

Memorandum of Understanding
Between
California School Employees Association
And its Capistrano Chapter 224
And
Capistrano Unified School District

RETURN IMPACTS AND EFFECTS (COVID-19)

November 6, 2020

This Memorandum of Understanding is entered into between the Capistrano Unified School District (“District”) and the California School Employees Association and its Capistrano Chapter 224 (“CSEA”) concerning the impacts and effects of resumed District operations under COVID-19 pandemic conditions.

The District and CSEA recognize the importance of maintaining safe facilities and operations, for the benefit of the students and communities served by the District and its teachers and staff. We recognize the importance of prudent measures to prevent District employees, students, their families, or other people using District facilities from being exposed to or infected with coronavirus. We agree that reasonable continuity of District operations should be maintained, and reasonable accommodation should be made for District employees who are impacted by the pandemic.

Classified unit members have a critical role in reopening schools and distance learning to address the learning loss caused by COVID-19. The Legislature’s expressed intent is that school districts retain all classified employees and the Budget Act of 2020 provides funding and flexibility to school districts to avoid layoffs of classified employees in the 2020-21 fiscal year.

To these ends, the District and CSEA agree as follows:

1. Safety:

1.1 Guidance

The District shall follow federal, state and local safety guidance including, but not limited to, the California Department of Public Health ([CDPH](#)), and Division of Occupational Safety and Health ([DOSH](#) or [Cal/OSHA](#)) guidance for school reopening and COVID-19. The District shall notify CSEA of any changes to its reopening plan or changes in the reopening phase as soon as practicable. Further, the District shall notify CSEA of any new guidelines from federal, state, or local health authorities and shall negotiate the effects of implementing those guidelines.¹

1.2 Injury and Illness Prevention Plan

The District agrees to post on the District’s website a copy of the District’s Injury and Illness Prevention Plan (IIPP), as a single PDF, including District plans to address unique circumstances during the COVID-19 crisis and agrees to provide updates to employees and parents. Further, the District shall provide documented plans for testing and contact tracing for when any on-site person(s) have tested positive for COVID-19 in accordance

¹ See also further guidance: [CDC](#), [OSHA](#), [CDE](#), [CDPH](#), [CDPH School Reopening Recommendations](#), [Cal/OSHA](#), [CDPH Cal/OSHA Checklist](#), [OCHCA](#), [Orange County Together](#)

with CDPH guidelines. The District shall follow federal, state and local governmental guidance for the development, implementation and personnel training for the District tracing plan. Should there be a conflict among agencies the CDPH or the government agency with the highest standard shall be controlling.

1.3 Worksite-Specific COVID-19 Prevention Plan

Per CDPH and Cal/OSHA guidance, the District will establish a written, worksite-specific COVID-19 prevention plan and an infectious disease preparedness plan at every facility. This plan will be made available on the District's and each school's public website.

1.4 Notice – Duty to Inform

The District will inform CSEA as soon as practicable should it learn of a confirmed or likely coronavirus infection of District employees or students and at which campus or worksite said infection was found. It is understood that privacy rights under HIPPA and the Americans with Disability Act (ADA) shall be maintained. The District recognizes that it has a duty to inform employees and shall also notify bargaining unit members who may have been exposed to COVID-19 at work and shall provide COVID testing at no expense to bargaining unit members where potential exposure has occurred. CSEA agrees to cooperate with the District in any necessary public health actions, such as contact tracing of infected individuals.

1.5 Reporting Unsafe Working Conditions

In the interest of protecting community and workplace health, any unit member may report, in writing, any identifiable unsafe condition in the working environment related to COVID-19 to the immediate supervisor. The District shall, as soon as possible or no later than the next business day, respond in writing to the unit member, with simultaneous copy to the CSEA Chapter 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 Cal/OSHA or other administrative complaints or to bring a grievance for violation of this agreement.

Unit members shall not be required to perform work reasonably considered to be unsafe. The unit member shall notify their supervisor in writing of an identifiable unsafe condition and may be directed to complete alternate work or work under modified conditions as directed until conditions are made safe for the completion of the original assignment.

1.6 Supplies

The District shall follow federal, state, local guidelines including the CDPH hygiene training recommendations for unit members in public health measures, hygiene, and sanitation to help prevent the spread of the virus and will ensure that its facilities have the necessary supplies for preventative sanitation measures.

1.7 Personal Protective Equipment (PPE)

The District shall make available to all unit members any personal protective equipment (PPE) necessary to comply with federal, state, local guidelines including CDPH, Cal/OSHA and OCHCA guidance and any PPE necessary to complete assigned tasks (i.e. including but not limited to masks, face shields, disposable gloves, disposable gowns, eye protection, respiratory protections, and other appropriate protective

equipment as needed). The District shall provide enough protective equipment to comply with CDPH guidance for students and staff appropriate for each classification or duty, relevant to Cal/OSHA requirements.

For cleaning in response to a confirmed or suspected COVID case or health procedures where a unit member comes into contact with bodily fluids, additional PPE such as shoe coverings and head coverings shall be provided.

If appropriate PPE is unavailable for the required work to be done, alternate work within the job description can be assigned that does not require that PPE, or the unit member may be sent home, without penalty or deduction of any sick or leave time, until the requested PPE is available. The intent of the parties is to ensure unit members have appropriate PPE for work assignments.

1.8 Physical Distancing

The District will ensure that there is physical distancing enough to allow at least six (6) feet distance, to the greatest extent possible, between staff in their work environment and between staff and students/public to reduce the spread of coronavirus, which includes:

1.8.1.1 Avoiding staff congregation in work environments, break rooms, staff rooms, and restrooms, and physical grouping of staff for training or staff development.

1.8.1.2 Wherever practicable, the District shall rearrange workspaces to incorporate a minimum of six feet distance between unit members and between unit members and students/public.

1.8.1.3 The District shall follow health guidelines and orders maintaining appropriate changes to physical layout in District facilities and vehicles to maintain physical distancing to the extent possible.

1.9 Air Quality

The District will ensure that air filters on HVAC systems are changed regularly and follow CDPH guidelines.

1.10 Barriers/Partitions

If physical distancing between workspaces or between unit members and students/visitors is not possible, the District will provide a plexiglass shield (e.g. sneeze guard) between other unit members/students/public, where practicable, to minimize exposure.

1.11 Sanitation

The District shall establish and maintain a routine “deep-cleaning schedule” in accordance with CDPH, Cal/OSHA and OCHCA guidance and state orders. “Deep-cleaning schedule” is defined as a plan for keeping school facilities at high level of cleanliness, particularly sanitizing high-touch surfaces.

1.12 Training

The District shall provide training on hygiene, sanitation, use of supplies and PPE in accordance with federal, state and local guidance. The District shall train unit members on its worksite-specific COVID-19 prevention plans.

1.13 Safety Working Group

The District may establish a working group to focus on safety issues related to COVID-19, including issues that arise as District operations evolve and best practices. If such a working group is established, it shall include classified unit members appointed by CSEA.

1.14 Students, Outside Visitors, Groups and Contractors

The District will instruct all students about proper handwashing techniques, face coverings, physical distancing, and other best practices for prevention of the spread of coronavirus.

The District will ensure that there are adequate hand-washing stations (whether in restrooms or otherwise) for all students, and that these stations are stocked with soap and hygienic (single-use) towels. The District will develop routines enabling students and staff to regularly wash their hands at staggered intervals. The District will consider portable handwashing stations throughout a site and near classrooms to minimize movement and congregations in bathrooms to the extent practicable. The District will limit access to campus for parents and other visitors, groups or contractors and require all visitors to wear a mask or face covering (disposable masks will be available at the entrance of each site). The District will evaluate whether and to what extent external community organizations can safely utilize the site and campus resources and ensure external community organizations and contractors that use the facilities also follow the school's health and safety plans and CDPH guidance. The District will review facility use agreements and establish common facility protocols for all users of the facility. The District shall establish protocols for accepting deliveries safely.

1.15 Face Coverings

The District shall require face coverings for every person on site, including students and visitors, in accordance with State health guidelines and orders. Individuals who cannot wear a face covering because of a documented medical restriction, shall be afforded an interactive meeting to seek a reasonable accommodation.

2. Screening

The District agrees to maintain specific plans for health screenings and clear standards in accordance with federal, state, and local guidelines. Screening should occur prior to allowing anyone into worksites. Any student, parent, caregiver, visitor, or staff with symptoms of COVID-19 (reference CDC and CDPH guidelines for COVID-19 symptoms) should not report to school or District sites.

The District will provide information to all employees regarding self-screening procedures and requirements necessary to enter District facilities.

Students and staff will be educated about COVID-19 symptoms and will be instructed about how to report symptoms if they occur during the day.

The District will screen staff and visitors to school sites daily in accordance with CDPH guidelines.

The District will screen students daily by conducting visual symptom and wellness checks at the beginning of each school day, including temperature reading with a no-touch thermometer in accordance with CDPH guidelines.

The District will exclude from entering District facilities any student, parent, caregiver, visitor, or staff showing symptoms of COVID-19 (reference CDC and CDPH guidelines for COVID-19 symptoms). Students may be placed in a waiting room pending parent/caregiver pickup.

When a unit member is not permitted to work due to screening during the day any time through December 31, 2020 (e.g. high temperature of 100.4° or greater, or positive report of key symptoms), the unit member may utilize available leave through HR 6201 and then medical leave. The parties may reopen this section in December 2020 and agree to at least three negotiation sessions, or less if an agreement is reached.

Records of staff screenings shall be kept in a safe, confidential location, and shall not be disclosed without unit member permission except to federal, state, or county public health officials.

The parties agree that screenings shall be considered a part of the standard workday. No unit member shall be required to be screened prior to their designated start time.

Temperature taking duties shall first be offered to bargaining unit members on a voluntary basis. Participating bargaining unit members shall be trained in screening technique prior to screening. If there are insufficient volunteers, the District will assign these duties to unit members.

The District shall purchase enough no-touch thermal scan thermometers (wall mounted preferred where practicable) for temperature checks upon entrance to facilities.

3. Testing and Tracing:

The District is currently providing routine testing at no out of pocket cost to the unit member. The District and CSEA will work together to explore lower test cost options to minimize impact to insurance premiums. This may include testing during work hours at District sites as practicable or self-administered home testing (if reliable home testing becomes available).

4. Leave and Workers' Compensation

4.1 Leave Related to COVID-19

In the event a CSEA unit member is exposed to coronavirus or is taken ill with coronavirus, sick leave policies will be liberally construed to encourage such unit member to not infect others by coming to work. Similarly, those unit members with medical proof of susceptibility to the virus should it be detected among students or staff at a facility will be granted leave as liberally as possible when consistent with the school's operational needs. CSEA will notify its members of the District's commitments but shall not encourage its members to take leave unless there is a medical reason to do so.

If a unit member is directed to self-quarantine in accordance with OCHCA guidance due to close contact or potential exposure at work and the employee is unable to perform the duties of their job remotely while on quarantine, the unit member shall use ten (10) days of leave as allowed through HR 6201 through December 31, 2020. After available leave through HR 6201 is exhausted, the unit member shall be placed on paid administrative leave for a maximum of ten (10) work days or less under direction of the OCHCA. The parties may reopen this section in December 2020 and agree to at least three negotiation sessions, or less if an agreement is reached. After this leave is exhausted, unit members may use quarantine leave as outlined in the CBA.

HR 6201: The parties recognize that the Federal “Families First Coronavirus Response Act,” also known as HR 6201, provides unit member with two weeks (10 days) of paid leave for coronavirus-related absences, and extends Family Medical Leave Act (FMLA) leave. Specifically, HR 6201 provides as follows, effective 4/2/20 through December 31, 2020:

- 4.1.2** 80 hours (10 days) of paid sick leave for full-time unit members (pro rata for part-time) at the unit member’s regular rate of pay (up to \$511 per day and \$5,110 in total) if:
 - 4.1.2.1** The unit member is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
 - 4.1.2.2** The unit member has been advised by a health care provider to self-quarantine because of COVID-19; or
 - 4.1.2.3** The unit member is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

- 4.1.3** 80 hours (10 days) of paid leave for full-time unit members (pro rata for part-time) at two-thirds the regular rate of pay (or state minimum wage, whichever is greater) up to \$200 per day and \$2,000 total if:
 - 4.1.3.1** The unit member is caring for an individual subject to an order or advised to self-isolate;
 - 4.1.3.2** The unit member is caring for their own child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 precautions; or
 - 4.1.3.3** The unit member is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.
 - 4.1.3.4** Unit members may coordinate accrued leave with HR 6201 two-thirds leave

- 4.1.4** For the duration of the applicability of HR 6201, the parties recognize that such leave as provided by HR 6201 shall be available to all unit members in the appropriate circumstances and shall be drawn prior to any other forms of paid or unpaid leave available to such unit members.

- 4.1.5** The parties further recognize that HR 6201 extends FMLA leave in various ways, including making it available to any unit member who has been employed for at least 30 days, making it available to unit members unable to work due to the need to care for a unit member’s minor child if the child’s school or place of care has been closed due to a public health emergency, and making it a paid leave at 2/3 pay after the first 10 days. (Those first 10 days could be covered by the 80 hours of paid leave

outlined above.) Unit members may coordinate accrued leave with HR 6201 FMLA two-thirds leave. Additionally, unit members may use HR 6201 FMLA leave intermittently absent a binding judicial decision to the contrary.

- 4.1.6** The District's obligation under HR 6201 shall cease after December 31, 2020 unless otherwise extended in writing by the parties.
- 4.1.7** Workers' Compensation: The District will review COVID-19 claims on a case by case basis. Only claims with a positive COVID-19 test will be considered to have met the definition of injury. SB 1159 creates a rebuttable presumption if there is a COVID-19 outbreak at District facilities for unit members exposed at work who are diagnosed with COVID-19 by a physician within 14 days of having come to work at a District site.

5. Accommodation:

5.1 Accommodation of High-Risk Individuals

The parties recognize that some unit members are at higher risk of severe illness from novel coronavirus due to existing medical conditions or age. 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) by providing, when practicable, options such as telework or negotiated change in classification or duties. If reasonable accommodations are not practicable, the District will work with the unit member to ensure access to applicable leaves.

5.2 Accommodation for Dependent Care

Unit members may request existing forms of leave (paid or unpaid) to address a childcare provider or school emergency affecting their children. If unit members do not have access to their normal childcare due to the coronavirus pandemic and related program and school closures, then the District will attempt, when practicable to enable unit members to:

- work-from-home or
- adjust schedules or
- allow those unit members to take paid or unpaid leave.

6. Return Personnel

- 6.1** The District and CSEA agree that unit members will either be working at their regularly assigned site, or other District site(s) in accordance with the CBA, or teleworking, dependent on the District's phase in the reopening plan (i.e. full distance learning, minimum days, full return of students) and approved reasonable accommodations.
- 6.2** The District will provide unit members working from home with all reasonably necessary equipment needed to perform their assigned duties.
- 6.3** The District agrees to give 48-hours' notice prior to requesting a unit member report back to their site, as practicable

7. Workload

The District and CSEA agree to set up a committee to address anticipated increased workload concerns to accommodate CDPH and other public health guidelines and recommendations. The District and CSEA shall meet to address any concerns regarding workload. The District and CSEA acknowledge changes in workloads due to COVID-19. Unit members and managers are encouraged to discuss priorities and schedules to accommodate the increased and/or changed workload requirements using the IBA process in a non-disciplinary setting. A unit member may request representation if the employee has concerns about meeting workload expectations.

8. Duties

The District and CSEA recognize temporary changes in job duties may be required to meet the requirements of CDPH guidelines. The parties agree this is a temporary solution to a current need and shall not be considered precedent setting for either party. Temporary changes in job duties shall be effective for the 2020-2021 school year and may cease prior to the end of the school year. District and CSEA representatives shall meet and identify COVID related duties and which classifications will be performing these duties.

9. 2020-2021 Job Security

The District will follow all California government orders directing funding, hiring, or prohibiting layoffs of bargaining unit members. The parties recognize the intent of this language is to memorialize a commitment to abide by employment related direction from the Governor and preserve unit member positions, when required, when the state provides the funding. If during the life of this agreement the District adopts a layoff, all temporary duties and revised working hours for other classifications related to the position laid off, implemented in section 8 above, shall return to previous work responsibilities, absent an agreement.

10. Reclosure of Schools

10.1 The District agrees that reclosure of schools shall be in accordance with federal, state and local health orders.

10.2 In the event District facilities are closed and/or District operations curtailed due to the pandemic, the District will follow all California orders specific to employment and funding. This may include CSEA unit members not suffering any loss of pay or benefits relative to their regular schedules for the period of closure or curtailment.

10.3 Unit members reporting during closures

The District shall timely inform CSEA about which classifications of unit members, and how many, are required to report for work during COVID-19 related closures. The District shall keep CSEA informed of its current and planned operational needs as they affect unit members working during the pandemic and shall upon request bargain further about the effects of such operations.

11. Information and Further Negotiation

The District will share with CSEA updates to standard operating procedures based on the most recent information received from CDPH or State guidelines regarding the impacts of COVID-19. This includes a commitment to negotiate the impacts of updates to the SOP.

12. Compliance with further governmental orders

The parties recognize that the COVID-19 pandemic is evolving and so is governmental response. The parties will comply with further state or federal legislation or orders as they affect the terms and conditions of employment of unit members and will bargain as needed over the effects of such further directives.

13. Learning Continuity and Attendance Plan

The District agrees to engage CSEA in the development of its Learning Continuity and Attendance plan.

14. Duration of Agreement

This MOU is a temporary agreement to address the extraordinary circumstances created by the novel coronavirus (COVID-19) pandemic. It does not create any precedents nor establish the status quo for future bargaining purposes. This MOU shall remain in effect until either the end of the day on June 30, 2021, or the lifting of the statewide State of Emergency declared on March 4, 2020 in response to the coronavirus outbreak, whichever comes first. Either party may request negotiations regarding evolving situations or other conditions not addressed in this MOU related to effects on unit members because of COVID-19.

Ronda Walen 11/6/20
Ronda Walen Date
Chapter President, CSEA Chapter 224

T. B. S.
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Associate Superintendent
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November 6, 2020
Date

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Senior Labor Relations Representative

November 6, 2020
Date