

**MEMORANDUM OF AGREEMENT AMENDMENT** (the "MOA Amendment" or "Amended Agreement") entered into this 29<sup>th</sup> day of January, 2019 by and between the Board of Education of the City School District of the City of New York (the "Board" or "Department") and the United Federation of Teachers, Local 2, AFT, AFL-CIO (the "Union") modifying the collective bargaining agreement between the Board and the Union covering Nurses and Therapists that will expire on February 13, 2019, as set forth more particularly below.

## **1. INTRODUCTION**

The collective bargaining agreement between the Board and the Union, which expires on February 13, 2019, covering Nurses and Therapists shall be succeeded by successor agreements that shall continue all their terms and conditions except as modified or amended below.

Nurses and Therapists shall be covered by all of the provisions of the Memorandum of Agreement dated October 11, 2018 (the "MOA") between the Union and the Board except: Section 8 (entitled "Paraprofessional Due Process"); Section 9 (entitled "Expedited Procedure For Class Size"); Section 10 (entitled "Evaluation"); Section 12 (entitled "A+ Credits/Second Differential"); Section 13 (entitled "Teacher Leadership Roles"); Section 16 (entitled "Remote Teaching Pilot Program ("Pilot Program)"); Section 17 (entitled "Professional Activities Menu"); Section 18 (entitled "Regents"); Section 19 (entitled "Programming"); Section 20 (entitled "K-8, K-12 and 6-12 Schools - Open School Night/Parent Teacher Conferences"); Section 21 (entitled "Pilot Workday"); Section 22 (entitled "Absent Teacher Reserve"); Section 23 (entitled "Pre-Service Staff Development and Screening"); Section 24 (entitled "Psychologists and Social Workers"); Section 25 (entitled "Guidance Counselors"); Section 26 (entitled "Single Shepherd"); Section 27 (entitled "Speech Therapists"); Section 28 (entitled "Paraprofessional Summer Work"); Section 29 (entitled "Secretaries"); Section 32 (entitled "Teachers Assigned"); Section 33 (entitled "Attendance Teachers") Section 34 (entitled "Coaches") Article 35 (entitled "Librarians"); Section 37 (entitled "Lab Specialists"); Section 38 (entitled "Directors of Alcohol/Substance Abuse"); Section 39 (entitled "Non-Public Schools"); Section 40 (entitled "Teachers of the Homebound") Section 41 (entitled Supervisors of School Security"); Section 42 (entitled "Per Diem Substitutes"); Section 43 (entitled "Site Coordinators"); and Section 46 (entitled "3020-A Hearing Officers").

This MOA Amendment shall replace Sections 30 ("Nurses"), 31 ("Supervisors of Nurses and Therapists"), and 36 ("Occupational Therapists and Physical Therapists") of the MOA.

The terms of the successor agreements shall be from February 14, 2019 through September 13, 2022.

## **2. NURSES**

### **A. Professional Development**

The Board ("DOE") may utilize time during the regular work year and work day (e.g., clerical half days, high school scoring days, and afternoon parent teacher conferences) for professional development. The Department will consult with the nurse chapter on the professional development and its implementation.

**B. CPR**

In consultation with the nurse chapter, the DOE shall create a schedule for CPR training/renewal and schedule CPR training during designated professional development days or on days that shall be approved as non-attendance days.

**C. Head Nurse**

The Board ("DOE") shall reinstate and fill the Head Nurse Position in accordance with this Agreement and applicable law.

**3. SUPERVISORS OF NURSES AND THERAPISTS**

The Board ("DOE") shall request that the Department of Citywide Administrative Services (DCAS) administer civil service exams for supervisors of therapists on a regular basis. In the event that the DOE asks DCAS to create a new level in the Supervisor of Nurses, Supervisor of Therapists, or related titles, the DOE will so inform the UFT and collaborate with them on this proposal.

**4. OCCUPATIONAL THERAPISTS AND PHYSICAL THERAPISTS**

**A. Encounter Attendance**

Effective February 14, 2019, all physical and occupational therapists shall enter a certified encounter attendance record for all mandated sessions for every student, in accordance with the student's IEP mandate, on their caseload (i.e., including cancelled sessions, student/provider absences, etc.) contemporaneous with delivery of service, in accordance with professional standards, and no later than twenty (20) school days after delivery of the service, except if time during the work day for therapists to do SESIS-related work is reduced or extraordinary circumstances beyond the therapist's or the school's control prevent the therapist from entering the encounter, in which case it will be done as soon as possible.

Effective the first day of school for the 2019-2010 school year, all physical and occupational therapists shall enter the first encounter attendance record for all mandated sessions for every student in accordance with the student's IEP mandate within ten (10) school days of the first session with each student, except if time during the work day for therapists to do SESIS-related work is reduced or extraordinary circumstances beyond the therapist's or the school's control prevent the therapist from entering the encounter, in which case it will be done as soon as possible.

In the event that Medicaid rules and requirements change or alter the above timeframes, the parties agree to adjust the above timeframes to conform with Medicaid rules and requirements.

**B. Differentials and Longevity Increments**

Amend Article 32(A)(3) of the collective bargaining agreement covering Nurses and Therapists as follows:



The DOE shall continue its practice of promoting Occupational Therapists and Physical Therapist by promoting Occupational Therapist (DOE) Level I and Physical Therapist (DOE) Level I, upon completion of two (2) years of service, to Level II (previously "Senior Therapists").

Effective the first day of school for the 2019-2020 school year, for new hires (Level I and Level II) only, the difference between the Level I and Level II salary (the "Level II Differential") shall be paid in three (3) equal installments for every two years of employment as a DOE therapist, up to a maximum of six years. A new employee with two or more years of outside experience shall be eligible for the first installment upon their date of hire with the DOE. A maximum of only two years of outside, non-DOE experience shall count towards the years of employment required for the Level II Differential.

The Chancellor shall have the sole discretion to designate up to 50 schools citywide as "Hard to Assign" therapist schools. Said designation shall be final and not grievable or arbitrable.

In "Hard to Assign" therapist schools, any current therapist, newly hired therapist, or any therapist who transfers into such a school will receive the entire or remaining amount of the Level II Differential after two years in said school, provided they remain in that school for a full four school years following the year they receive the Level II Differential.

In the event an employee in a "Hard to Assign" therapist school transfers to a non-"Hard to Assign" therapist school, they will be placed on the appropriate salary schedule.

The five hundred dollar (\$500.00) increase to the longevity increment for therapists based on five (5) years of service provided for in the MOA shall be eliminated.

The longevity increment for therapists and supervisors based on twenty-two (22) years of service will be increased by two-thousand two hundred dollars (\$2,200.00) beginning February 14, 2019.

The Masters Educational Differential for all therapists shall be increased by six-hundred sixty-four dollars (\$664.00) beginning February 14, 2019.

### **C. Right to Return to Workplace**

Amend Article Ten of the UFT-Board Collective Bargaining Agreement Covering Nurses and Therapists as follows:

#### **ARTICLE TEN LEAVE WITHOUT PAY**

A. Leave Without Pay for Study. A leave of absence without pay for study not to exceed one year to upgrade the employee's professional knowledge and skills shall be granted after a minimum of three years of full-time, paid service at the Board of Education provided an appropriate replacement is available.

B. Return from Leave. Occupational and Physical Therapists who return from a leave of one year or less shall be returned to the school or facility where they served at the time of the leave, in accordance with seniority, if the following occurs: (1) for leaves that are more than sixty (60) calendar days, but one year or less, the Occupational and Physical Therapists shall provide sixty (60) calendar days' notice prior to return from leave; (2) for leaves that are more than thirty (30) days, but sixty (60) days or less, the Occupational and Physical Therapists shall provide fifteen (15) calendar days' notice prior to return from leave; and (3) for leaves of thirty (30) days or less, the Occupational and Physical Therapists shall provide five (5) calendar days' notice before the end of leave. The return date specified in the Occupational or Physical Therapist's application for leave on SOLAS shall constitute sufficient notice, unless the DOE informs the Occupational and Physical Therapists at the time of application that another reasonable method for providing the notice is required. The return shall be effectuated at the next reorganization unless an earlier return is permitted. Failure to provide appropriate notice shall allow the Department to place the returning therapists in a comparable position in either their home school or elsewhere in the district.

**D. Include Indemnification Language from 2016 SLP SESIS Agreement**

Create a new article of the UFT-Board Collective Bargaining Agreement Covering the Nurses and Therapists as follows:

The City and Board ("DOE", "NYCDOE" or "Department of Education") hereby agree that those individuals who are providing the use of their NYS SLP, NPI, and Medicaid Billing or Non-Billing identification number, completing referrals, evaluations (including reevaluations), and Encounter Attendance session notes, and delivering "medically necessary services" are doing so as part of their normal duties and responsibilities as employees of the Department of Education in order to allow the City and the DOE to submit a claim for Medicaid reimbursement and is therefore within the scope of their public employment. Upon the employee's request, the City will provide for legal representation of such employees and indemnification for any judgment, decision, determination, order or disposition (including but not limited to a settlement agreement as approved by New York City Corporation Counsel pursuant to its normal procedures) to such employees as a result of administrative or legal proceedings that arise in connection with the DOE/City submitting a claim for Medicaid reimbursement provided that the employee was acting in the scope of his or her public employment, in the discharge of the employee's duties, was not in violation of any federal, state or City rule or regulation and was in acting in accordance with applicable policies of the City and the DOE.

All employees shall be provided with Medicaid compliance training during the regular work day and all compliance concerns shall be reported in a manner consistent with the NYCDOE Medicaid Compliance plan. Any employee of the DOE who reports such information may do so anonymously. No employee will be subject to retaliation, administrative disciplinary proceedings, a letter to file, or be discontinued for reporting in accordance with the NYCDOE Medicaid Compliance plan or refusing to take any action that the NYCDOE Medicaid Compliance Officer or other agency or officer authorized to receive reports has agreed is a



violation of federal, state and city law or regulations. The provisions of this Article shall be in addition to any rights and/or remedies an employee may have pursuant to the law.

**F. Labor Management Committee**

The UFT and the DOE shall establish a Joint Labor Management Committee, consisting of an equal number of UFT and DOE representatives. The Committee shall have its initial meeting within thirty (30) days of the ratification of this MOA Amendment and shall:

(1) Review and discuss how to create/modify therapist assignments (e.g. evaluations, assessments, direct therapy sessions and home visits) that shall occur outside of the regular work day and report its findings and recommendations to the Chancellor and UFT President.

(2) Create a family leave policy for all full-time therapists effective the first day of school in the 2019-2020 school year. In the event this Committee disagrees on how to create such a leave, it will meet with the Chancellor and the UFT President to determine how best to proceed. Nothing herein shall limit any right that a therapist has to leave for which the therapist is eligible under the Family and Medical Leave Act.

(3) Develop criteria for the approval of and attendance at professional courses, conferences and workshops during regular working hours, so that it will not be unreasonably denied. In the event this Committee disagrees on criteria, it will meet with the Chancellor and the UFT President to determine how best to proceed.

**5. SALARY SCHEDULE**

Those provisions of Appendix A to the MOA pertaining to Physical and Occupational Therapists are replaced with the attached Appendix A.

**6. MISCELLANEOUS**

a. The provisions of this MOA Amendment apply to those titles covered by the UFT-Board Collective Bargaining Agreement covering Nurses and Therapists and, together with the applicable provisions of the MOA as stated in Paragraph 1 of this MOA Amendment, will be incorporated into the individual unit agreement as applicable.

b. In the event any inconsistency exists between the terms contained in the MOA, as modified by this MOA Amendment, and the expired collective bargaining agreement, the MOA, as modified by this MOA Amendment, shall be determinative.

**7. RATIFICATION**

The MOA, as modified by this MOA Amendment, is subject to ratification by the bargaining unit covering (i) Registered Nurses, Occupational Therapists, Physical Therapists and

related tiles; and (ii) Supervising Nurses, Supervising Physical Therapists and Supervising Occupational Therapists, and adoption by the Board of Education.

**8. SAVINGS CLAUSE**

In the event that any provision of this MOA Amendment is found to be invalid, such invalidity shall not impair the validity and enforceability of remaining provisions of the MOA, as modified by this MOA Amendment.

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

By: Michael Mulgrew  
Michael Mulgrew  
President

**The Board of Education  
As Employer**

By: Richard Carranza  
Richard Carranza  
Chancellor

**City of New York**

By: Renee Campion  
Renee Campion  
First Deputy Commissioner  
Office of Labor Relations

**Adopted by the Board of Education**

By: Vanessa Leung  
Vanessa Leung  
Chairperson of the Board