

**STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION
SPECIAL MAGISTRATE, MARTIN O. HOLLAND**

In the Matter of Impasse)	
between)	
)	
Orange County Classroom Teachers)	
Association,)	
)	
Union/Petitioner,)	
and)	Case No.: SM-2020-013
)	
School District of Orange County, FL,)	
Employer/Respondent))	

Discussion and Recommended Decision

Appearances:

For the Union: Mark Richard, Esq.; Lucia Piva, Esq.;
Phillips, Richard & Rind, P.A.
Wendy Doromal, President
Orange County Classroom Teachers Association

For the Employer: John C. Palmerini, B.S.C., Esq.
James Preusser, Senior Executive Director,
Orange County Public Schools

Date of Impasse: August 6, 2020
Date of Virtual Hearing: October 6 and 7, 2020
Hearing Closed: November 2, 2020
Date of Decision: November 12, 2020

In accordance with Section 447.201 and 447.403 of the Florida Statutes and Florida Administrative Code Rule 60CC-3, Martin O. Holland was appointed as Special Magistrate on September 2, 2020 to hear the facts of the impasse described herein, then to offer his Recommended Decision pursuant to the authority granted to the Special Magistrate by the Florida Statutes. On September 16, 2020, the parties were advised of suggested hearing dates during a pre-hearing conference call. The parties mutually agreed to a virtual hearing date of October 6 and 7, 2020 by Zoom conference. The hearing commenced at 9:30 am and continued to 6 pm. The second hearing day commenced at 9:00 am and continued to 1 pm. A transcript was made of the parties' arguments and submissions. The hearing was deemed closed at the exchanging and receiving of the post-hearing briefs.

Issue

Whether the Orange County Classroom Teachers Association (OCCTA or CTA) “Issue at Impasse” should be the Recommended Decision of the Special Magistrate. The CTA stated the impasse as: Memorandum of Understanding (MOU) regarding safely reopening schools for the 2020-2021 school year. Orange County Public Schools (OCPS) is governed by the School Board of Orange County (SBOC). The parties agreed the MOU is proper under impact bargaining during the existing Collective Bargaining Agreement (CBA) ratified December 6, 2019. See Joint Exhibit #1, Article II, Section J. Impact bargaining is well accepted in Florida. Sch. Dist. of Indian River County v. Florida Pub. Employees Relations Com’n, 64 So. 3d 723 (Fla. 4th DCA 2011)

Objective

The objective of the Special Magistrate is to recommend a decision to the parties that would be acceptable in free collective bargaining, that meets the parties’ realistic expectations and that the recommendations are justified under the Florida Statute criteria for such decisions. The Recommended Decision is a careful and conscientious balancing of various factors in public employment, the current economic climate and the reality of other public employment contracts with industrial norms and generally accepted labor practices. The goal is quick ratification by both parties pursuant to the statutory scheme.

Background

Orange County Public Schools, Florida, serves in excess of 204,000 students (K-12 enrollment) in over 202 schools or worksites. The School Board of Orange County, Florida is the legislative body entering into a CBA with OCCTA. Orange County has seen exceptional growth since Walt Disney World established Disneyworld as a world-renown entertainment park. Other major attractions, such as, Sea World, also provide extensive tourism. The SBOC employs 14,000 instructional personnel in the bargaining unit, represented by Orange County Classroom Teachers Association (Union). See, Public Employees Relations Commission, Case Number 8H-RC-754-1039 (1975) The County has grown to the fourth largest school district in Florida and eighth largest school district in the United States. The SBOC receives its tax revenue funding from two main sources. In general terms, the State of Florida provides \$7,500. per student. The State also sets conditions and standards that must be met by SBOC. Further, Orange County property taxes are

a major source of revenue. The State of Florida school funding known as Florida Education Finance Program, provides the basis of revenue for the County public schools. Accordingly, the SBOC must abide by the obligations and conditions set forth by the State.

Statutory Provisions for Impasse

A Special Magistrate is a neutral or arbitrator with broad labor experiences that the parties mutually select. The Special Magistrate is similar to a fact finder or judge pursuant to the Florida Statute. The impasse procedure is governed by statute because teachers, as police/fire bargaining units, are prohibited from striking. Public employees and employers who bargain to impasse and then utilize the impasse procedure expect a fair and reasonable outcome to their dispute. It has long been held, in the private sector, that arbitration between employers and unions brings “industrial peace” and is *quid pro quo* for a no strike provision in a collective bargaining agreement. Textile Workers Union v. Lincoln Mills, 353 U.S. 443, 453-55 (1957) Most States have public employee bargaining statutes and many States have impasse procedures with binding impasse decisions or impasse decisions with special provisions. In Florida, the Recommended Decision is a public tool to test the reasonableness of the parties’ impasse position. The value in the Magistrate’s Recommended Decision is the scrutiny brought to bear on the parties’ positions and the public pressure to accept a neutral’s recommendation that results from the impartial evaluation and analysis of each party’s position. The point is, a Special Magistrate’s Recommended Decision must be afforded true deference by the parties and legislative body for the statutory scheme to work. In some States, as Illinois, teachers have the right to strike while such actions by police/fire are prohibited. The general public accepts that police/fire and teachers are fundamental to public service and those employees are valuable. It is often expressed that teachers control our nation’s future and police/fire protect the future. Interest arbitration, throughout the majority of States, utilizes a standard or criteria that are essentially the same as the Florida Statute, “*Factors to be considered by the Special Magistrate*”. See Section 447.405, Fla. Stat. One State with a long history of police/fire interest arbitrations is Michigan. The Michigan Supreme Court clarified similar standards found in the “Michigan Police and Firemen’s Arbitration Act” stating:

“Since the Section 9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrators with an answer. It is the [arbitrator] panel which must make the difficult decision of determining which particular factors are most important in resolving a contested issue under the

singular facts of a case, although, of course, all applicable factors must be considered.” Detroit v. Police Officers Assn., 105 LRRM 3083, 3092

Similarly, Arbitrator James J. Sherman considered the Florida Statute for standards and comparison. Arbitrator Sherman stated that statutory standards in his opinion “...are intended to be applied only selectively depending upon the circumstances of each case ‘that the standards’ are not to be given equal weight in every case...” and “Indeed in some cases particular standards probably have no applicability and should not even influence the decision”. City of Winter Haven, 65 LA 557 (1975)

Accordingly, this Special Magistrate will consider and give weight to all of the five factors listed in Section 447.405 recognizing that some factors may deserve greater weight and discussion in this Recommended Decision. Further, the statutory language, “The factors, among others, to be given weight by the Special Master”, is recognition that the Special Magistrate may also consider other well-founded principles of interest arbitration. The five express statutory factors in 447.405 are:

447.405 Factors to be considered by the special magistrate. – The special magistrate shall conduct the hearings and render recommended decisions with the objective of achieving a prompt, peaceful, and just settlement of disputes between the public employee organizations and the public employers. The factors, among others, to be given weight by the special magistrate in arriving at a recommended decision shall include:

(1) Comparison of the annual income of employment of the public employees in question with the annual income of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved.

(2) Comparison of the annual income of employment of the public employees in question with the annual income of employment of public employees in similar public employee governmental bodies of comparable size within the State,

(3) The interest and welfare of the public.

(4) Comparison of peculiarities of employment in regard to other trades or professions, specifically with respect to:

- | | |
|---------------------------------|------------------------------|
| (a) Hazards of employment. | (e) Job training and skills. |
| (b) Physical qualifications. | (f) Retirement plans. |
| (c) Educational qualifications. | (g) Sick leave. |

(d) Intellectual qualifications. (h) Job security.

(5) Availability of funds.

In interest arbitration situations, special magistrates are confronted with conflicting arguments raising divergent issues, which must ultimately be resolved. Allegheny County, 120 LA 432 (Wagner, 2004) The application of generally applied arbitration principles used by magistrates to reconcile the conflicting issues and positions of the parties must be explained in some detail. See Berkeley Unified School Dist., 122 LA 1034 (Staudohar, 2006) Here, the employees are teachers. Their passion and dedication are directly related to the future of our children. Their knowledge, skills and abilities include special training for the gifted student as well as the impaired student. Teaching is a career choice with limited mobility once hired by a county. Teachers must achieve and maintain educational and intellectual qualifications far higher than the general public.

It has long been recognized that a county or city has a fiscal interest in maintaining the quality and morale of its teachers since the property values and local businesses find its economic worth is influenced by the quality of the school district. A superior school district will encourage commercial businesses, building and property values. Today, school districts are very much a concern of the general public as well as its students.

I recognize that this dispute is different in the public sector than in the private sector. The private sector is bilateral, employer and employee. Whereas the public sector is trilateral. The employee, governmental unit as the employer and the public as the taxpayer make the process different. While the profit motive is absent in public services, the taxpayers' vote is the ultimate decider of the level of public services. In Abood v. Detroit Board of Education, the United States Supreme Court expressed:

The government officials making decisions as the public "employer" are less likely to act as a cohesive unit than are managers in private industry, in part because different levels of public authority – department managers, budgetary officials, and legislative bodies – are involved, and in part because each official may respond to a distinctive political constituency. And the ease of negotiating a final agreement with the union may be severely limited by statutory restrictions, by the need for the approval of a higher executive authority or a legislative body, or by the commitment of budgetary decisions of critical importance to others.

Decision-making by a public employer is, above all, a political process. In Abood, the court reasoned the officials who represent the public employer are ultimately responsible to the electorate, which ... can be viewed as comprising three overlapping classes of voters – taxpayers –users of particular government services, and government employees... . Public employees are not basically different from private employees; on the whole, they have the same sort of skills, the same needs, and seek the same advantages. “The uniqueness of public employment is not in the employees nor in the work performed; the uniqueness is in the special character of the employer.” 431 U.S. 209, 228 (1977)

In State of Florida v. Florida Police Benevolent Association, the Florida Supreme Court noted public employees’ bargaining is not the same as private bargaining. 613 So.2d 415, 142 LRRM 2224 (Fla. 1993) The Court explained that while the private sector experience could serve as a reference, the private sector is not an infallible basis for public employment. Id. Notably the Court reasoned the public sector employees in Florida require legislative approval and discretion that cannot be bargained away. Id. @418 Nevertheless, the County and legislative body must recognize that the significant purpose of the Florida Statute and its statutory scheme should not be discarded. A legislative body’s easiest political choice may be to refuse any Union proposal, but the Florida Statute mandates collective bargaining with a recognized bargaining union. Sch. Dist. Of Indian River County v. Florida Pub. Employees Relations Com’n, 64 So. 3d 723 (Fla. 4th DCA 2011) The following Finding of Facts and Recommended Decision is a product of that statutory scheme.

Discussion

Covid-19 is an unprecedented pandemic. Not since the Spanish Flu in 1918 has such an influenza pandemic caused such long-term health problems and deaths. Florida, today, is reaching over 6,000 new cases per day. Over 17,000 Floridians have died from Covid-19. The covid pandemic, by a preponderance of medical experts, will continue for years. No vaccine will be available until 2021, if even then. Pfizer has just announced a pending vaccine.

In August 2020, the Florida Commissioner of Education ordered the SBOC to open their brick and mortar schools for face to face instruction. Teachers have been and will be exposed to Covid-19

and could infect their own families. The parties negotiated the current CBA but never contemplated such an extensive pandemic. The CBA did not include provisions for pandemic safety procedures or employee conditions. This unique pandemic outbreak mandates that the parties seek solutions and guidelines to ensure safety for its personnel. Teachers' health and safety is a significant term and condition of employment requiring impact bargaining under the Florida Statutes. See, City of Cocoa, 14 FPER ¶19311; City of Boca Raton, 12 FPER ¶17051. The OCCTA invoked impasse under the Florida Statutes to secure a Memorandum of Understanding for the safe reopening of schools. This Recommended Decision is the result of two days of hearings, medical expert testimony, and lengthy post-hearing briefs to establish a fair and reasonable MOU for the parties. The Special Magistrate urges the SBOC and Union to adopt the Recommended Decision.

At hearing, the SBOC made many meaningful and well-founded arguments on various issues that the Special Magistrate has adopted. The SBOC gained significant amendments in the Union's proposed MOU. Two (2) major SBOC adoptions were in paragraph 4 and 44. The Union sought a "choice" for its teachers to choose either LaunchED (virtual) teaching or face-to-face teaching in schools. The term "choice" indicates one or the other teaching method. The Union wanted teachers to have a binary choice to teach virtually or face-to-face. The Special Magistrate feels this is too restrictive on the Board. A parent's initial election of the LaunchED platform is changeable. Covid-19 is changeable. Where the pandemic is in November may be vastly different in March 2021. I agree that teachers should not perform both virtual and face-to-face functions at the same time in a classroom. However, the necessity of some teachers to perform both functions at the same time in a classroom may be implemented by the Board due to manpower shortages or students opting to shift from virtual to in-classroom learning. In fact, the parties do not know what demands or conditions will prevail in January 2021. Flexibility over teacher choice must be limited. For example, a specific school may have three (3) teachers teaching a total of fifty-four (54) second grade students. Class size is limited by State regulation to no more than 18 students per class. Ideally, thirty-six parents selected virtual learning for their child. Two (2) of the three teachers would be assigned to the LaunchED platform with 18 students each and one (1) teacher would be assigned to teach 18 students in a face-to-face classroom setting. Subsequently, if nine (9) parents elect to change their child's instruction method, one (1) of the three (3) teachers may be assigned 18 students in the LaunchED platform, one teacher assigned to 18 students in a classroom face-to-

face setting, and the final teacher assigned to a combination class of 9 LaunchED students and 9 in classroom face-to-face students. The number of students can change according to their parent's preference for their child's learning. Thus, the number of teachers assigned to face-to-face, virtual or combination classrooms may also change to accommodate virtual and/or in classroom instruction.

In some areas, I accept the SBOC's recommendations because the terms, changes, or deletions did not make a difference. For example, I deleted the "Whereas" clause at the Board's suggestion because it was repetitive. In some other areas, I accept the SBOC's suggestion that the "Joint Safety Committee", referred to in the CBA, should be utilized for ongoing issues. Article II, M (6)(b)(2) However, the parties admit the safety committee has no members and never actually met as a forum. The Union President and OCPS Executive Director of Human Resources can be ex-officio members immediately. The CTA should appoint members to its side of the committee and submit written issues every month to be discussed. If the Board does not act or ignores the Union, these written issues will be documentation for future actions and/or grievances.

The parties will notice I have adopted the uncontroversial language of Union Exhibit 1-A.¹ In some paragraphs, I substituted specific words and/or phrases for clarity and meaning. I added the term "gross negligence" at two points for a fair resolution. The term "negligence" is too simple and arbitrary for liability or fault. Gross negligence is more than ordinary negligence but less than intentional wrongdoing. For example, a vehicle driven 45 mph in a 35-mph zone could be considered ordinary negligence. A vehicle driven 55 mph in a 35-mph zone may be gross negligence. A vehicle driven 65 mph in a 35-mph zone may be intentional wrongdoing.

Next, I accept the CTA's proposals for "Terms and Conditions", "Duration", and conflict resolution. The Terms and Conditions clause was modified by this Special Magistrate. The MOU must be enforceable. Capital Improvement Bd., 118 LA 1108,1116 (Wendt, 2003) The MOU must be clear and meaningful for the parties to understand the plain meaning of its terms. The

¹ I notice that Exhibit 1-A in the Union's exhibit book is different than the Exhibit 1-A used at hearing. I understand the language difference is the parties attempt at narrowing the issues before hearing.

Board's argument about excessive grievances are unsubstantiated. Upon this Special Magistrate's inquiry, the parties admitted just a few numbers of grievances are currently active. The bargaining unit has 14,000 members. The CTA, or its membership, is not abusing the grievance process. In contrast, the MOU must be clear and enforceable. Health and safety of teachers is a significant term and condition of employment. The Florida Statute §447.405, commands the Board to bargain and negotiate significant terms and conditions of employment. The parties are under a "Duty to Bargain" which compels a "Duty of Good Faith". Restatement (Second) of Contracts, §205 (1981); Farnsworth, Contracts §7.17 (3d ed. 1999) The MOU, as recommended, is reasonable. External MOUs comparable from Dade, Hernando and Broward counties are relevant. External comparables are substantial evidence for the Board's adoption of this Recommended Decision. City of Cedar Falls, Iowa, 119 LA 1711 (Moellar, 2004) Here, the interest and welfare of the public is better served by adopting the CTA's terms and conditions clause, as well as, the duration clause. City of Hugo, Oklahoma, 120 LA 540 (Crow, 2004)

Finally, the parties' offered excellent and lengthy briefs on all 29 disputed issues. The parties' brief will provide substantial documentation as to why some language was adopted or deleted. The parties should quickly accept the Recommended Decision as a fair and reasonable resolution of this impasse.

Finding of Facts

The Recommended Decision's Memorandum of Understanding clearly meets the interest and welfare standard under the Florida Statute §407.405. The recommended MOU relating to safely reopening schools for the 2020-21 school year is justified under the Florida statute. Health and safety are terms and conditions of employment over which the District must bargain. City of Cocoa, 14 FPER ¶19311; City of Boca Raton, 12 FPER ¶17051; Roadmaster Corp. 98 LA 847 (Christenson, 1992)

The Recommended Decision of this Memorandum of Understanding is a fair comparison with other large school districts in Florida that have adopted a similar MOU during this difficult Covid-19 pandemic. A review of Dade, Hernando, and Broward counties show the Recommended Decision for this MOU is reasonable and achievable. The MOU is guided by the CDC, Florida

health officials, and Orange County School Board Medical Advisory Committee member, Dr. Annette Nielson.

The Union did not waive its strong right to bargain over working conditions. City of Gainesville, 12 FPER ¶17124 General references to infectious diseases or Health and Safety Committees in a CBA does not establish a waiver. United Faculty of Florida v. University of Central Florida Board of Trustees, 36 FPER ¶1160 (2010)

The Joint Safety Committee is a suitable and appropriate forum to address personnel issues and safety concerns before the grievance process. Article II, M(6)(b)(2) The CBA allows this MOU to be incorporated into the contract. Article II, (J). Federal Bureau of Prisons, 116 LA 1271 (Moore, 2002) When the OCPS Health and Safety Procedures Manual is incorporated into this MOU it will give teachers a say in their workplace health and safety. Id.

Recommended Decision

MEMORANDUM OF UNDERSTANDING BETWEEN THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA AND THE ORANGE COUNTY CLASSROOM TEACHERS ASSOCIATION

This Memorandum of Understanding (MOU) is made on this day of 2020 by and between the School Board of Orange County, Florida (District) and the Orange County Classroom Teachers Association (OCCTA). This Memorandum of Understanding relates to safely reopening schools for the 2020-21 School Year.

The parties mutually agree as follows:

The COVID-19 Health and Safety Procedures Manual version 8.0 (effective September 12, 2020) is hereby adopted and incorporated to this MOU as if fully set forth herein. In the event of a conflict between this Memorandum of Understanding and the COVID-19 Health and Safety Procedures Manual, this Memorandum of Understanding shall prevail. The parties understand the COVID-19 Health and Safety Procedures Manual may be amended as needed for legitimate operational needs by the School Board. The OCCTA will be given prior notice for a meet and confer opportunity. The OCCTA will have ten (10) days for input prior to any amendment to the Health and Safety Procedures Manual through the contractual Joint Safety Committee, established in the CBA, Article II, M(6)(b)(2)

Health and Safety

1. The procedures contained herein apply to all OCPS facilities wherein bargaining unit employees work and shall be implemented in accordance with Center for Disease Control and Prevention (“CDC”) guidelines, including any updates, unless otherwise mutually agreed by the parties in writing. The District will also consider the recommendations of local health officials and industry guidance and best practices as appropriate to Florida and Orange County, to the extent they do not conflict with the CDC.

2. In accordance with CDC guidelines, the District shall limit nonessential school site and classroom visitors, volunteers, and activities involving external groups or organizations as possible. The frequency of walkthroughs will be limited and no more than two persons will be allowed to conduct a walkthrough at any given time. Any school or classroom visitors or volunteers who are deemed essential, including for walkthroughs, must comply with all other safety protocols, including those established by this MOU.

3. The District will update emergency plans and contact lists, and establish procedures for students and staff who have come to school with COVID-19 symptoms, or who have tested positive for COVID-19, including but not limited to the following:

a. Implementing training for teachers to identify, and procedures to address, students who appear symptomatic, including clear guidelines for nurses.

b. Establishing procedures to separate symptomatic and/or COVID-19 positive individuals from the school population. Each school shall expand school clinic capabilities with triage and have at least one separate isolation room that can be used to isolate symptomatic and/or COVID-19 positive individual. Schools with medically fragile students should provide an additional room for students to receive services.

c. Ensuring symptomatic and/or COVID-19 positive individuals are sent home as soon as possible and developing a parent or guardian communication and pick up plan.

d. Informing OCCTA and all employees at the worksite whenever a student, employee, or visitor at a worksite has tested positive for COVID-19, OCCTA will be provided with a weekly update of these worksites. The OCPS “dashboard” “may be utilized for this purpose provided the OCPS immediately updates all incidents.

e. Following CDC guidelines on how to disinfect the portions and/or all of building as necessary if someone is symptomatic and/or COVID-19 positive.

f. Closing out areas used by the person who is symptomatic and/or COVID-19 positive.

g. Identification and contact tracing in accordance with CDC guidelines and in conjunction with the Florida Department of Health in Orange County.

h. Preparing for targeted school closures where necessary.

i. If there has been a confirmed COVID-19 case at a school, the District shall [d]ismiss the room or building of students and most staff for an initial consultation with local health officials as recommended by the Florida Department of Education which recognized that this allows time for the local health officials to gain a better understanding of the COVID-19 situation impacting the school. This also allows the local health officials to help the school determine appropriate next steps, including whether an extended dismissal duration is needed.

Said procedures will be developed in accordance with CDC guidelines and in collaboration with local health officials and OCCTA.

4. Employees who are at increased and/or high risk for serious complications from COVID-19, as established by the CDC, or are caring for increased and/or high-risk household members may indicate a preference for a LaunchED@Home assignment to teach or conduct work-related duties at home to the extent student demand allows such instruction to be completed at home. If such assignment is not available because of a lack of student demand the District will work to accommodate those employees at their school site to minimize exposure to the extent feasible. The employee shall return to their same worksite and position if available.

5. The District will grant members of the bargaining unit personal leave without pay up to one school year upon request. Members of the bargaining unit shall be permitted to find outside employment while on leave for this COVID -19 pandemic period during the school year 2020-2021 only.

6. Symptomatic and/or COVID-19 positive employees and students, and/or those who have had direct contact with someone with COVID-19 will be required to stay at home. Said Employees who have tested positive for COVID-19 or have had direct contact with someone with COVID-19 will be placed on medical relief of duty if they cannot work remotely. The parties understand the current CDC recommendations and the SDOC's standards enunciated in the Health and Safety Procedures manual should be the same. As recommended by the CDC:

a. If an employee or student has had COVID-19 symptoms they may not return to school until they had 3 days with no fever, and their respiratory symptoms have improved and it has been at least 10 days since symptoms first appeared.

b. If an employee or student has tested positive for COVID-19, they may not return to school until they have no fever, respiratory symptoms have improved, and they have received two negative test results in a row, at least 24 hours apart.

c. If any employee or student has had close contact with someone with COVID-19 and/or COVID-19 symptoms they must stay home for 14 days after exposure.

Any employee who is asymptomatic but is required to stay home for the reasons outlined above may request a remote assignment as described in Paragraph 4 of this MOU.

7. If an employee is sent home due to COVID-19 related illness, he/she will be placed on Medical Relief of Duty up to fourteen (14) calendar days. Employees may also be eligible for paid Emergency Sick Leave or Emergency FMLA under the Federal Families First Coronavirus Response Act (FFCRA-HR 6201). Once employees have exhausted all available leave and/or federal benefits, he/she may use personal, sick, or unpaid leave, and then employees must use unpaid leave.

8. The District will follow Department of Education (DOE) guidelines for waivers related to making up lost instructional days and time related to COVID-19. Any change to the calendar and/or workday will be negotiated with the Union.

9. The District shall not ask or require any bargaining unit employees to sign any waiver agreement(s) requiring the employee to waive any rights, hold the District harmless, or to agree to free the District of any liability associated with contracting COVID-19 at work.

10. Any and all meetings including, but not limited to, faculty meetings, PLCs, team meetings, pre-planning meetings, IEP meetings, Meet the Teacher, and Open House will be held virtually where legal and possible. Provided, parents may request face to face meeting if possible. Virtual meetings may be recorded. Any other administrator communication will be conducted via email.

11. The District will ensure adequate equipment and supplies are provided to support hygiene practices, use of Personal Protective Equipment, and sanitation. There must be proper and sufficient supply and equitable distribution of face coverings, gloves, disinfectant wipes and/or cleaner, hand sanitizer with at least 60% alcohol, soap, paper towels, tissues, physical barriers to the extent necessary when other Personal Protective Equipment cannot be used, handwashing and sanitizing stations, and sanitizing materials that will not damage sensitive equipment (e.g. instruments and books). Teachers and schools will have access to said supplies and equipment as needed. Bargaining unit employees are not required to clean or sanitize classrooms; however, these supplies will be available for their use.

The District will ensure that bargaining unit employees whose job description requires increased interaction with students (e.g. elective teachers, nurses, social workers, psychologists, counselors, employees who may be required to implement student restraints, and employees who work with younger students, ESE students, and students with physical conditions) are provided with supplies and equipment commensurate with their exposure level including face shield, physical/plexiglass barriers, masks, gloves, and additional supplies as needed.

Teachers will be permitted to wear scrubs or casual clothing. Nurses and ESE teacher including those who work in self contained classrooms will be provided with protective gowns upon request.

The District will provide face shields for Deans, Psychologists, Social Workers, Counselors, and Staffing Specialist. Social Workers, Psychologists, Counselors, and Deans shall not be required to meet face-to-face in their office with more than one student if 6 feet physical distancing cannot be maintained. The District and local administration will coordinate other facilities for use. Otherwise, the District will provide plexiglass barriers in their offices in the event that a student meeting must be conducted.

12. Bargaining unit employees, including Social Workers, will not be required to conduct home visits, which could put their health and safety at risk, unless home visits have a legitimate operational need. Home visits will be made utilizing all protective measures.

13. Bargaining unit employees, including Social Workers, Psychologists, Counselors, Deans, Behavioral Specialist, and Staffing Specialist may conduct and participate in IEP meetings, 504 plans, and parent-teacher conferences virtually or by conference call, where feasible.

14. Pursuant to CDC guidelines, face coverings should be worn by staff and students (particularly older students) as feasible, and are most essential in times when physical distancing is difficult.

Individuals should be frequently reminded not to touch the covering and to wash their hands frequently. Information should be provided to staff, students, and students' families on proper use, removal, and washing of face coverings.

High-Risk teachers and those in situations where students are not wearing masks or 6 feet physical distancing cannot be achieved will be provided with KN95 masks. Complaints or inquiries will be processed pursuant to the Joint Safety Committee. Article II, Section M (6)(b)(2)

15. Pursuant to CDC guidelines, the District will “develop a schedule for increased, routine cleaning and disinfection” and will “clean and disinfect frequently touched surfaces (e.g. playground equipment, door handles, sink handles, drinking fountains) within the school and on school buses at least daily or between use as much as possible. Use of shared objects (e.g. gym or physical education equipment, art supplies, toys, games) should be limited when possible, or cleaned between use.” Any shared objects that were used shall be left in a designated bin to be sanitized daily. A checklist stating what was cleaned in each classroom will be attached to the classroom door daily.

16. Teachers will be allowed to have air purifiers in their classrooms or offices.

17. As recommended by the CDC, the District will “[p]rovide physical guides, such as tape on floors or sidewalks and signs on walls, to ensure that staff and children remain at least 6 feet apart in lines and at other times.” The District will require each school to establish protocols to facilitate compliance with CDC guidelines of physical distancing while traveling through the building, including during transitions between classes. This may include, but is not limited to, signage and physical markings, additional time for class changes, increased monitoring and security, and limited and/or staggered transitions. Signage should be consistent and uniform across the District.

18. All class sizes (including VPK, electives and special area classes) will comply with CDC and State guidelines and will be reduced in a manner that will facilitate physical distancing. Classrooms and workspaces must be reconfigured and space seating must be at least 6 feet apart, as possible, to comply with the same.

19. [intentionally left blank]

20. In order to avoid congregation of employees upon arrival and departure from the worksite, to check in and out, the District will provide an electronic check in/out sheet.

21. The District will encourage and communicate health and safety practices to parents, students, and employees. District-wide hygiene practices, social distancing, and other safety protocols will be taught to students and embedded in daily routines. Daily schedules, including class transitions, must include time for every student and employee to implement adequate hygiene practices and social distancing. The parties acknowledge some special need students or teaches may need accommodation.

22. Employees may, but will not be required to, enforce student adherence to hygiene practices, social distancing, and other safety protocols. Employees shall not be disciplined or held

responsible when students refuse to follow instructions to practice safety protocols unless the employee is grossly negligent and takes no actions to correct the noncompliance. Teachers will also not be held responsible for any adverse consequences of face coverings; COVID-19 cases traced to their classroom; or curriculum requirements that cannot be followed due to social distancing requirements or class closures.

23. School administrators will promptly take action to correct any student non-compliance with health and safety protocols of which they have been made aware to protect the safety of all students and staff.

24. The District will cover the cost of COVID-19 testing and COVID-19 associated medical costs for those employees who are not yet eligible for insurance coverage with the District.

Training

25. The District will provide sufficient training for employees on proper safety protocols; how to use safety equipment and supplies safely and properly; how to de-escalate situations in which students refuse to follow protocols; and how to handle situations unique to COVID-19 such as reporting and dealing with suspected cases, privacy rights, identifying and addressing emotional stressors, student engagement, and attendance. All training will be completed by no later than the first day in which the employee is required to implement it.

26. The District shall provide meaningful training, guidance, and instructional materials.

27. District professional development will be made available online to assist staff in completion of requirements for recertification.

LaunchED@Home

28. Employees and students who are engaging in LaunchED@Home will follow the schedule provided by the school which shall include a duty-free lunch and planning time and will not exceed the duty day.

29. Teachers engaging in LaunchED@Home will be available on screen for students throughout the entire duration of each class, but the parties acknowledge teachers may be subject to personal needs, other drills or situations beyond a teacher's control.

30. Regular attendance and grading policies will be followed while engaging in LaunchED@Home.

31. The District will ensure that employees who are engaging in LaunchED@Home have access to internet, computers with working microphone and video capabilities, digital materials, cloud or other storage, as well as instructional platforms to conduct their work. Any teacher in need of equipment to teach through the LaunchED platform will contact their administrator and it will be provided in a timely manner.

32. The District will provide employees with learning platforms to conduct LaunchED@Home.

33. Employees who are engaging in LaunchED@Home will be given the option of conducting it from a classroom.

34. Cameras for live streaming will be available for teachers. Cameras will not be installed in the classrooms, offices, or room, or areas used by bargaining unit employees for concerted activities. Teachers will have control over the activation and deactivation of cameras.

Live steaming and cameras will only be permitted during the 2020-2021 School Year.

35. If video cameras are used in classrooms to provide live or recorded instruction:

- a. Teachers must be trained on the proper usage of equipment.
- b. The District will ensure the security of the data and how it is stored.
- c. The District will ensure student and personal privacy including, but not limited to, FERPA prior to the first day of the usage of such audio/visual devices.
- d. Teachers must be notified of which students in their classrooms have signed applicable consent forms and the District will ensure that policies and procedures for dealing with students whose parents have not provided consent are followed.
- e. Teachers are to be held harmless for any malfunction of said equipment provided the malfunction was not caused by gross negligence of the employee.
- f. Teachers are to be held harmless for any remote student behaviors that are streamed to the entire classroom.
- g. A sign indicating that the classroom has a video camera or recording equipment and which states that such cameras are being utilized for instruction must be placed in each classroom upon the installation of such devices.

36. Teachers may record their own lessons at their discretion.

37. Teachers will inform their worksite Administrator if they are sick or absent and will put in leave in the Employee Self-Service (ESS) portal.

38. Video content will not be used by the District for any purpose or exhibited in any other context without the written permission of the teacher. In no circumstances will video recordings of teachers be made or used as part of any evaluation without the advance knowledge and written consent of the employee.

39. When disciplinary action is being considered, recommended action will be based on totality of the evidence, rather than the video recording(s) in isolation.

40. Students that record a teacher without their knowledge or permission may be subject to discipline according to the District's Code of Student Conduct.

41. [intentionally left blank]

42. Employees shall not be disciplined or held responsible for damage to District equipment related to LaunchED platform, unless the equipment is damaged due to the gross negligence and/or an intentional act of the employee; functionality of technology or if connectivity is interrupted or otherwise insufficient to facilitate LaunchED@Home; privacy issues; oversight or supervision of children at home; or improper use of technology by parents or student. While teaching under the LaunchED platform, the teacher will be responsible to report abuse, neglect, or abandonment under the requirements of Management Directive A-4. It is understood that employees who will be providing LaunchED@Home may have inadvertent lesson interruptions or distractions, such as background noise or conversations from others. Employees shall not be disciplined or held responsible in any way for actions of others that might be witnessed or heard by students.

43. If a parent brings forth a charge or civil suit against a teacher over lessons, materials, discussion and/or matters that arise from LaunchED@Home, the District will provide an attorney who will represent the teacher to the extent the teacher was acting within the course and scope of his/her employment.

Workload

44. Preferably, Teachers will not be required to perform both on-campus face-to-face and LaunchED@Home simultaneously. The parties will negotiate a process to determine teacher assignment of on-campus face-to-face or LaunchED@Home that allows for teacher preference, and teachers who are at increased and/or high-risk for serious complications from COVID-19, as established by the CDC, or are caring for increased and/or high-risk household members will be considered first for LaunchED@Home positions at their worksite. The parties acknowledge the external circumstances and the changing preferences of parents must be considered.

45. Employees will be notified of their work times, schedule, and location, whether in the building or remote, with ample time to plan and carry out their responsibilities.

46. The duty day, including time for planning, grading, and student instructions, shall not exceed contract hours.

47. In the event a bargaining unit employee is required to stay home for the reasons outlined in Paragraph 7 of this MOU, and is unable to work remotely, no other bargaining unit employee will be asked or required to fulfill that employee's work responsibilities or assignments to the extent feasible.

48. [intentionally left blank]

49. [intentionally left blank]

50. In accordance with Article VII, Section A of the CBA, teachers will have the freedom to implement the adopted curriculum. The parties agree to adhere to the lesson plan settlement. For those teachers working from home, lesson plans shall be submitted electronically within three (3) duty days of the request as stated in the lesson plan settlement.

51. Bargaining unit employees will not be required to perform duties or responsibilities outside of their job description or historically assigned duties.

52. Classroom teachers will not be required to supervise students between periods. The time will be used to prepare for the next group of students.

Evaluations

53. [intentionally left blank]

54. [intentionally left blank]

55. [intentionally left blank]

56. If the State prohibits District evaluations to be submitted as outlined in Paragraph 3 of this section, then the parties will meet prior to the first day of pre-planning, or as soon thereafter as the prohibition becomes known, to agree on training and temporary modifications to the evaluation system suitable for the 2020-2021 School Year.

Electives

57. Supply lists, developed in collaboration with teachers, will be sent to parents so students have the necessary materials to engage in elective from homes.

58. Student performances, concerts, rehearsals, and art shows will continue in a manner that complies with CDC guidelines on physical distancing (e.g. staggered performances, reducing cast size, distanced seating, virtual streaming) and the District will make available the appropriate platforms to share performances with high quality audio and video.

Terms and Conditions:

The parties agree to further establish, in writing, best practices and mechanisms to monitor and enforce established safety protocols, and to revisit the subjects addressed herein, as necessitated by parent, student, and employee feedback; Center for Disease Control and Prevention updates; recommendations from local health authorities; changes in the law; changes of the course or severity of the Pandemic; and the evolving needs of parents, students, and employees. Subsequent agreements and understandings germane to the reopening of schools will be incorporated herein, and the OCCTA will utilize the Joint Safety Committee to recommend or establish best practices and mechanisms to monitor and enforce safety protocols or to revisit the subjects addressed herein.

This Agreement sets forth an entire agreement between the parties hereto and shall supersede any and all prior agreements or understandings between the parties; except that all other provisions of the Collective Bargaining Agreement remain in full effect and in the event of a conflict between this Memorandum of Understanding and the Collective Bargaining Agreement, the Collective Bargaining Agreement shall prevail unless mutually agreed by the parties in writing.

This Agreement may be executed in counterparts, and each counterpart will have the effect of an original. Electronic and facsimile copies will be considered originals for all purposes, including enforcement.

This Agreement may not be amended except by a written agreement signed by the parties.

Duration:

This Memorandum shall commence effective from the date of Board approval and shall sunset on June 30, 2021, unless otherwise mutually agreed to by the parties in writing.

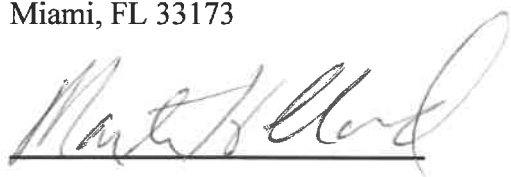
Executed on this day. Of 2020.

Certificate of Service

I hereby certify that a true and correct signed copy of SM-2020-013 Recommended Decision has been served by USPS Priority Mail delivery service to:

Mark Richard, Esquire
9360 SW 72nd Street, Suite 283
Miami, FL 33173

John Palmerini, Esquire
445 West Amelia Street
Orlando, FL 32801

A handwritten signature in dark ink, appearing to read "Martin O. Holland", is written over a horizontal line.

Martin O. Holland

November 12, 2020