
AGREEMENT BETWEEN:

**NEW MEXICO CHILDREN, YOUTH
AND FAMILIES DEPARTMENT**

AND

**AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES
COUNCIL 18**

NOVEMBER 9, 2022 THROUGH JUNE 30, 2025

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ARTICLE 1 PURPOSE

THIS AGREEMENT is entered into between the Children, Youth and Families Department/Juvenile Justice Services (JJS) Education, hereinafter referred to as "CYFD" or "Agency," and AFSCME, Council 18, hereinafter referred to as the "Union," to provide terms and conditions of employment for all certified instructional employees of the Children, Youth and Families Department (CYFD) as defined in the appropriate bargaining unit and certified by the State of New Mexico Public Employee Labor Relations Board.

ARTICLE 2 UNION RECOGNITION

In accordance with the State of New Mexico Public Employee Bargaining Act (TEBA"), CYFD hereby recognizes the Union as the exclusive representative of the certified bargaining unit employees covered by this Agreement for the purpose of collective bargaining with respect to wages, hours, and other terms and conditions of employment. The bargaining unit consists of all Teachers (Job Code 9526) and Basic Ed Teachers (Job Code 9193) who work for the Juvenile Justice Services Division of CYFD except Confidential Employees, Management Employees and Supervisory Employees.

ARTICLE 3 MANAGEMENT RIGHTS

Section 1. Except to the extent specifically modified or limited by this Agreement or by applicable statutory or regulatory provisions, the sole and exclusive rights of management shall include the following:

1. Direct the work of, hire, promote, assign, evaluate, transfer, demote, suspend, dismiss, or otherwise discipline Employees;
2. Determine qualifications for employment and the nature and content of personnel examinations;
3. Take actions as may be necessary to carry out the mission of the State in emergencies;
4. Determine the size and composition of the work force;
5. Formulate financial and accounting procedures;
6. Make technological or service improvements and change production methods;
7. Relieve an Employee from duties because of lack of work or other legitimate reason;
8. Determine mission, methods, means and personnel by which the Agency's business is to be conducted;
9. Determine the building location and physical operation of its organization;
10. Provide reasonable rules and regulations governing the conduct of Employees; and,
11. Provide reasonable standards and rules for Employees' safety.

Section 2. Prior to implementing any change in existing terms or conditions of employment relating to items 9, 10 or 11 of Section 1 above, the Agency shall provide the Union with reasonable notice under the circumstances of such contemplated action and, if requested to do so, shall bargain with the Union in good faith to impasse prior to implementing such changes.

Section 3. The Agency may maintain policies and procedures that contain provisions that are more generous to the Employee than those within this Agreement.

ARTICLE 4 UNION AND EMPLOYEE RIGHTS

For purposes of the Agreement, the following definitions shall apply:

Employee means a Teacher who is part of the bargaining unit.

Union Representatives means non-Teachers paid by the Union who are authorized to act on behalf of the Union to administer the Collective Bargaining Agreement (CBA).

Union Officials means a Teacher elected as Local Union President or Local Union Vice-President authorized by the Union to administer the CBA.

Union Steward means a Teacher authorized by the Union to administer the CBA.

Member means a bargaining unit Employee who pays Union membership dues.

Section 1. The Union shall have the right to select Union Stewards to represent Employees covered by this Agreement. The Steward Agreement will be negotiated between the parties and it will identify the exact number and location of Union Stewards for the Agency. The Steward Agreement will be an Appendix of this Agreement.

Section 2. The Union shall provide the Agency's designee with the following information about Union Stewards, Union Officials, and Union Representatives: a written list of the names, addresses, telephone numbers, and the Agency to which they are employed, who are authorized to act on behalf of the Union and the extent of their authority. The list shall be updated every calendar quarter or when additions and/or deletions have occurred. As noted above, identified Union Stewards shall have full power on behalf of the Union to resolve all disputes and disagreements through Step 3 of the Grievance Procedure in the administration of this Agreement as set forth in the Grievance and Arbitration Procedures in Article 15 and Article 16 of this Agreement.

Section 3. As set forth below in this Section the Agency shall allow Union Officials, Union Stewards, and Employees to attend on State-paid status (using the union time code) as set forth in this Section's succeeding paragraphs. Each Union Official, Union Steward, or Employee shall be entitled to investigate and process grievances, which they are authorized to settle, for reasonable periods of time. Request must be pre-approved and will not be disapproved except for operational reasons. However, the Agency retains the right to disapprove the request when the Union Official, Union Steward, or Employee is in an overtime status. If disapproval necessitates an extension of time for processing a grievance, the time shall be tolled for the duration of the denial until time is afforded to the Union Official, Union Steward, or Employee to investigate and process the grievance. Union time code shall count as hours worked for the purpose of overtime computation but shall not qualify for payment of mileage or per diem unless an Employee is otherwise assigned

to a per diem status by the Agency. A Union Official, Union Steward or Employee shall use the union time code within assigned work hours to investigate and process grievances in the most efficient and effective manner possible so as to minimize operational impairment. Time spent investigating and processing grievances outside of assigned work hours shall not be compensated. When a Union Official, Union Steward, or Employee desires to consult with another Employee concerning a grievance on work time, both Employees shall request and obtain prior permission to do so by using the Union Time Form. The following activities are to utilize the union time code:

- Investigatory interviews, either as target or witness
- Disciplinary Appeal Prep/investigation; up to four (4) hours
- Disciplinary Appeal Hearing; representing appellant; duration of the hearing
- Disciplinary meetings -- issuing discipline (Letter of Reprimand (LOR), Notice of Contemplated Action (NCA), or Notice of Final Action (NFA)
- Disciplinary response preparation time; up to four (4) hours
- Oral Response Meeting (ORM) to NCA, if face-to-face (F2F)
- Grievance, process and investigate; up to four (4) hours
- Grievance F2F meetings
- Committees agreed to by the parties and the member is assigned by the Union
- Meetings agreed to by the parties; attendance
- Agency policy negotiations and CBA negotiations
- To investigate and represent in a PELRB hearing; up to four (4) hours
- Union Steward trainings; first year a full day, thereafter a half (1/2) day annually
- Union Steward shadowing; up to two (2) Union Members for investigatory interview, ORM, and grievance F2F meetings
- Agency orientation meetings
- PELRB hearing; grievant and representative; duration of the hearing

Union Officials, Union Stewards, and Employees will not be compensated by the Agency for the following, but will be allowed to utilize leave without pay (LWOP), or personal leave at the Employee's discretion:

- Union meetings and conferences
- Union trainings, except Union Steward training
- Organizing
- Political activity
- Community functions

State vehicles can be utilized by Union Officials and Union Stewards, if available, for all committees/taskforce, Agency policy negotiations, and CBA negotiations. Travel time will be coded as union time and can only be utilized up to four (4) hours one way. An Employee cannot use a State vehicle when they are in a LWOP status.

Section 4. The Agency recognizes the importance of having Union Officials available to represent Employees should a Union Steward be unavailable. In the event that a Union Steward is not available to represent an Employee within the Union Steward's local at a grievance meeting or a case before the PELRB, the Agency shall allow a Union Official to code their time to represent as union time code, as if they were a Union Steward, in order to provide representation to covered Employees within the Union Official's local. As used in this Section, unavailable means that the Union Steward is on leave, there is a conflict where the Union Steward has to recuse themselves, operational reasons prevent the Union Steward from leaving their post, or where a Union Steward vacancy exists that the Union has been unable to fill despite good faith efforts to do so.

The parties shall each designate a centralized point of contact to coordinate the use of union time and address any issues related to the use, or allegations of misuse, of union time. If there are concerns related to the use or alleged misuse of union time, the Agency's designee shall provide, as expeditiously as possible as much specific information as possible, and any supporting documentation, to the Union designee. The Union shall seek to resolve the concern as expeditiously as possible. In the event the Agency's designee is not satisfied with the Union's resolution of the issue(s), the Agency's designee may reopen this Section of the Agreement dealing with reasonable union time. If no agreement is reached during such negotiations, the Agency's designee may use the impasse resolution procedures provided for in the PEBA. This paragraph shall not preclude the Agency from taking disciplinary action to address the abuse of union time.

Section 5. Union Representatives and Union Officials shall have reasonable access to visit the Agency as necessary for purposes of administration of this Agreement. Such consultation shall not unreasonably interfere with the operations of the Agency. The Agency may designate a management representative through whom **all** such visits must be coordinated. If an Agency facility is secured, then reasonable notice shall be given, and the Agency shall provide a reasonable place where Union Representatives and Union Officials can talk with an Employee in private.

Section 6.

- A. The Agency shall approve reasonable written requests for personal leave and/or LWOP for up to fourteen (14) calendar days, if requested by Union Steward/Union Officials, in order to participate in Union executive board meetings, Union conventions, and employment as Union Representative.
- B. The Agency shall approve reasonable requests for personal leave and/or LWOP in excess of fourteen (14) calendar days and less than twelve (12) months for the above purposes and shall assure an Employee the right to return to a position of like status and pay, at the same geographic location, unless the Agency has a reasonable basis to believe that the Employee, upon providing fourteen (14) days' notice, cannot be placed in such a position. In such an

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- C. event, the Agency shall grant the leave provided the Employee signs a written waiver of their right to return. An Employee who signs such a waiver shall be returned to a position of like status and pay, at the same geographic location, upon providing fourteen (14) days' notice provided such a position is available. If such a position is not available, they will be placed in an available position that is closest to salary range, status, duties, and worksite as possible. Upon the availability of a position of like status and pay, at the same geographic location, the Employee shall be placed in that position. Approval of requests for extensions of LWOP status for additional twelve (12) month periods shall not be unreasonably withheld and shall be provided on the same basis as the original request.
- D. Employees returning to State service after LWOP shall receive any general salary increases implemented that they would have been entitled to had they not taken LWOP and such leave shall not affect seniority status.

Section 7. Union Stewards/Union Officials who are on non-work time, or Union Representatives, may distribute Union literature on Agency facility grounds in public areas, in non-public non-work areas, and in work areas where the distribution does not interfere with Agency operations or present a security or confidentiality breach. At facilities with 24-hour operations, Union Stewards/Union Officials who are on non-work time, or Union Representatives, may distribute Union literature in public areas and in non-public non-work areas, but not in work areas (due to security, safety, privacy, and confidentiality concerns) that pose security, safety, privacy, and/or confidentiality concerns. The Union shall have the right to place literature in areas adjacent to where paychecks are initially distributed so that Employees may take a copy of the literature.

Section 8. The Union shall have exclusive use of separate bulletin boards of an equal size near every bulletin board used by the Agency to give information to Employees. The Union will provide the bulletin board and the Agency will install it unless the Agency agrees to allow the Union to use existing bulletin board space. Postings on Union bulletin boards shall be confined to internal Union business, including notices and announcements of meetings, news items, labor-management news, but shall not include materials of a partisan, political, defamatory, or obscene nature or personal criticism of any individual. Distribution of Union literature at worksites shall not include materials of a defamatory or obscene nature or personal criticism of any individual. The Agency shall not authorize the posting of notices critical of the Union, or any Union member (except for instances necessary to protect Employees); the Union shall receive advance written notices in these instances, or its representatives on the Agency's official **bulletin boards**.

Section 9. **Within** one hundred eighty (180) days of the effective date of this Agreement, the Union **will be afforded up to** two (2) hours using the union time code to jointly participate with management in Agency meetings in order to present and explain this Agreement to Employees. As an exception to the above, if the Agency has annual in-service training, a presentation may be made during the annual training.

Section 10. Except as limited by law or this Agreement, each Employee shall have the right to join and assist the Union freely, without fear of penalty or reprisal, or refrain from doing so, and the Agency and the Union shall assure that each Employee shall be protected in the exercise of such right. Allegations concerning violations of these rights shall be filed with the PELRB.

Section 11. Union Representatives may request the use of State property to hold Union meetings. Upon prior notification, the Agency will provide meeting space where feasible. Union meetings will not interrupt State work and will not involve Employees who are working. The Agency shall make space available for Union Representatives to have confidential discussions with Employees on an as-needed basis subject to availability.

Section 12. Union Officials and/or Union Stewards are authorized to make reasonable use of copiers, FAX machines, computers (including email), and other office equipment for purposes of collective bargaining, including the administration of CBAs, the investigation of grievances or other disputes relating to employment relations and matters involving the governance or business of the labor organization, provided such use does not interfere with official State business

Section 13. The Union shall be permitted to use internal State mail systems, including computer/electronic mail, for bargaining unit mailings in accordance with applicable executive policies. The Union shall give the Agency's designee reasonable notice in advance of any mass mailings. The Agency's designee will whitelist AFSCME emails in all email filters. Correspondence hand-delivered to bargaining unit members marked "confidential Union business" shall be treated as confidential.

Section 14. The Union will provide the Agency with the names and addresses of authorized Union Representatives who will be provided with notice of each orientation meeting held by the Agency. The notice will be sent as soon as such meetings are scheduled and will include date, time, and location. During orientation meetings, the Union will be permitted to give up to a thirty (30) minute presentation which may include an enrollment in supplemental Union benefits and programs. The Union shall participate in the orientation meetings using the same medium as the Agency (e.g., telephone, videoconference, F2F meeting). In the event an orientation meeting is not held, the Union will be permitted to provide information to be included in the orientation package that the Agency mails to the Employee.

Section 15. Union Steward Training. When an Employee has been designated to fill a vacant Union Steward slot, the Agency shall permit one (1) workday of union time in the Union Steward's initial year of appointment and one-half (1/2) workday for purposes of Union Steward training each fiscal year thereafter that they remain a designated Union Steward filling a Union Steward slot.

ARTICLE 5 DEDUCTIONS

Section 1. The Agency will honor voluntary Union membership dues deduction authorizations. The amount of the dues shall be certified in writing by the Union and shall not include special assessments, penalties, or fines of any type. The Union shall notify and identify to the Agency's designee the amount per pay period to be deducted for Membership dues. On the dues deduction authorization, the parties agree that they will determine how best to identify the dues paying structure to which the Member belongs.

The Agency's designee will begin all voluntary deductions promptly after receiving stamped authorization forms from the Union or the Employee within two (2) pay periods following the pay period in which the authorization is submitted to the Agency's designee. Upon receipt, the Agency's designee will notify the appropriate Agency and the Agency will file the authorization forms in the Employee's personnel record. Authorizations shall be submitted in writing by the Union or Employee on the appropriate Union authorization form to the Agency's designee. Upon receipt the Agency's designee shall send the Union a copy of such forms via email or mailed to 1202 Pennsylvania NE, Albuquerque, NM 87110.

Membership dues deduction authorization shall continue until the Employee instructs the Union, in writing, to end such deductions, as long as such Employee instruction to end dues deductions is made in accordance with the language on the Employee's written dues deduction authorization form. Within two (2) weeks of the Union's receipt of the Employee's request to cease payroll deductions, in accordance with this Section, the Union will notify the Agency's designee to cease deductions. In the event the Agency's designee becomes aware that an Employee may be entitled to a reimbursement of membership dues, the Agency's designee shall notify the Union.

In the event that the Union determines a refund of the membership dues is necessary, such reimbursement shall be made by the Union to the Employee.

Section 2. If an Employee has insufficient earning for the pay period, no dues or other deduction will be made for the Employee for that pay period.

Section 3. The Agency's designee shall provide the Union with a list of the names of each of the Employees from whom the Agency's designee is making deductions pursuant to Article 5 under this Agreement.

Section 4. The Agency's designee will honor separate additional voluntary deductions authorizations for the Union's political action committee (PEOPLE) within two (2) pay periods following the pay period in which the authorization is submitted to the Agency's designee. An Employee shall specify the amount of additional authorizations for the PEOPLE program.

Section 5. It is specifically agreed that the State assumes no obligation, financial or otherwise, arising out of its application of the provisions of this Article, and the Union agrees that it will indemnify and hold the State harmless from and against any claims, actions, or proceedings arising from deductions made by the State pursuant to this Article. Once the funds are remitted to the Union, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union

ARTICLE 6 PERSONNEL RECORDS

Section 1. Maintenance of Records.

A. The Agency shall maintain all records concerning an Employee under secure conditions. The Agency shall maintain an official personnel record concerning an Employee (hereinafter referred to as "personnel records"). Personnel records may contain "confidential" documents, as defined in this Article.

1. Other than documents related to general maintenance of the personnel record, the Agency shall notify the Employee of all documents being placed in the Employee's personnel records.
2. An Employee shall have a right of access to any document filed in their official personnel records after such a document is filed and upon request will be provided a copy of any document contained in their personnel record.
3. Employees may respond in writing to any matter contained in their personnel records and the responses shall be included at the Employee's request.

With the exception of files on conduct or performance maintained by an Employee's immediate supervisor in accordance with subsection B below or confidential investigatory files in accordance with subsection C below, all other files maintained by the Agency which contain performance or conduct information specific to an Employee, shall be made available by inspection and a copy by the Employee upon request.

B. Files maintained by an Employee's immediate supervisor shall not be considered a personnel record as that term is used herein. If maintained, such records or files shall be disclosed in accordance with the following:

1. Except as modified below, the supervisor may, but is not required to, disclose the files to the Employee upon request;
2. The supervisor is required to disclose such files to the Employee if the supervisor takes a tangible employment action based in part on the information in the files;
3. The supervisor may not disclose the files, or any portion thereof, to any other party unless also disclosed to the Employee;
4. The supervisor may not transfer custody of or copy the files, or any portion thereof, to any other party; and,
5. The supervisor shall maintain only timely and relevant material.

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- C. Records of confidential investigations that do not result in an adverse employment action shall only be disclosed by an Agency pursuant to a court order or lawful subpoena that has been obtained as part of an official investigation or as part of litigation. Such records shall only be accessible to the general counsel, executive management, or those authorized to conduct investigations on the behalf of the Agency on a need-to-know basis.
 - D. Employees who are the subject of a confidential investigation may pursue remedies exclusive of this Agreement for unauthorized disclosure of records of the investigation but shall have no remedy under this Agreement for unauthorized disclosure.

Section 2. Confidentiality of Records.

A. The following documents shall be regarded as confidential:

1. Any documents pertaining to an Employee's physical and/or mental injury and examination, sick leave, and/or medical treatment;
2. Any documents maintained for purposes of the **ADA**;
3. Letters of reference concerning employment, licensing, or permits;
4. Any documents containing statements of opinion about an Employee;
5. Documents concerning alleged or proven infractions and disciplinary actions;
6. Performance appraisals and/or evaluations whether formal or not;
7. Opinions as to whether an Employee should be reemployed;
8. College transcripts;
9. Military discharge, if other than honorable;
10. Information on the race, color, religion, sex, national origin, ancestry, political affiliation, sexual orientation, age, or disability of an Employee;
11. Laboratory reports or test results concerning an Employee; and,
12. Home address and personal telephone number unless provided in this Agreement.

Unless otherwise required by law, the Agency agrees to maintain the confidentiality of an Employee's personal information, including but not limited to their social security number, date of birth, residential address, credit references and/or credit history.

B. Confidential documents are not subject to inspection by the general public without written permission of the Employee to whom they concern or pursuant to a lawful subpoena.

1. The Agency will make such documents available to the Union, with the prior written consent of the Employee, if necessary, for and relevant to a grievance pursuant to the Grievance and Arbitration Procedure hereof as determined by an Arbitrator selected under the provisions of this Agreement, but only upon agreement of the Union to maintain the confidentiality of such material to the greatest extent possible while pursuing the grievance.
2. The Agency shall not provide references or disclose any information from confidential documents or the documents themselves, by any means of communication, to any person or organization except with prior written consent of the Employee to whom the employment reference and document disclosure pertains.

Grievances over allegations of violation, misapplication, and misinterpretation of this Section, shall be filed in accordance with Section 1.B of the Grievance and Arbitration Procedures Articles of this Agreement.

Section 3. Limitations on the Content of Records.

- A. The Agency shall not maintain in an Employee's personnel records any documents critical of any Employees which have not resulted in discipline when investigation of any such materials is not on-going or has ceased. Nothing contained herein shall require the removal of an Employee's formal performance evaluations, so long as the Employee has had the opportunity to submit rebuttal statements or documents if he/she has disagreed with any part of an evaluation.
- B. Confidential and other documents may be removed from an Employee's personnel record as part of a grievance settlement agreement or Arbitration award. When documents are removed from an Employee's personnel record, pursuant to this Article, they shall not be considered in connection with any future personnel action involving the affected Employee.
- C. The Agency shall allow an Employee to inspect their personnel records. Upon request, an Employee will be provided with copies of any documents in their personnel records at the Agency's expense if the Employee is facing disciplinary charges; or by reimbursing the cost for copying if the Employee is not facing disciplinary charges.

Section 4. Removal of Reprimands. One (1) year after an Employee has received a LOR, the Employee may request that the LOR be removed from the Employee's personnel records. If the Employee makes such a request and has not committed any further infractions of agency policies or procedures during the preceding year, the Agency shall not use the LOR as the basis for further discipline, shall remove the LOR from the Employee's personnel records, and notify the Employee in writing of its removal. The Employee may make such a request on the form attached hereto as an Appendix. If such action could subject the Agency to potential liability to third parties, a copy may be retained in a secure location for legal purposes by the Agency.

Section 5. Documented verbal warnings and letters of warning, coaching, counseling, and concern may be removed from an Employee's personnel records under the same circumstances as the LOR.

ARTICLE 7 INFORMATION EXCHANGE

The union president will provide a listing to CYFD or its designee of union representatives including name, address, and telephone number, and extent of authority in July of each year and at any time that a representative changes.

Section 1. CYFD or its designee shall bi-annually furnish the Union, an electronic copy of the following information pertaining to all bargaining unit Members:

- Employee ID
- Name
- Retired, terminated, promoted, transferred out of the bargaining unit, or deceased
- Home address
- City
- State
- Zip
- Home phone/cell phone
- Agency code
- Agency division
- Agency title
- Employee position/job number
- Job class code
- Job classification name
- Hourly rate of pay
- Hire date
- Hire date in current classification
- Bargaining unit code
- Work location
- Work phone number
- Work address
- City
- State
- Zip
- Work email/personal email
- Member deductions
- PEOPLE deductions

Section 2. The Union shall provide the Agency designee information necessary for purposes of administration and application of this Agreement. The Agency designee shall provide on an annual basis information for the Agency's records custodian.

ARTICLE 8 OUTSIDE EMPLOYMENT

Bargaining unit Employees should consider their employment with CYFD as their primary employment. Bargaining unit Employees wishing to obtain outside employment shall file a request for approval with the immediate supervisor and shall include a description of the employment, location, and hours that will be worked. Outside employment is subject to the approval of CYFD, who will consider, among other things, hours of work, conflict of interest, discredit upon CYFD, and the safety of the Employee, fellow Employees, and the public. Requests for outside employment must be filed annually for approval.

ARTICLE 9 DRESS CODE

Bargaining unit Employees are to follow policies, procedures, and post orders regarding professional attire and grooming for secure facilities.

ARTICLE 10 CLASS SIZE

CYFD will comply with applicable State Statutes and Public Education Department Regulations in determining class size. Wherever practicable, class sizes will be restricted to the maximum occupancy of the clients' housing unit(s) with possible exceptions for Post-Secondary courses and providing for allowances as demanded by unforeseen or exigent circumstances.

ARTICLE 11 TRAINING

Section 1. New Technology. In the event the Agency makes technological, or service improvements, or changes production methods, the Agency will provide Employees affected by such changes with adequate training, during the normal working hours, to learn to use the new technology, services, or production methods. The Agency will provide Employees affected by substantial changes with at least fifteen (15) work-days advance notice prior to the changes being implemented unless impossible due to emergency or unforeseen circumstances.

Employee's infrequent use of technology and/or programs and processes may require refresher training. At the request of the Employee, the Agency may provide such training where practicable. Such a request will not be unreasonably denied.

The Agency recognizes that relevant training opportunities should be made available to Employees on a fair and equal basis. Accordingly, where feasible before selecting Employees for training, interest shall be solicited among all Employees in the work unit in which the training is to be offered and selection will be made by Agency Seniority in the work unit where all other factors are equal.

Section 2. Re-certification and re-licensure. The Agency will pay for Employee's re-certifications and re-licensures when applicable

Section 3. Additional Licenses, Certifications or Endorsements. If CYFD requires current Employee(s) to obtain additional licenses, certifications, or endorsements, CYFD will reimburse Employees for tuition and books if the coursework is successfully completed. CYFD will also grant the Employee(s) paid leave to attend classes necessary to obtain the required license, certification, or endorsement if the classes are not available outside contract hours.

ARTICLE 12 MEETING NOTICES

Normally, teachers will receive notice of assemblies, meetings, or school-wide testing the day prior to the event.

ARTICLE 13 ASSIGNMENT OF GRADES

Licensed/certified teachers will assign students grades. Grade changes will not be done without notification to their teacher of record.

ARTICLE 14 DISCIPLINE

Section 1. Discipline. The purpose of this Article is to correct performance or behavior that is below satisfactory standards, or contrary to Agency's legitimate interests, in a constructive manner that promotes Employee responsibility. Progressive discipline shall be used whenever appropriate. The Agency shall utilize alternative methods to resolve conflicts or improper Employee performance or behavior whenever appropriate. Except in the case of non-tenured termination, Employees may be disciplined only for "just cause," defined as a reason that is rationally related to an Employee's competence or turpitude or the proper performance of their duties and that is not in violation of the Employee's civil or constitutional rights. Employees are subject to this Agreement, applicable Codes of Conduct, and the Code of Ethics and Standards of Professional Conduct contained in the New Mexico Administrative Code.

Section 2. Pre-Disciplinary Investigations. Employees shall have the following rights:

- A. At any investigatory interview where the Agency is investigating any Employee for possible disciplinary action, and the Employee reasonably believes that by answering the questions, discipline could result, the Employee shall have the right to Union representation at the investigative interview. (This is also known as Weingarten Rights). The Agency shall:
 1. Notify the Employee at the outset of the interview that the Employee is being investigated for possible disciplinary action;
 2. On request, allow the Employee the opportunity for Union representation; and,
 3. If the Agency elects to proceed with the interview, provide the Employee with a reasonable amount of time to confer with their Union representative.

The Agency may not make a verbatim record of such interview unless it notifies the Employee at the outset of the interview of its intention to do so. If the Agency does elect to make a verbatim record of the interview, the Employee shall be provided with a true and correct copy of the record. In addition, if the Agency is recording the interview, the Employee may also record the interview provided that the interview will not be unduly delayed while the Employee obtains a recording device;

- B. An Employee may refuse to answer questions of a superior that probe possible criminal conduct until the Employee has obtained legal advice and/or counsel. The Employee shall be given a reasonable period of time to secure counsel; and,
- C. If a superior needs to talk to an Employee concerning the Employee's performance or conduct, the meeting shall be held in private. In all cases, the confidentiality of the disciplinary process shall be maintained by the Agency and its representatives as required by law and this Agreement.

Section 3. Time Limits. Except for disciplinary actions related to cases where outside Agencies or divisions are involved in the investigation, the Agency may impose any disciplinary action or issue a NCA no later than forty-five (45) calendar days from the date of the alleged incident, unless facts and circumstances exist which require a longer period of time. In the event that the Agency cannot meet the forty-five (45) calendar day limit, the Union will be notified in writing of the facts and circumstances for the delay.

Section 4. Discharge and termination shall be pursuant to the New Mexico School Personnel Act.

Section 5. Employees may be suspended in accordance with the following procedures:

A. NCA.

1. To initiate the suspension an Employee the Agency shall serve a NCA on the Employee which: describes the conduct, actions, or omissions which form the basis for the contemplated disciplinary action; gives a general explanation of the evidence the Agency has; advises the Employee of their right to inspect and obtain copies of any documentary evidence relied upon; specifies what the contemplated action is; and, states that the Employee has eleven (11) calendar days from service of the notice to respond in writing to the notice or to request an opportunity for an ORM.
2. To support a NCA, the Agency cannot use or rely on:
 - a. Earlier unsubstantiated allegations or investigations that did not lead to discipline;
 - b. Discipline later reduced pursuant to settlement agreement (Agency can rely on reduced discipline only, not the original discipline);
 - c. The Employee's disciplinary history from a previous Agency; or,
 - d. Documents that should have been removed from the Employee's personnel record in accordance with this Agreement or a settlement agreement.
3. When the NCA is served by mail, the Employee receiving service shall have three (3) additional calendar days in which to file a response.

B. Response of NCA.

1. Within eleven (11) calendar days of service of the NCA, the Employee or a representative of the Employee's choosing may respond in writing or request an ORM in response to NCA.
2. If there is a request for ORM to the NCA, the Agency shall meet with the Employee within eleven (11) calendar days of a request for an ORM, unless the Employee and the Agency agree in writing to an extension of time or unless the Agency needs additional time to provide the needed information. A representative of the Employee's choosing may represent the Employee.
3. The purpose of the ORM is not to provide an evidentiary hearing but can be an opportunity for the Employee to explain their side of the story or why discipline was not appropriate.

C. NFA.

1. If the Employee does not respond to NCA, the Agency shall issue a NFA within eleven (11) calendar days following the response period.
2. If the Employee has filed a written response or has been provided an opportunity for ORM, the Agency shall issue a NFA no later than eleven (11) calendar days from the date of receipt of the response.
3. The NFA shall:
 - a. Specify the final action to be taken, which may be upholding the contemplated action, a lesser form of discipline than contemplated, or no disciplinary action;
 - b. Describe the conduct, actions, or omissions which form the basis for the disciplinary action, which may not include allegations not included in the NCA;
 - c. Give a general explanation of the evidence the Agency has;
 - d. Specify when the disciplinary action will be effective, which must be at least twenty-four (24) hours from the time of service of the NFA; and,
 - e. Inform the Employee of their appeal rights.

Section 6. Appeal rights. An Employee may appeal a final action of suspension to an arbitrator jointly selected by the parties. If parties cannot agree to an arbitrator, an arbitrator shall be selected by striking an FMCS regional panel obtained by the Union, in accordance with the same processes outlined in the grievance procedure herein.

A. Hearing:

1. Pre-hearing discovery shall be subject to the control of the arbitrator.
2. The Employee may appear through a Union representative at any and all times during the hearing process.
3. The arbitrator may clear the room of witnesses not under examination, if either party so requests, and of any person who is disruptive. The parties are entitled to have a person, in addition to its representative, in the hearing room during the course of the hearing, even if the person will testify in the hearing.
4. CYFD shall present its evidence first.
5. Oral evidence shall be taken only under oath or affirmation.
6. Each party shall have the right to:
 - a. Make opening and closing statements;
 - b. Call and examine witnesses and introduce exhibits;
 - c. Cross-examine witnesses;
 - d. Impeach any witness; and,
 - e. Rebut any evidence.
7. The arbitrator shall admit all evidence, including affidavits, if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The arbitrator shall exclude immaterial, irrelevant, or unduly cumulative testimony.
8. The rules of privilege shall be effective to the extent that they are required to be recognized in civil actions in the district courts of the State of New Mexico.

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9. The arbitrator shall admit evidence relevant only to those allegations against the appellant.
 10. The hearing shall be recorded by a court reporter, video and/or audio recording device provided by CYFD, under the supervision of the arbitrator. No other recording of the hearing, by whatever means, shall be permitted without the approval of the arbitrator.
 11. The arbitrator shall issue a written decision within thirty (30) calendar days of the conclusion of the hearing.

Section 7. Prior Disciplinary Actions. NCAs and NFAs for suspensions shall not be used as a basis for progressive discipline after five (5) years, provided no similar actions have occurred during that time.

ARTICLE 15 GRIEVANCE PROCEDURES

- A. The purpose of this procedure is to secure, at the lowest possible level, mutually satisfactory resolutions to grievances which may arise during the term of this Agreement and are subject to resolution under this Agreement. This is the sole and exclusive remedy available to an Employee for alleged violations of the collective bargaining agreement.
- B. A grievance is defined as a charge by either party to this Agreement that the other has violated this Agreement.
- C. A "grievant" may be any bargaining unit Employee, group of Employees, the Union, or CYFD. Grievances filed on behalf of a group of Employees must be accompanied by documentation demonstrating that notice has been given to each member of the group on whose behalf the grievance is being filed.
- D. As used in this Article, "days" shall mean workdays (Monday through Friday) and shall not include holidays or times when CYFD Administrative Offices are closed.
- E. A written grievance must contain the following:
 1. A statement of the grievance;
 2. The name(s) of the Employee(s) and the Employee(s) worksite;
 3. The name, address, and telephone number of the union representative, if any;
 4. The individual, if applicable, alleged to have committed the violation;
 5. The circumstances and facts upon which the grievance is based;
 6. The date of the alleged violation;
 7. The specific Article and Section of this Agreement allegedly violated; and,
 8. The specific remedy being sought;
 9. The grievance must be signed and dated by the Employee(s) and/or union representative, if applicable.

The grievance must contain all of the above information. Any modification or amendment to a grievance during the grievance/arbitration process to add additional Articles and/or Sections allegedly violated or requested relief must be filed timely as a separate grievance.

- F. The term "grievance" and the procedure relevant thereto shall not be deemed applicable to the following instances:
1. In matters where a method or review is mandated by law or by any rule, regulation, resolution, or bylaw of CYFD.
 2. In matters where CYFD is without authority to act;
 3. Evaluations, growth plans, and/or development plans; and,
 4. Whether or not an investigation is conducted.
- G. Grievances submitted on behalf of CYFD shall be initiated by the Superintendent of Education or designee by filing the grievance with the Union President or designee, beginning at Step Three. CYFD shall follow the process as outlined below beginning at Step Three.
- H. Failure to submit a grievance within twenty (20) days following the date the grievant knew or should have known of the act or the condition which gave rise to the grievance, will constitute forfeiture of the right to file a grievance. In addition, failure to appeal any grievance determination to the next level within the specified time limits will render the grievance closed. When it is mutually agreed by the parties in writing, the time limits expressed herein may be extended. A grievance may be withdrawn at any step of this procedure by the grievant. Grievances will be considered filed at each step based on the date received by CYFD or designee. •
- I. Should CYFD or designee fail to respond to a grievance within the time limits expressed herein, the Union/grievant may appeal to the next level of the grievance procedure within the time limits set forth as if CYFD or designee had timely responded. Non-response from CYFD or designee at any step of the grievance procedure will be considered a denial of the grievance.
- J. Nothing herein contained shall be considered as limiting the rights of an Employee to discuss or process their grievance as an individual as long as the Union is provided the opportunity to be present at any grievance meetings and make its views known on grievances filed by an individual. CYFD and the Employee cannot enter into an agreement that modifies or changes the collective bargaining agreement without the agreement of the Union.

K. Grievances shall be presented as outlined below:

Informal: A bargaining unit Employee who believes that they may have a grievance is encouraged to meet with the Principal, if appropriate, in a good faith attempt to resolve the grievance prior to filing a Step One.

Step One: A grievant shall file a written grievance with CYFD or designee within the time limit described in subsection H above. CYFD or designee may request a meeting between the Employee and the Superintendent of Education or designee to discuss the grievance. CYFD or designee shall respond in writing within ten (10) days of receipt of the written grievance, unless an extension is mutually agreed upon in writing by the parties. If the matter is not resolved to the satisfaction of the grievant, the grievant may file a written grievance at Step Two as outlined below.

Step Two: Should the grievant or union decide to file at Step Two, they shall submit the Step Two in writing within ten (10) days of the time for response of the Step One grievance, to CYFD or designee. CYFD may request a meeting between the grievant and the Superintendent of Education or designee to discuss the grievance. CYFD shall respond in writing within ten (10) days of receipt of the written grievance, unless an extension is mutually agreed upon in writing by the parties. If the matter is not resolved to the satisfaction of the grievant, the grievant may file a written grievance at Step Three.

Step Three: Within ten (10) days of the time for response of the Step Two grievance the Union or grievant shall submit the Step Three in writing to CYFD or designee. CYFD or designee may request a meeting between the Employee and the Cabinet Secretary or designee to discuss the grievance. CYFD shall respond in writing within fourteen (14) days of receipt of the written grievance, unless an extension is mutually agreed upon in writing by the parties. If the matter is not resolved to the satisfaction of the grievant, the grievant may file a written request for Arbitration.

ARTICLE 16 GRIEVANCE ARBITRATION

- A. In the event the grievance is not resolved at Step Three of the Grievance Procedure, the Union or CYFD may refer the grievance to arbitration by filing a written notice to the responding party within thirty (30) calendar days of receipt of the response to the Step Three grievance or in the case of non-response within thirty (30) calendar days of the deadline to respond at Step Three, along with a copy of the paid request for arbitration panel filed with the Federal Mediation and Conciliation Service (FMCS). An Employee taking a grievance to arbitration without the Union representation will be required to place money into escrow for the arbitration costs within thirty (30) calendar days of the selection of the arbitrator. The amount to be placed in escrow will be determined by the arbitrator. Failure to place the money into escrow will deem the grievance null and void.

- B. Issues of arbitrability or grievability may be raised at any step of the grievance or arbitration procedure and will be decided by an arbitrator through a briefing process prior to scheduling a hearing on the merits.

- C. The paid request to FMCS shall be submitted to the responding party within twenty-four (24) hours of when it is filed with FMCS. The request to FMCS shall demand a panel of seven (7) arbitrators from the region including New Mexico to be delivered simultaneously to the parties. The parties will meet to strike names from the list of arbitrators within fourteen (14) calendar days of receipt of the list. Each party will strike one (1) name followed by the other party striking one (1) name until a single name remains, who shall become the Arbitrator. The party required to strike the first name will be determined by the flip of a coin. The moving party will notify FMCS of the selection within five (5) calendar days of the striking of the panel. Failure to pursue a grievance to an arbitration hearing within six (6) months of the date of notifying FMCS of the arbitrator selection will render the grievance closed, and not a controversy subject to arbitration unless the parties agree in writing to extend the time.

ARTICLE 17 LEAVE AND ABSENCES

Section 1. Sick Leave Employees will accrue sick leave at the State rate based on hours worked per pay period.

Section 2. Personal Days. Employees shall be granted two (2) personal leave days per school year. No Employee will be allowed to accrue personal leave days beyond the two (2) day maximum. Employees shall not accrue annual leave. Requests to utilize personal leave shall be filed with the Employee's immediate supervisor, who will consider CYFD's needs. Personal leave shall not be utilized on the day before or the day after a school-recognized holiday or break, on a professional development day or day when multidisciplinary team/IEP will be held, or during the first or last week of school. Employees are encouraged to schedule appointments outside of duty hours.

Section 3. Interview Leave. Employees shall be provided one (1) work day of administrative leave annually to participate in interviews for a job with the State, to include travel time.

Section 4. Administrative Leave. Employees may receive a maximum of three (3) days of administrative leave per contract year, which must be taken in full-day increments, for personal reasons. This leave must be requested and approved in advance, and is at the discretion of the supervisor. Administrative leave shall not be utilized on the day before or the day after a school-recognized holiday or break, on a professional development day or on a day when a multidisciplinary team/IEP will be held, or during the first or last week of school. Administrative leave shall not be utilized for outside employment and cannot be carried forward to the next year.

Section 5. Administrative Leave Granted by Governor. Any administrative leave granted by the Governor shall be in accordance with the Governor's directive. Employees who are not on contract shall not be entitled to administrative leave.

Section 6. Fitness and Wellness. Employees shall receive modified work schedules that permit the Employee administrative leave for up to two (2) hours total per week for fitness and wellness activities, unless denied based on the grounds outlined in this Section.

Time needed for travel, taking showers, changing clothes and/or eating lunch must be considered and should be included in the modified work schedule.

Employees may elect to forego a scheduled period of fitness and wellness activity. However:

- Missed fitness and wellness time may not be accumulated and taken during subsequent weeks;
- Missed fitness and wellness time may not be added onto fitness and wellness activities during the same work week; and,
- Missed fitness and wellness time may be made up at another time during the same work week provided written approval from supervisor is obtained.

Fitness and wellness activities will not be counted toward the earning of FLSA overtime or State comp time.

The Agency is not required to consider a request for a schedule change to participate in the fitness and wellness program more frequently than every ninety (90) days for any participant.

Requests to participate in the fitness and wellness program are approved for one (1) year at a time. Requests will be considered each year in January. If an Employee's initial request is approved in the middle of a year, the Employee must renew the Employee's request the following January. Employees approved for fitness and wellness activities are responsible for notifying the Agency should they cease to engage, on a regular basis, in their fitness and wellness activities on the days specified on their fitness and wellness request.

Performance deficiency, unsatisfactory attendance, timeliness, and disciplinary actions may be grounds for denial or rescission of administrative leave for fitness and wellness activities.

Operational needs and job duties may also be grounds for denial or rescission of administrative leave for fitness and wellness activities. Once an Employee submits the Request to Participate in Fitness and Wellness Program form, the Agency is expected to reach a decision and communicate it to the Employee pursuant to the Agency policy.

Section 7. Bereavement Leave. Employees shall be granted three (3) days of administrative leave for bereavement of an immediate family member within the third degree of relationship defined as: mother, father, sister, brother, spouse, daughter, son, stepparent, or child, grandparent, grandchild, aunts, uncles, nephew, niece, great-grandchild, great-grandparent, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, domestic partner, or children of domestic partner.

Section 8. Religious Observances. Upon fifteen (15) days' advance notice, CYFD shall approve an Employee's request for personal leave or leave without pay (LWOP) for religious observances when the Employee's religion requires that the Employee abstain from work during the workday or work week.

Section 9. Voting Leave. Employees will be granted two (2) hours of administrative leave for voting in:

- A. General elections;
- B. Primary elections;
- C. Statewide special elections;
- D. Elections to fill vacancies in the office of United States representative;
- E** Local elections included in the Local Election Act;
- F. Recall elections, county officers, school board members, or applicable municipal officers;
- G. Special district elections; and,
- H. Tribal Elections.

ARTICLE 18 WORKDAYS, WORK HOURS, AND WORK YEAR

- A. The work year for licensed/certified Employees for Fiscal Year (FY) 23 shall be one-hundred ninety-five (195) work days, in lieu of increased compensation, with exceptions to include a two hundred twenty (220)-day contract for Post-Secondary instructors to be mutually agreed upon by the parties. Pending increased compensation in accordance with Article 21, the working calendar may be extended to 210 days for FY24 and FY25.
- B. Delays and/or closures related to weather will follow the public school district in that location unless Employees are directed otherwise by their Principal.
- C. Bargaining unit Employees who are instructors shall work a seven-and-a-half (7.5) hour day which shall include a thirty (30) minute duty-free lunch period each day. The limits set forth in this section may be modified by mutual agreement of the parties.
- D. Prep time is intended for the preparation of instruction of students. Bargaining unit Employees will remain at the worksite during prep time, unless otherwise approved by the Administrator in charge of the worksite.

ARTICLE 19 ASSIGNMENTS

- A. Assignment of Employees will be determined by the Superintendent of Education or designee based upon the needs of the students. Preliminary teaching assignments for the following school year will be made before the end of the current school year. Except in extenuating circumstances, Employees shall be notified of a change in assignments at least two weeks before the beginning of the school year.
- B. Employees who are employed after school begins shall be given notice of their assignments at the time employment begins.

ARTICLE 20 VACANCIES AND TRANSFERS

A. Voluntary Transfers

1. Employee transfers are allowed at the end of each semester for posted positions. Exceptions to the semester requirement may be granted upon approval by the Superintendent of Education or designee.
2. An Employee desiring a transfer shall complete all information on the "Request for Transfer" form, sign the request, obtain the signature of their supervisor, and submit the form to the Superintendent of Education or designee.
3. The Superintendent of Education or designee will forward **all** transfer requests to supervisors for posted positions at their work sites. A qualified Employee requesting a transfer shall be considered for an interview for the posted position.
4. Employees must complete a separate "Request for Transfer" form for each posted position in which they are interested.
5. The Employee may submit written withdrawal of the "Request for Transfer" by submitting a written request to the Superintendent of Education or designee.
6. Employees interviewed will be notified in writing by the Superintendent of Education or designee indicating the position has been filled.

B. Involuntary Transfers

1. CYFD retains the right of assignment which includes the right of involuntary transfer.
2. CYFD will provide written notice to an Employee selected for involuntary transfer at least fourteen (14) calendar days prior to the effective date of the transfer, except in extenuating circumstances.

C. Filling of Bargaining Unit Vacancies

1. A vacancy exists when CYFD has completed all transfers and assignments/reassignments and a position remains the Employer decides to fill. CYFD Employees will be considered before outside applicants are considered.
2. Employees who wish to be considered for vacancies may submit a letter of interest to the Superintendent of Education or designee within any time limit identified in the posting. This letter of interest shall serve as an application.
3. Employees will be licensed to teach in the State of New Mexico as provided for under the Public Education Department Regulations for State-supported schools and applicable State law.
4. When a bargaining unit position becomes vacant, and CYFD decides to fill the vacancy, CYFD will email a notice of advertising the position to bargaining unit Employees at least five (5) business days before filling the position. Such notice shall include a listing of the position, required licensure, license level, and desired experience.
5. An interested Employee applying for a vacancy shall notify the contact person listed on the job posting.

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6. If the choice is between two (2) current substantially equally qualified Employees, seniority defined by Article 2 subsection 1.B of this agreement will be given preference in the selection.

D. Notice requirements

1. Certified Employees who intend to resign employment from CYFD shall provide CYFD with a minimum of thirty (30) calendar days' notice.
 2. CYFD shall inform Employees of rehire or termination no later than fifteen (15) calendar days prior to the end of the contract.
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ARTICLE 21 WAGES

- A. CYFD will make efforts in its FY24 budget request to the New Mexico Legislature to extend pay increases provided to NMPED teachers to bargaining unit Employees comparable to public school teachers (e.g., Albuquerque Public Schools, Las Cruces Public Schools) subject to and in accordance with Legislative appropriation.
- B. CYFD will notify and include Local 717 bargaining team members in efforts to secure pay increases for CYFD teachers in the bargaining unit. This should include the option to attend relevant legislative committee meetings.
- C. In its FY25 budget request to the New Mexico Legislature, CYFD will request salary increases for bargaining unit Employees that seek equity in pay between bargaining unit Employees and comparable public-school teachers (e.g., Albuquerque Public Schools, Las Cruces Public Schools). Wage adjustment shall be subject to and in accordance with Legislative appropriation.
- D. Any Employee accepting a position as a coach or athletic director will be required to sign a coaching or athletic director contract. Such contract may be terminated by CYFD or the Employee may resign the position as a coach or athletic director without terminating or resigning the Employee's teaching position.
- E. CYFD will attach a copy of the current school year's salary schedule to each instructor's annual contract.

ARTICLE 22 PENSION

Bargaining unit Employees are required to participate in the Educational Retirement Act pension plan.

ARTICLE 23 BENEFITS

Bargaining unit Employees may continue to participate in all applicable benefit programs in the same manner as Employees in the classified services.

ARTICLE 24 HEALTH AND SAFETY

Section 1. Health and Safety Standards and Measures. Safety is an integral part of the responsibilities of every manager, supervisor, and Employee. Safety management exists to assist managers, supervisors, and Employees in the better performance of their duties. Employees, supervisors, and managers shall comply with such rules, regulations, and practices as may be prescribed in order to provide safe, sanitary, and healthful working conditions. For all Employees covered by this Agreement, the Agency shall:

- A. Provide safe and healthy working conditions and practices;
- B. Comply with federal OSHA and all other applicable federal, State, local laws and regulations, and Agency safety rules and regulations;
- C. Provide safe, healthy, clean work sites and grounds; and,
- D. Provide Employees with adequate information on communicable diseases, infestations, and hazards to which they may have routine exposure as soon as the Agency becomes aware of such information.

Section 2. For the safety of the Employees and students and in order to comply with statutory requirements for supervision of students, all bargaining unit Employees will complete the sign-in/sign-out sheets at each school site upon arrival at the site and departure from the site.

Section 3. State Vehicles. An authorized driver of a State vehicle shall not be required to operate an unsafe vehicle if the authorized driver reasonably believes continued operation could endanger any person or property. In such a case, the authorized driver shall immediately notify their supervisor and the fleet manager for the Agency responsible for the State vehicle of their reasonable belief of the unsafe vehicle condition and obtain a repair or replacement vehicle if available.

Section 4. Security. Where there may be a high risk of a client or member of the public with whom Employees must interact, posing a threat of physical harm to Employees, such Employees shall not be required to work at their work site, or where they are exposed to such risk or threat of physical harm, for periods of time when adequate security is not provided. Where the treatment or placement of the client is predicated on the potential risk or threat of physical harm by such client, adequate security is defined as prior provision of training to Employees adequate to carry out their job duties in the Agency.

Section 5. Emergency Transportation. An Employee who suffers an on-the-job injury or illness and requires immediate emergency care shall be transported to a treatment facility at the expense of the Agency.

Section 6. Reimbursement for Property Loss. Should Employees, during the course of their duties, suffer damage to clothing or personal effects, including a motor vehicle, which are necessary to do their job, the Agency shall reimburse the reasonable cost, at actual market or depreciated value, of repair or replacement of such items.

This Section shall not apply to wear and tear and damage to personal effects normally associated with the work being performed. Where damages result in whole or in part from an Employee's own negligence, the Agency shall not reimburse the Employee for a proportion of the damages that is equivalent to the Employee's proportion of fault.

Section 7. Hostage Taking and Battery. Employees who, during the performance of their duties, are seized or detained by force or threat and/or are victims of a significant battery, shall, immediately after the incident, be granted a reasonable period of administrative leave with pay to recover from the immediate impact of any physical or psychological harm caused by the action. Such period of leave shall not exceed thirty-five (35) hours.

Significant battery is defined in this Section as the unlawful touching or application of force to the person of another with the intent to injure that person or another and that inflicts or causes significant bodily harm to the Employee or is performed with a deadly weapon causing significant bodily harm to the Employee.

Section 8. Critical Incident Stress Debriefing. The Agency shall provide Employees appropriate and adequate Critical Incident Stress Debriefing (hereinafter referred to as "CISD"). CISD is to be used for critical job-related incidents including, but not limited to, mass casualty, riots, work peer suicide, serious work injury, and/or work-related death of co-worker. Such CISD shall include, when appropriate, initial debriefing, individual and group therapy and/or counseling, and/or follow-up. All debriefings and other CISD sessions shall be strictly confidential. Where Workers' Compensations benefits are available for an Employee injury, this Section, if otherwise applicable, may be used to provide reasonable supplemental treatment not provided by Workers' Compensation.

Section 8. Early Return to Work Modified Work Assignments. The Agency shall make a good faith effort to provide Employees covered by this Agreement with opportunities for returning to work on a modified work assignment due to temporary medical conditions and/or restrictions while recovering from non-work-related injury or illness. An Employee requesting an early return to work in modified duty assignment may request such assignment for a period of up to one (1) year consistent with accompanying medical recommendations. Any medical documentation requested by the Agency shall be confidential with access and use restricted as required by federal and/or State laws, regulations and/or guidelines. An Employee who returns to work on modified work assignment shall be paid no less than their last rate of pay.

Section 9. Right to Refuse Dangerous Work. An Employee acting in good faith has the right to refuse work outside of the Employee's job description and job duties under conditions that the Employee reasonably believes present an imminent danger of death or serious harm to the Employee. The Agency shall not discipline or discriminate against an Employee for such refusal.

Section 10. COVID-19. The Agency shall meet with the Union to develop COVID-19 Agency-specific policies, if any. Notwithstanding the forgoing, the Agency may take actions as may be necessary to carry out the mission of the State in emergencies pursuant to its Management Rights (Article 3, Section 1.3 of this Agreement).

ARTICLE 25 SENIORITY

Section 1. Seniority of bargaining unit positions shall be defined as follows:

- A. Job classification/Title seniority is defined as a continuous length of employment in a specific job classification with CYFD as a full-time Employee without a break in employment.
- B. Agency seniority is defined as a continuous length of employment with CYFD as a full-time Employee without a break in employment.
- C. State seniority is defined as a continuous length of employment in State government as a full-time Employee without a break in employment.

Section 2. Tie-break Procedures.

- A. Where two (2) or more Employees have the same seniority by Job Classification/Title Seniority date for determining job rights, the tie shall be broken with seniority based upon Agency Seniority.
- B. Where two (2) or more Employees have the same seniority by Agency Seniority date for determining job rights, the tie shall be broken with seniority based upon State Seniority.
- C. Where two (2) or more Employees have the same seniority by State Seniority date for determining job rights, the tie shall be broken based upon a coin toss, witnessed by the interested Employees, tossed by a supervisor of both the interested Employees.

Section 3. These definitions and Tie-break Procedures shall govern all applicable Articles in this Agreement.

ARTICLE 26 FURLOUGH AND REDUCTION IN FORCE

- A. Upon determination that it is necessary to implement a reduction in force (layoff) or furlough, CYFD will provide written notice to the Union at least thirty (30) calendar days before the effective date of the reduction in force or furlough. The union may offer written alternatives to the reduction in force or furlough or suggestions regarding the implementation and/or impact within five (5) days of the date of the notice of reduction in force or furlough.
- B. A reduction in force of bargaining unit Employees may occur in situations such as, but not limited to:
1. Decrease in student enrollment or reduced student demand for or participation in programs or activities;
 2. Decrease in revenue;
 3. Change in educational program of CYFD;
 4. Consolidation or de-consolidation involving CYFD;
 5. Court orders;
 6. Orders of the Secretary of Education;
 7. Legislative mandates; and,
 8. Unanticipated financial emergencies identified by the Superintendent of Education which warrant initiation of a RIF process.
- C. CYFD will first request voluntary transfers and resignations by written notice to the Employees in the affected programs or job classifications. Prior to initiating a layoff, CYFD will attempt to maintain positions through voluntary and involuntary transfers.
- D. If the request set forth in subsection C above does not resolve the problem, CYFD will notify in writing the Employee with the least seniority (as defined in Section 1.A of Article 25) affected by the layoff that the Employee will be laid off.
- E. A laid off Employee shall have the following rights: The Employee shall have recall rights for one (1) year. CYFD shall offer any bargaining unit position vacancy for which the certified Employee is licensed to the certified Employee. Employees on an eligible recall list shall be recalled in seniority order (as defined by Section 1.A of Article 25). The Employee shall maintain a current address and phone number with CYFD. Failure to provide this information will disqualify the Employee for recall rights under the Agreement. If the Employee is not recalled to employment within one (1) year, the Employee's re-employment rights are expired. If the Employee refuses an offered position, the Employee will be removed from the recall list.

ARTICLE 27 DRUG-FREE WORKPLACE/DRUG AND ALCOHOL TESTING

- A. The parties support a drug- and alcohol-free environment for the safety of the students and Employees. CYFD prohibits Employees from using, being under the influence of, possessing, selling, giving away, or transporting alcohol, illegal drugs, and/or drug paraphernalia on CYFD property, at activities for CYFD students, or in CYFD vehicles.
- B. The Employee may be placed on administrative leave with pay until the results of the testing are received and/or the investigation of drug/alcohol abuse is conducted. Refusal to participate in drug/alcohol testing shall subject the Employee to discharge/termination.

ARTICLE 28 LABOR-MANAGEMENT COMMITTEE

- A. The parties may form a Labor-Management Committee (LMC) to address and resolve problems and concerns related to the implementation of the Agreement and other issues, to include the impact of instructional and professional decisions, health and safety, and other mutually agreed upon topics.
- B. Issues may be brought to the LMC by the Union or by CYFD.
- C. The committee shall be composed of three (3) Union-appointed members and three (3) CYFD-appointed members.
- D. This committee may make recommendations to CYFD and the Union.
- E. The LMC may create subcommittees as needed to fulfill specific requirements.
- F. The LMC and any subcommittees shall meet after the duty day of bargaining unit Employees. Bargaining unit Employees will attend on unpaid time.

ARTICLE 29 COPIES OF AGREEMENT

The Agency shall print this Agreement within sixty (60) days of signature by all parties. Consistent with law, the parties shall make reasonable accommodation, where needed, for persons with disabilities. The Agency and Union shall each pay one-half (1/2) the cost of such printing, distribution, and accommodation. A letter sized or smaller copy shall be distributed by the Agency to each Employee covered by this Agreement.

ARTICLE 30 SAVINGS CLAUSE

In the event that any provision of this Agreement is held invalid by a court or administrative agency of competent jurisdiction, or the parties agree that a law newly enacted by the New Mexico Legislature invalidates a provision of this Agreement, such invalidation shall apply only to the particular provision held invalid. All other provisions of this Agreement shall remain in full force and effect. The provision determined to be contrary to law may be re-negotiated by the parties provided either party submits a written request to reopen negotiations no later than thirty (30) days after the parties knew or reasonably should have known that the provision was contrary to law.

ARTICLE 31 COMPLETE AND ENTIRE AGREEMENT

This Agreement shall be deemed the final and complete Agreement between the parties and, in conjunction with written Agency Appendices and any other written agreements reached between the parties, expresses the entire understanding of the Agency and the Union. In the event of a conflict between this Agreement and any other rule, law, regulation, or policy, the terms of this Agreement shall prevail unless the conflicting rule, law, regulation, or policy is considered as controlling authority in accordance with the PEBA.

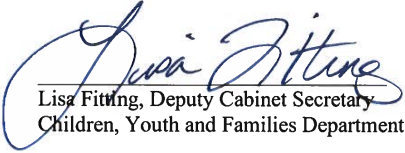
ARTICLE 32 WHISTLEBLOWER PROTECTION

Employees shall have the right, without interference or fear of penalty or reprisal, to disclose in good faith to internal auditors, Inspectors General, or other appropriate governmental authorities information that may evidence improper governmental activity (including, but not limited to, action that is in violation of any State or federal law or regulation; action that is economically wasteful; or action that involves gross misconduct, gross incompetence, or gross inefficiency) or conditions that may threaten the health or safety of Employees or the public.

ARTICLE 33 DURATION

This Agreement will become effective upon ratification and signature of the parties and will continue in full force and effect through June 30, 2025. Either party may reopen negotiations on two (2) Articles by providing written notice to the other party no earlier than March 1st and no later than April 1st each year. A party desiring to negotiate a successor agreement shall notify the other party in writing no later than thirty (30) days prior to the expiration of the Agreement.

SIGNATURES



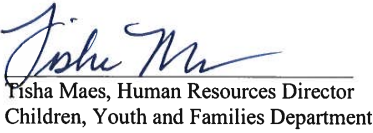
Lisa Fitting, Deputy Cabinet Secretary
Children, Youth and Families Department

2/8/23
Date



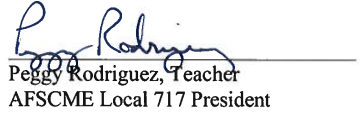
Sam Chavez, Representative
AFSCME Council 18

2-8-2023
Date



Tisha Maes, Human Resources Director
Children, Youth and Families Department

2/08/2023
Date



Peggy Rodriguez, Teacher
AFSCME Local 717 President

2/08/2023
Date

APPENDIX A LOR REMOVAL FORM

APPENDIX A

AFSCME Employee Request for Removal of Letter of Reprimand and Other Documents

(Submit to your direct supervisor)

Date Submitted: _____

Pursuant to Article 6 of the AFSCME CBA, I (Insert name) _____ (title), hereby request the removal of the following document(s) from my personnel record (circle all that apply):

<input type="checkbox"/> Documented Verbal	<input type="checkbox"/> Letter of Counseling	<input checked="" type="checkbox"/> Letter of Warning
<input type="checkbox"/> Letter of Concern	<input type="checkbox"/> Letter of Reprimand	<input type="checkbox"/> Letter of Coaching

which occurred on or about date(s) _____

I confirm that one (1) year has passed since I received the Letter of Reprimand and/or other documents identified above, and I have not committed any further infractions of work rules during that one (1) year period. I authorize the Agency to remove the documents(s) circled above from my personnel record. The Agency maintains the right to retain the original copy and may not use it as a basis for progressive discipline.

The AFSCME CBA requires that you provide me notice in writing that the document has been removed.

Employee Signature Date

To be completed by management

Document removed from personnel record on (date) _____

Or _____

Employee request denied for the following reason: _____

Agency Name _____

Direct Supervisor Name _____ Signature _____ Date _____

Bureau Chief Name _____ Signature _____ Date _____

HR Manager Name _____ Signature _____ Date _____

cc: labor.relations@state.nm.us

APPENDIX 1 UNION STEWARD AGREEMENT

Two (2) Union Stewards for each school (2 schools).

State of New Mexico

CHILDREN, YOUTH and FAMILIES DEPARTMENT

MICHELLE LUJAN GRISHAM
GOVERNOR

HOVVIE MORALES
LIEUTENANT GOVERNOR



BARBARA J. VIGIL
CABINET SECRETARY

BETH GILLIA
DEPUTY CABINET SECRETARY

LISA M. FITTING
DEPUTY CABINET SECRETARY

October 26, 2022

Sam Chavez, Staff Representative, Lead Negotiator
AFSCME New Mexico Council 18
1202 Pennsylvania Street NE
Albuquerque, NM 87110

RE: Clarification of Mutual Understanding and CYFD Acceptance of AFSCME's October 21, 2022 Last, Best, and Final Offer

Dear Mr. Chavez:

On October 26, 2022 starting at 3:05PM, you and I met with Tamera Marcantel, Deputy Director for Secure Facilities, to discuss portions of AFSCME's October 21, 2022 Last, Best, and Final Offer (LBFO) for Local 717's Collective Bargaining Agreement (CBA) for JJS Education teachers.

We discussed that we all agreed to revise Article 17 Section A as follows:

- A. *The work year for licensed/certified employees for FY 23 shall be one-hundred ninety-five (195) work days, in lieu of increased compensation, with exceptions to include a 220-day contract for Post-Secondary instructors to be mutually agreed upon by the parties. Pending increased compensation, the working calendar may be extended to 210 days for FY 24 and FY 25.*

to now read:

- A. *The work year for licensed/certified employees for FY 23 shall be one-hundred ninety-five (195) work days, in lieu of increased compensation, with exceptions to include a 220-day contract for Post-Secondary instructors to be mutually agreed upon by the parties. Pending increased compensation in accordance with Article 20, the working calendar may be extended to 210 days for FY 24 and FY 25.*

HUMAN RESOURCES
P.O. DRAWER 5160 • SANTA FE, N.M. • 87502
PHONE: (505) 827-7620 • FAX: (505) 827-8082

We also discussed that by notifying and including Local 717 bargaining team members in efforts to secure pay increases in accordance with Article 20 Section B, CYFD, AFSCME, and bargaining unit members will not violate rules, policies, and procedures regarding political activities, lobbying, or advocacy. We discussed that CYFD employees who wish to attend New Mexico Legislature events and hearings must take leave in order to do so and may not represent CYFD during these activities. We discussed that employees and AFSCME representatives have previously had the ability to do this and can continue to do so. We discussed that there are parts of the budget process that are private and confidential that would not involve notification and inclusion of bargaining team members, such as internal budget preparation. We agreed that CYFD will notify AFSCME when there are New Mexico Legislature hearings regarding CYFD's budget so that AFSCME may choose to organize its representatives and bargaining team members to voluntarily attend such hearings as part of AFSCME in order to advocate for efforts to increase salaries for teachers.

CYFD accepts AFSCME's October 21, 2022 offer and is ready to continue the process towards ratification and signature of the CBA. I will work with you to create a draft final version of the CBA, with the above change to Article 17.

In order to implement Article 17 Section A and the change in the length of the school year, CYFD will issue a revised school calendar at the beginning of calendar year 2023, pending execution of the CBA.

Should you have any questions or concerns, please feel free to contact me at (505) 670-8546 or edward.mccorkindale2@cyfd.nm.gov.

Sincerely,

Edward

McCorkindale

Digitally signed by Edward
McCorkindale
Date: 2022.10.26 16:38:36
-06'00'

Edward McCorkindale, Acting Employee Relations Manager, Lead Negotiator
Children, Youth & Families Department