

**Memorandum of Understanding Between the Berkeley Unified School District
and the Berkeley Council of Classified Employees**

School Year 2020-2021 and Distance Learning

The Berkeley Unified School District (“District”) and the Berkeley Council of Classified Employees (“BCCE”), enter into this Memorandum of Understanding (“MOU”) regarding issues related to the coronavirus COVID-19 and the opening of schools during the 2020-21 school year.

The parties agree to the following:

1.0 RISK REDUCTION

1.1 Physical Distancing

1.1.1 The District agrees to maintain physical distancing standards in school facilities and vehicles, including but not limited to implementing plans incorporating the following components:

a. Maintaining appropriate changes to the physical layout to maintain physical distancing:

- One-way hallways to the extent possible;
- Provide sufficient points of access to avoid larger gatherings to the extent practicable;
- Protective Plexiglass Barriers for public-facing office positions at the point of public

contact as availability of supplies allows; and

- Limits on the number of students in classrooms or other spaces in compliance with CDC guidelines

- One employee per District provided vehicle (excluding school buses which are covered in section 4.0)

b. Plan to limit the number of people in all campus spaces to the number that can be reasonably accommodated while maintaining a minimum of six feet of distance between individuals, or current CDC recommended distance.

c. To the extent possible, and as recommended by the CDC, attempt to create smaller student and educator cohorts to minimize the mixing of student groups throughout the day. Minimize movement of students and educators or staff as much as possible.

d. In a circumstance where sufficient physical distancing is difficult or impossible, such as when students enter or exit a school bus in proximity to the bus driver, all individuals, including staff and students, must wear face coverings that cover the mouth and nose consistent with public health guidance. Both parties recognize that some students, including very young students and some students with disabilities, may struggle to wear face coverings. The parties recognize that coverings are not a replacement for physical distancing, but they should be used to mitigate virus spread when physical distancing is not feasible.

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1.1.2 The District agrees to develop a plan that ensures physical distancing among staff in their work environment to reduce the spread of virus which includes:

- a. Avoiding staff congregation in work environments, break rooms, staff rooms, and bathrooms.
- b. In-person meetings shall be virtual to the extent possible. In the event that a meeting needs to be held in person, social distancing and the use of Essential Protective Equipment (EPE) will be required.
- c. In accordance with Cal/OSHA regulations and guidance, the District shall evaluate all workspaces to ensure that employees can maintain physical distancing to the extent possible.
- d. Where possible, the District shall rearrange workspaces to incorporate a minimum of six feet between employees and students, or current CDC recommended distance.
- e. If physical distancing between workspaces or between employees and students/visitors is not possible, the District agrees to install physical barriers to separate workspaces, unless the physical distancing prevents the work to be completed safely.
- f. Where possible, continue to implement and use paperless systems to conduct business.
- g. As long as the City of Berkeley, County of Alameda, or the State of California have a shelter-in-place order related to covid-19, the District agrees to minimize the employees considered essential to the operation of the district and not require all employees to work on-site at a District Facility. The District and BCCE agree that if an employee voluntarily requests to work on-site they shall be allowed as long as all other aspects of this agreement are followed.

1.2 Essential Protective Equipment (“EPE”)

1.2.1 The District shall provide sufficient protective equipment to comply with CDPH guidance for staff appropriate for each classification or duty, relevant to Cal/OSHA requirements, including but not limited to as follows:

- a. For all classifications: Face coverings (as defined by Public Health), gloves available upon request
- b. For staff engaged in symptom screening, nursing staff, and/or staff working with severe special education students in person: Masks, face shields, bite guards, disposable gloves and gowns.
- c. For food service staff: Face coverings and disposable gloves
- d. For custodial staff: Face coverings, gloves and hand sanitizer

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Surface cleaning - Face coverings, gloves appropriate for all cleaning and disinfecting

Deep cleaning and disinfecting - Appropriate EPE for COVID-19 disinfection (gloves, eye protection, and face covering) in addition to EPE as required by product instructions

e. Nothing in this section precludes the employee and their supervisor from engaging in a discussion, up to and including the interactive process, regarding additional EPE.

1.2.2 The District shall implement a plan for securing and providing an ongoing supply of protective equipment.

1.2.3 The District shall require the use of face coverings for all persons who enter District facilities.

1.2.4 Face coverings are not required for individuals working in private offices/classrooms when alone. If someone is within 10 feet of an individual or enters a previously closed space they will wear a face covering.

1.3 Hand Washing

The District shall ensure sufficient supplies of hand sanitizer solution, soap, hand washing stations, and paper towels.

1.4 Cleaning & Sanitizing

1.4.1 The District shall maintain adequate school-appropriate cleaning supplies to continuously disinfect the school site in accordance with CDPH guidance.

1.4.2 The District shall establish and maintain a routine “deep-cleaning” schedule in accordance with State guidelines and orders. “Deep-cleaning schedule” is defined as a plan for keeping school facilities at a high level of cleanliness, particularly sanitizing high-touch surfaces.

1.5 Student Screening

1.5.1 Self Attestation: The District agrees to instruct parents to screen students before leaving for school (check temperature to ensure temperatures below 100.4 degrees Fahrenheit, observe for symptoms outlined by public health officials) and to keep students at home if they have symptoms consistent with COVID-19 or if they have had close contact with a person diagnosed with COVID-19.

1.5.2 If a student is symptomatic while entering campus or during the school day: Students who develop symptoms of illness while at school will be separated from others right away, preferably isolated in an area

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through which others do not enter or pass. If more than one student is in an isolation area, the district will ensure physical distancing.

1.5.3 Follow established guidelines for triaging students in the health office, recognizing not all symptoms are COVID-19 related.

1.6 Thermometers

1.6.1 The District shall purchase a sufficient number of no-touch thermal scan thermometers for symptom screenings.

1.7 The District will comply with the state, county, and/or city mandates regarding classroom, site, and district closures based on positive test results.

1.7.1 The District agrees to maintain an updated Districtwide and Site Specific Protection Plans to address unique circumstances during COVID-19 crisis and agrees to make updates accessible to employees.

2.0 REPORTING UNSAFE CONDITIONS

2.1 Both parties recognize that all BUSD employees share the responsibility for maintaining a healthy work environment, and that compliance with the terms of this agreement will require each employee to exercise individual responsibility. Because managers cannot directly observe all work at all times, employees are encouraged to communicate with one another in positive ways if they have a concern about another employee's personal health practices.

2.2 In the event that a BCCE bargaining unit member (hereinafter referred to as "member") is unable to resolve with a co-worker an issue related to risk reduction practices, and in the interest of protecting community and workplace health, any employee should report, in person or in writing, any unsafe condition in the working environment to the immediate supervisor. The supervisor shall, within two (2) working days, respond in writing to the employee, with a simultaneous copy to the BCCE President, stating what has been done to make the condition safe or, if no action will be taken, the reason(s) why. This method of resolving safety concerns shall not displace the right to file OSHA or other administrative complaints or to bring a grievance for violation of this agreement.

2.3 An member has a "Right to Refuse Hazardous Work" per Cal/OSHA regulations:

In addition to filing a complaint, you have the right to refuse hazardous work if both of the following are true:

1. Performing the work would violate a Cal/OSHA health or safety regulation.
2. The violation would create a "real and apparent hazard" to you or your coworkers.

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When these conditions are met, you have the right to refuse to perform the work. But before you refuse, you should take the following steps:

- Tell your supervisor about the hazard and ask that it be corrected.
- Explain that you are willing to continue working if the hazard is corrected or you are assigned other work that is safe.
- State that you believe a health or safety regulation is being violated.
- Contact your union representative.
- If the problem is not fixed, call Cal/OSHA and file a complaint.

3.0 OUTSIDE VISITORS AND GROUPS

3.1 The District agrees to develop a plan to minimize access to campus and limit non-essential visitors and volunteers.

4.0 TRANSPORTATION

4.1 District agrees to meet with the union to discuss the specifics for the transportation department prior to implementation of any plan.

4.2 District agrees to develop and maintain a maximum capacity seating plan for students of each vehicle while meeting physical distancing objectives.

4.3 The District agrees to ensure that drivers have access to surplus face coverings to provide to students who are symptomatic on the bus.

4.4 The District agrees to instruct students and parents to maintain distancing objectives at bus stops and while loading and unloading.

4.5 The District agrees to develop a plan for students who are symptomatic prior to boarding the bus so that they are safe and do not compromise the health of others on the bus.

5.0 CHILD NUTRITION

5.1 The District agrees to develop strategies, in coordination with the union, to limit physical interaction during meal preparation and meal service.

5.2 The District agrees to install physical barriers, such as sneeze guards and partitions at Point Of Sale and other areas where maintaining physical distance of six feet is difficult.

5.3 The District agrees to update standard operating procedures for sanitation of school kitchens and cafeterias.

5.4 The District will ensure gloves, face coverings, and other supplies are readily available to Child Nutrition staff.

5.5 The District agrees to promote fresh healthy menu options that are individually plated meals and pre-portioned and pre-wrapped produce.

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5.6 School site administrators will assess whether to serve meals in the classroom or cafeteria or to use outdoor seating.

5.7 Physical distancing will be encouraged through increased spacing, small groups, and limited mixing between groups, to the extent possible.

5.8 The District will provide physical guides, such as tape on floors or sidewalks and signage on walls to ensure that students remain at least six feet apart in lines or while waiting for seating.

5.9 The District agrees to remove or suspend use of share tables and self-service buffets for food and condiments.

5.10 The District agrees to have staff wear face covering and gloves while using point of service (POS) touch pads, and/or have hand sanitizer available.

5.11 The District agrees to ensure cleaning of every table between groups of students or meal service times.

5.12 The District agrees to offer grab-and-go student meals for consumption at home, including drive-through, delivery, or curbside pick-up options during distance learning.

6.0 TRAINING

6.1 The District will provide training to staff on proper EPE usage, social distancing protocols, and handwashing procedures within the first workday of the employees return to on-site work.

7.0 EMPLOYEE SCREENING

7.1 The District agrees to engage in “Self Attestation” of staff prior to starting their shift.

7.1.1 Encouraging staff to self-screen before leaving for work (check temperature to ensure temperatures below 100.4 degrees Fahrenheit, check for symptoms outlined by public health officials) and to stay home if they have symptoms consistent with COVID-19 or if they have had close contact with a person diagnosed with COVID-19.

7.2 Bargaining unit members shall be required to respond to screening questionnaire of questions that are based on CDC recognized symptoms and exposure, including but not limited to:

- Fever or chills
- Cough
- Shortness of breath or difficulty breathing
- Fatigue
- Muscle or body aches

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- Headache
- New loss of taste or smell
- Sore throat
- Congestion or runny nose
- Nausea or vomiting
- Diarrhea

7.3 Temperature checks and questionnaires shall be performed in a confidential manner.

7.4 Screening records shall be kept confidential.

7.5 Safety screenings and any necessary medical examinations are strictly limited to COVID and shall not be used to inquire into other medical conditions.

8.0 TESTING AND TRACING

8.1 The District shall provide documented plans for testing and contact tracing for when any on-site person(s) have tested positive for COVID-19.

8.2 The District shall notify bargaining unit employees who have been exposed to a confirmed case of COVID-19 at work within 24 hours of the district being notified.

8.3 The District shall notify BCCE Union Leadership of bargaining unit member exposure to a confirmed case of COVID-19 within 24 hours of the district being notified.

8.4 BCCE agrees to cooperate with the District in any necessary public health actions, such as contact tracing of infected individuals. All members will comply with contract tracing including signing in and out of locations. This information will be used solely for contact tracing purposes only.

8.5 Participating bargaining unit members shall be trained in screening techniques prior to screening. Members may take their own temperature if there is reasonable suspicion that they are experiencing COVID-19 symptoms.

8.6 Temperature taking duties shall not be required for any bargaining unit member who is categorized as high risk of contracting COVID-19 or has a household member/dependent classified as high risk with medical verification.

8.7 The District will provide all members with information for locations that offer COVID-19 testing, including free local testing.

8.8 Given that employees are allowed to work from their classrooms/offices, signage will be posted on the door to notify others when those employees are in their classrooms/offices. Postings must include red (room is occupied) and green (room is vacant) notification that employees are using the room. Postings will include “knock before entering to

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allow the person to put on their mask". Some rooms will not be receiving custodial service as determined by the Executive Director of Facilities and Maintenance.

9.0 LEAVE

9.1 The District agrees to protect and support staff who are at higher risk for severe illness (medical conditions that the CDC says may have increased risks) or who cannot safely distance from household contacts at higher risk by providing options such as telework or negotiated change in classification or duties. The District will provide reasonable accommodation to the extent practicable.

9.2 If reasonable accommodations are not practicable, the District will work with the employee to develop a flexible leave plan that allows the employee to utilize all available leave including: Emergency Paid Sick Leave, Extended FMLA Leave, Sick Leave, Vacation Leave, Catastrophic Leave, Extended Illness Leave, and all other available statutory leaves.

9.3 District and BCCE agree that there will be a temporary adjustment of ratio for Personal Necessity(PN) afforded under the collective bargaining agreement in Article 11.2.8 for the 2020-2021 school year only. The employee shall be allowed to use their annual allotment of sick leave for the year to be used as PN. For example, if the employee receives 12 days of sick leave, then the employee may use 12 days toward PN.

9.4 District agrees not to contest workers' compensation claims that are related to COVID-19 exposure at work.

9.5 In the event a BCCE bargaining-unit member is exposed to coronavirus or is taken ill with coronavirus or wishes to self-quarantine for reasonable cause (i.e. family members who are uniquely vulnerable), the member may use available leaves without fear of reprisal.

9.6 The District will comply with all provisions of HR 6201, also known as the Federal "Families First Coronavirus Response Act." The parties recognize that such leave as provided by HR 6201 shall be available to all eligible District employees in the appropriate circumstances, and shall be drawn prior to any other forms of paid or unpaid leave available to such employees.

9.6.1 Members may use any previously accrued vacation or personal necessity leave to fill any gap in pay resulting from the 2/3 formula in HR 6201.

9.7 Members may use existing forms of leave to address a childcare provider or school emergency affecting their children.

9.8 Other forms of leave: Members who have exhausted accrued sick leave may use extended sick leave in accordance with the provisions of article 11.2.11 of the bargaining agreement.

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9.9 No loss of pay during COVID-19 related closures or curtailments: In the event any District facility must be closed, or any District operations are curtailed due to the coronavirus epidemic, BCCE bargaining-unit members will not suffer any loss of pay or benefits relative to their regular schedules for the period of closure or curtailment. Thus, for example the District will continue to pay bargaining-unit members even if they are unable to work due to coronavirus-related reduction in use of District facilities. If there is a District closure, members will be expected to perform duties remotely. Members will not be required to use paid sick leave or any other form of paid time off during such an eventuality, unless the member is ill or chooses to not work remotely at which time they will need to use available leave.

9.10 To support the bargaining unit members with child care responsibilities, BUSD will make every effort to provide child care on each BUSD campus for the members with children between TK and fifth grade, including consultation with Public Health and Community Licensing, and will consult with BCCE on implementation. Members who elect to use employer-sponsored child care will comply with all terms and conditions created by the district.

10.0 ACCOMMODATION

10.1 The District explicitly acknowledges that the interactive process shall be required to make work safe for members with health conditions that heighten the risk of severe outcomes with COVID-19.

10.2 The District agrees to maintain procedures for keeping confidential member communications about non-COVID health conditions.

10.3 The District agrees to initiate the interactive process upon the notification from the member whose physician designates them as “high risk” or “vulnerable” as related to exposure to COVID-19.

10.4 The District shall provide reasonable accommodation for members particularly vulnerable to COVID-19 due to a medical condition, including but not limited to:

- Providing additional or enhanced essential protective equipment (EPE);
- Placing physical barriers to separate the vulnerable member from coworkers or the public;
- Eliminating, reducing, or substituting less critical, non-essential job functions that create more risk of exposure;
- Moving the member workstations.

11.0 RETURN OF PERSONNEL

11.1 In the event of a COVID related closure, the District agrees to give 24 hour notice of their return date prior to requesting an member report back to their site unless it is an emergency.

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12.0 DUTIES

12.1 The District and BCCE acknowledge that California Education Code §45101(a) and §88001(a) requires that all classified positions have set duties. However, due to the current unforeseen and unprecedented nature of the current conditions BCCE and the District recognize that some BCCE bargaining unit positions may be asked to perform duties not currently contained within their current job description. However, The provisions of Article 8.4 of the Collective Bargaining Agreement, Employees Working Out of Classification, will apply.

12.1.1 If new work duties are requested, the district shall strive to insure that these new duties still fall within their job classification.

12.1.2 If the requested duties are outside of their classification, they should be compensated based on the salary schedule of that classification, at appropriate range and steps, at a minimum of a 5% increase in salary. (Article 8.4)

12.1.3 The district shall meet with the BCCE and the affected member(s) to discuss the change in the work duties, if feasible.

12.1.4 The district agrees to meet and confer with BCCE and the affected member(s) to discuss a change in work duties that would affect a whole classification or is outside of the member's skill set.

12.2 Members may provide feedback to their supervisor regarding workload concerns at any time. Members and Supervisors shall work collaboratively to resolve workload concerns. If the concerns are not resolved, the member, with BCCE representation, may appeal to the Director of Human Resources.

12.3 Technology and Supplies Stipend: BUSD will provide all unit members working remotely a \$200.00 stipend to cover the cost of expenses related to the provision of distance learning from the home. This stipend covers instructional positions and office staff. This stipend will resolve any needed technology supplies and materials. No additional reimbursements will be provided. Staff is encouraged to borrow equipment from their classrooms/offices as practicable. These purchases do not require the pre-approval of an administrator.

13.0 GRIEVANCE

13.1 Any alleged violation, misinterpretation, or misapplication of the terms of this MOU shall be subject to the Grievance provisions of Article 16 of the BCCE Collective Bargaining Agreement.

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14.0 DURATION

14.1 This MOU shall expire in full on June 30, 2021 unless extended by mutual written agreement of the parties. This agreement is non precedent setting.

14.2 Nothing in this agreement shall preclude the parties from modifying this MOU by mutual written agreement of the parties.

14.3 This MOU resolves the negotiable effects of changes to working conditions due to the COVID-19 Pandemic. The District and/or BCCE reserve the right to negotiate any additional impacts related to COVID-19 and/or additional school closures in the 2020-21 school year.

14.4 The District shall adhere to the COVID guidelines issued by the Centers for Disease Control and Prevention ("CDC"), California Department of Public Health ("CDPH"), California Department of Education ("CDE"), the California Department of Industrial Relations Division of Occupational Safety and Health (Cal/OSHA), the Alameda County Health Department and the City of Berkeley Public Health Department which may be updated from time to time. The parties agree to meet as soon as possible to negotiate the impact and effects of any revisions or updates to those guidelines.

15.0 DISTANCE LEARNING MODEL

15.1 During a distance learning model where members are required to shelter in place at home, bargaining unit members shall be issued a chromebook, printer, and headsets and microphones upon request. This shall apply to BCCE members who directly support student learning and/or the office and have been approved by an administrator.

15.2 Evaluations for all probationary members and those on the evaluation cycle for 2020-2021 will take place remotely.

15.3 During distance learning, Special Education/Instructional Assistants and Behavior Intervention Specialists will support student learning through zoom meetings and working with small groups of students in breakout rooms. This includes Wednesdays. These members will work under the direction of the teacher.

15.4 All school site members (IAPP and OTBS) will assist principals in making contact with families of students who are not participating in the distance learning model to ensure that the district remains in compliance with temporary state accountability rules around distance learning.

15.5 All IAPP members will participate in a maximum of four hours (4) per school day or twenty hours (20) per school week of direct student interaction online through tools such as Zoom and Google Meet. This does not include any professional development opportunities or meetings such as staff/classroom/team/IEP. Any unit member holding more than one IAPP position will split the four hours in the same ratio as their total number of hours per position per workday,

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for example if a unit member is 0.8 FTE IA and 0.2 FTE IT they will spend a maximum of 3 hours 15 minutes in IA position and 45 minutes in the IT position on zoom or google meet, daily.

15.6 School Safety Officers (SSOs) will report to work during Distance Learning to promote safety, security, and protection of all District sites/facilities.

15.6.1 SSOs shall receive training on District safety procedures and plans specific to COVID 19 and strategies to promote compliance and safety on their first official day on-site.

15.6.2 SSOs will be offered the opportunity to select a temporary site assignment based on seniority. The temporary assignment will continue as long as the District remains in Distance Learning.

15.6.3 SSOs will support safety and compliance by reminding others regarding social distancing, wearing masks, and washing hands/using hand sanitizer. SSOs will report any concerns to site administrators (when possible) and to covidconcerns@berkeley.net or the District Consultant as soon as possible with details of the issue.

15.6.4 SSOs will support safety and compliance by making sure signage and supplies are in appropriate locations on the campus in coordination with the custodial staff.

15.7 During Distance Learning, all components of the current Collective Bargaining Agreement between BCCE and District not addressed by the terms of this agreement shall remain in full effect.

For BCCE:


Frank Hernandez, President

9-30-20
Date

For BUSD:


Samantha Tobias-Espinosa, Assistant
Superintendent

9/30/2020
Date