Pursuant to legislation enacted in 2009, the Union intends to create a voluntary employee benefit association that will purchase health insurance coverage for Covered Child Care Providers through the Family Health Plus (FHPlus) Employer Buy-in established under Social Services Law §369-ff (1).
- b. During the 2009 calendar year the Union will enter into a contract with a health plan participating in the FHPlus Buy-in and will initially seek to enroll into the selected FHPlus Buy-in plan those providers who are already enrolled in FHPlus. The Department of Health will work with the Union to facilitate transferring providers from their FHPlus plan to the plan under contract with the Union.
- c. In 2010 the Union will begin to enroll uninsured income-eligible providers who would otherwise qualify for FHPlus into coverage through the Buy-in.
- d. The State will provide to the Union five million dollars (\$5,000,000) during State fiscal year 2010-11 according to a schedule to be included in the final agreement between the State and the Union, to contribute to the Union's cost of purchasing coverage under the FHPlus Buy-in for providers who do not otherwise qualify for coverage under FHPlus. The selection of providers eligible for coverage under the Buy-in shall not result in adverse selection.
- e. The State will provide to the Union a total of nine million dollars (\$9,000,000) during State fiscal year 2011-12 according to a schedule to be included in the final agreement between the State and the Union, to contribute to the Union's cost of purchasing coverage under the FHPlus Buy-in for providers who do not otherwise qualify for coverage under FHPlus. The selection of providers eligible for coverage under the Buy-in shall not result in adverse selection.
- f. The State will provide to the Union a total of nine million dollars (\$9,000,000) during State fiscal year 2012-13 according to a schedule to

be included in the final agreement between the State and the Union, to contribute to the Union's cost of purchasing coverage under the FHPlus Buy-in for providers who do not otherwise qualify for coverage under FHPlus. The selection of providers eligible for coverage under the By-in shall not result in adverse selection.

- g. During the 2012-13 State fiscal year, the State and the Union will conduct an assessment of the extent to which over-income providers (i.e. providers ineligible for FHPlus coverage) have been covered by the funding already provided and the amount necessary to complete the coverage of all providers who desire coverage.
- h. In State fiscal year 2013-14, the goal will be for the State to provide sufficient funding to allow for the Union's cost of purchasing coverage under the FHPlus Buy-in for all providers who do not otherwise qualify for coverage under FHPlus and who are still without health insurance coverage and desire such coverage, based upon the results of the assessment conducted pursuant to Section 4, paragraph g of this Agreement. The selection of providers eligible for coverage under the Buy-in shall not result in adverse selection.
- i. To the extent authorized by Social Services Law Section 369-ff(1)(c), the State shall subsidize the full cost of coverage for those providers determined to be eligible for FHPlus or Medicaid to the extent of available funds.

5. PROFESSIONAL DEVELOPMENT FUNDS

- a. The State and the Union are committed to the enhancement of the quality of child care services provided by the child care providers and to aiding the providers to increase their training and certifications.
- b. The Union will establish a professional development fund for child care providers.
- c. The State agrees to contract with the Union to provide the fund with an initial grant of one-half million dollars (\$500,000) according to a schedule for cash disbursement that will be included in the final agreement between the state and the Union, which will be used to provide professional development to licensed group family day care home, registered family day care home and legally-exempt providers irrespective of their membership in the Union or the representative unit and to such other providers as the Union and OCFS agree, to meet existing training requirements and to enhance their development.
- d. The Union will reach an agreement with OCFS on the methods by which these funds are expended. Training activities may include but need not be limited to: the management of a training voucher program and the design, development and presentation of video training sessions, web-based training, classroom training, and innovative training approaches that use

non-traditional methods and allow for the participation of providers during non-working hours.

- e. OCFS and the State are committed, as existing training funds currently obligated for family and group family day care training activities become available, to amend the contract entered into under subdivision c of this Section to provide additional funds to the Union for the union professional development fund. The Union and OCFS will develop requirements and protocols for the disbursement of these funds to provide training and professional development to all applicable child care providers.

6. QUALITY GRANTS

- a. In order to help licensed group family day care home and registered family day care home providers increase the quality of the environment in which they provide their services, a quality grant program is established.
- b. OCFS agrees to contract with the Union to provide one and a half million dollars (\$1,500,000) in each of the first two years of this Agreement for these grants, according to a schedule that will be included in the final agreement between the state and the Union.
- c. The funds will be distributed equally among all Covered Child Care Providers who are licensed group family day care home or registered family day care home providers in the City of New York irrespective of their membership in the Union.
- d. The Union and OCFS will develop rules for the disbursement of these grants.

7. UNION DUES/FAIR SHARE PAYMENTS

- a. The Union represents all Covered Child Care Providers and intends to collect union dues from all Covered Child Care Providers who choose to be members of the Union. The State agrees to establish procedures for the deduction and transfer to the Union of union dues from the subsidy payments of those Covered Child Care Providers who individually authorize the dues deduction in writing from payments made directly by the City of New York or by the networks with which the City contracts to those Covered Child Care Providers on behalf of families who receive subsidies under the Social Services Law to pay for all or a portion of their child care costs. The Union will be responsible for obtaining written authorization from Union members for the union dues to be deducted and transferred to the Union from such Covered Child Care Providers.
- b. The Union will assume all the design, development, and on-going maintenance costs for all changes to the City of New York's existing payment system(s) and any other administrative costs necessary for union dues to be deducted and transferred to the Union for those Covered Child

Care Providers who have submitted written authorizations for dues deductions. Such deductions will not commence until the necessary technical changes have been implemented. Once the necessary technical changes have been implemented, the Union will be responsible for providing the City of New York with information about those members who have authorized the deduction of union dues in a format determined by the City of New York as necessary to electronically input the information into the payment system(s) to enable the system(s) to deduct and transfer the union dues to the Union.

- c. The Union will establish the amount of the union dues in a consistent manner for all providers.
- d. OCFS agrees to seek legislation authorizing, consistent with the federal and State constitutions, the deduction and transfer to the Union of a fair share payment from those Covered Child Care Providers who do not choose to be members of the Union or to authorize the deduction of union dues but who receive subsidy payments directly from the City of New York or from the networks with which the City contracts on behalf of families receiving child care subsidies under the Social Services Law. Upon enactment of that legislation and implementation of the necessary technological changes to the City of New York's payment system(s), the fair share payments will begin to be deducted. The Union will assume all the design, development and on-going maintenance costs for any additional changes to the City of New York's existing payment system(s), and any other administrative costs necessary for the fair share payments to be deducted and transferred to the Union from payments due to the applicable Covered Child Care Providers. Once the necessary technical changes have been implemented, the Union will be responsible for providing the City of New York with information about those Covered Child Care Providers who are responsible for making fair share payments to the Union in a format determined by City of New York as necessary to electronically input the information into the payment system(s) to enable the system(s) to deduct and transfer the fair share payments to the Union.
- e. OCFS and the Union agree to form a committee to work out the details necessary to implement the deduction of union dues and any fair share payments as described in this Section. The Parties agree that the State will use its best efforts to convene a meeting among all necessary parties within 30 days of the signing of this agreement to commence discussions on an expeditious implementation of these provisions.
- f. The State and the Union have an interest in the adequate availability of child care services for those families participating in the child care subsidy program. The State and the Union intend to implement this Section in a manner that does not limit parental access to or choice from among the categories of care or types of providers or exclude a significant number of providers in any category of care or of any type and will establish procedures to monitor and, if necessary, adjust the manner of implementation.

- g. The Union shall cooperate with the City of New York and/or OCFS, as applicable, in resolving complaints and/or concerns of Covered Child Care Providers regarding the deduction of union dues and any fair share payments.
- h. The Union shall indemnify and hold the State and the City of New York harmless against any and all claims, damages, suits, or other forms of liability which may arise out of any action taken or not taken by the State or the City of New York for the purposes of complying with the provisions of this Section.

8. PARENTAL RIGHTS

- a. The parties reaffirm that parents, guardians, and/or caretakers have the sole and undisputed right to hire child care providers of their choice, supervise the care provided to their children, and remove child care providers from their service for any reason subject to any terms agreed to between the parent, guardian or caretaker and the child care provider; provided, however, that parents, guardians or caretakers receiving child care subsidies are subject to the limitations in federal and State law and regulations regarding eligible child care providers and covered child care services, and that a social services district may disapprove a provider chosen by a recipient in a preventive or protective case if the district has reason to believe that it would be contrary to the health, safety or welfare of the child to receive child care services from that provider.
- b. Union representatives, Covered Child Care Providers, and OCFS shall maintain strict standards of confidentiality regarding parents, guardians, caretakers, and children and shall not disclose personal information pertaining to any parents, guardians, caretakers, or children obtained from any source unless the disclosure of such information is compelled by a legal process or otherwise permissible by law.

9. STATE RIGHTS

- a. Nothing in the Agreement shall interfere with the ability that child care providers, or any other organization that represents such providers, otherwise may have to meet or correspond with, or otherwise appear before, OCFS or other state agencies in regard to any matter of relevance, including any matter under discussion as set forth in this Agreement.
- b. The State, OCFS, and the City of New York retain and may exercise all rights, powers, duties, authority, and responsibilities conferred upon and vested in them by the laws and constitutions of the State of New York and of the United States of America.
- c. Except as specifically abridged, limited, or modified by the terms of this Agreement, all such rights, powers, authority, prerogatives of the State and

the City of New York, and responsibility to promulgate and enforce rules and regulations governing the conduct and the activities of Covered Child Care Providers are retained by the State and the City of New York.

- d. No action may be taken under this Agreement that would derogate from the status, function or authority of OCFS in its capacity as the Lead Agency for the Child Care and Development Fund and the State Plan for such Fund filed by the Commissioner of OCFS with the United States Department of Health and Human Services.
- e. Nothing in the Agreement shall result in either the State or any social services district being considered to be the employer of any Covered Child Care Provider for any purpose, including but not limited to, vicarious liability in tort and statutory retirement, health insurance, unemployment compensation, worker's compensation, disability, or any other public employee benefits. Covered Child Care Providers shall remain as independent contractors of the families receiving child care services and, for those Covered Child Care Providers that have chosen to enter into a contract with a district, independent contractors of that district.
- f. The parties recognize and agree that the provision, funding and regulation of child care services is subject to federal and State laws and regulations.
- g. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this Agreement to the Union or to anyone else beyond funds appropriated and made available for this Agreement. To the extent that any provision of this Agreement requires the appropriation of funds during a particular State fiscal year to be effective, the State will propose an appropriation for such purpose in the Executive budget for that State fiscal year and will act diligently, in conjunction with the Union, to obtain legislative approval of such appropriation.

10. AREAS OF AGREEMENT ON OTHER ISSUES

The Union and OCFS have reached additional agreements in the following areas with regard to those Covered Child Care Providers who are licensed group family day care home and registered family day care home providers and agree to discuss the changes, if any, that need to be made to reach agreements in such areas with regard to legally-exempt providers:

- a. Union recognition, including non-discrimination; up-to-date lists of providers: access to union bulletin boards; timely information and discussions on proposed changes to regulations, rules, and policies; and access to newly licensed or registered providers.
- b. A joint committee to discuss and review those current child care regulations pertaining to providers that both OCFS and the Union(s) mutually agree should be discussed in a forum separate from other relevant stakeholders. The committee has already completed a review of the licensing and registration regulations.

- c. Joint support of legislation to amend the ratios of children to providers and to extend the length of time that initial licenses or registrations and renewals are valid. (OCFS Departmental #131 of 2009).
- d. Guiding Principles.
- e. Parental Rights.
- f. Inspections for licensing, registration or renewal.
- g. OCFS Website.
- h. Professional Development.
- i. Quality Early Education and Care Initiatives regarding the Quality Rating Improvement System.
- j. No Strike or Work Action.
- k. Paperwork in English and Spanish to the extent feasible within existing resources.

The Union and OCFS will continue discussions to finalize agreements in the following areas:

- a. Dispute resolution processes, including inspection/licensing dispute resolution; enforcement actions; and payments dispute resolution, and contract dispute resolution.
- b. Payments and billing.
- c. Homeowners and Liability Insurance.

The finalized agreements in the above areas, including the duration of any such agreements, will be included in the final agreement between the State and the Union.

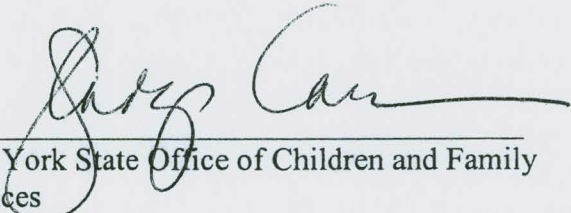
11. SEVERABILITY

Should any part of this Agreement or any provision contained herein be determined to be contrary to law, be determined by the Federal government to jeopardize the receipt by the State of any federal child care funds; and/or, in cases where it may be necessary, not be approved by the State or Federal government, such invalidation of such part or provision shall not invalidate the remaining portions of the Agreement and the remaining portions of the Agreement shall remain in force and effect. In such event, the parties shall meet promptly to discuss substitute provisions for those rendered or declared unlawful, invalid or unenforceable.


12. RATIFICATION

This Agreement is subject to ratification by the members of the Union.

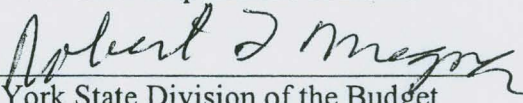
Date: _____

By: 
New York State Office of Children and Family
Services

Date: 10/16/09

By: 
New York State Department of Health

Date: _____

By: 
New York State Division of the Budget

Date: 10/7/09

By: 
United Federation of Teachers