COVID-19 pandemic provisions sample MOU

Draft: Sept. 20, 2021

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**[District]**

**AND**

**[Union]**

WHEREAS, the recent outbreak and spread of coronavirus (COVID-19) has prompted many necessary changes for school districts and educators for the 2021-22 school year; and

WHEREAS the district and the union agree that the current collective bargaining agreement between the parties governs terms and conditions of employment; and

WHEREAS distance learning, in-person or hybrid instruction that combines distance learning and in-person instruction require new considerations with respect to public health and staff and student safety;

NOW THEREFORE, be it resolved; that for the 2021-22 school year, the following language supplements the language in the collective bargaining agreement between the parties.

1. **Union-District incident command team or advisory council**

To address immediate and ongoing health and safety, instructional, operational and community need and concerns, the District and Union will convene a group of representatives from sites across the district and a variety of job classifications to jointly determine district needs, responses and recommendations for safe and equitable instruction and employment related to the COVID-19 pandemic. The Union and District shall each ensure that union-district incident command response team participants are empowered to make recommendations on behalf of their respective stakeholders.

1. **Public health guidance and governmental mandates**

As a means to protect the health and safety of students, staff, and the community, the parties recognize that guidance from the state of Minnesota is critical. For the duration of the pandemic, the district will follow all Executive Orders related to distance learning or school operations. The union-district incident command team will discuss guidance from the Center for Disease Control (CDC), Minnesota Department of Health (MDH), Minnesota Department of Education (MDE), Minnesota Department of Labor and Industry (DOLI) and other relevant agencies to determine plans based on federal and state guidance.

1. **Health and safety provisions**
2. **Masks, face shields and other personal protective equipment (PPE)**
3. The District shall require the use of facial coverings (“masks”), regardless of vaccination status, based on the guidance from the Minnesota Department of Health and the Centers for Disease Control. The district will maintain a supply of disposal face coverings for individuals who do not have one on a given day.
4. Individuals who seek an exemption under the Americans with Disabilities Act from the mask mandate will be required to provide medical documentation for their requested accommodation and shall wear a face shield.

1. Masks and face shields may not be required for children age two and under or for students with medical apparatus which prevents or obstructs the use of the apparatus.
2. Staff including licensed school nurses, health aides or any staff working in health offices who may be in close contact with staff or students presenting possible COVID-19 symptoms shall be provided with N95 respirators. The district shall provide paid time for staff working in health offices to be fit-tested for their N95 respirator.
3. The district and union shall jointly identify settings in which face shields, gloves, protective smocks to wear over clothes, Plexiglas shields or other personal protective equipment (PPE) are advised. The district shall provide an adequate supply for all staff assigned to the identified settings.
4. **Hand washing and sanitization**

The District shall comply with the following hand washing logistical requirements:

1. Every room with a sink shall be stocked with soap, hand sanitizer and sanitary drying equipment;
2. Every classroom shall be provided hand sanitizer;
3. Non-classroom workspaces and learning spaces shall be provided hand sanitizer;
4. Hand sanitizer or portable hand washing stations shall be provided at each ingress and egress point;
5. All hand washing/hand sanitizing supplies noted above or otherwise provided shall be checked and restocked immediately as needed and prior to the beginning of each day.

Students, employees and visitors shall be required to wash their hands or use hand sanitizer upon entering district sites and every time a classroom is entered.

1. **Daily cleaning and disinfecting**
2. The District shall ensure that all classrooms, restrooms and workspaces are cleaned and disinfected daily using the safest and most effective disinfectant available.
3. District employees will be provided with all necessary equipment and supplies to perform these responsibilities.
4. The Union and District will jointly determine schedules for custodial workers to ensure that cleaning takes place with minimal instructional disruption. Employees shall earn a premium of $3 for additional shifts needed to complete necessary cleaning protocols.
5. **Heating, ventilation and air conditioning (HVAC) systems**
6. The District shall ensure all HVAC systems operate on the mode which delivers the most fresh air changes per hour, including disabling demand-controlled ventilation, and open outdoor air dampers to 100% as indoor and outdoor conditions safely permit. Air filters shall be MERV-13 or higher and changed at the recommended intervals.
7. Spaces without adequate central HVAC shall be equipped with low-noise HEPA air filters with a large enough capacity and flow rate for the square footage of the room.
8. **Physical distancing requirements**
9. Classroom space: The District shall ensure minimum physical distancing of three (3) feet between students, six (6) feet between educators and students, and six (6) feet between employees.
10. Student lunch: If the District and Union mutually agree that students stay in classrooms for lunch, the District shall compensate supervising educators for the assignment at their hourly rate of pay. Educators are still entitled to duty-free lunch per Article [\_\_] of the Master Agreement.
11. Staff meetings: The District shall not require in-person staff meetings or professional development if the District cannot ensure a minimum of [six (6)] feet of physical distance between all employees for the duration of the meeting and for entering/leaving the meeting.
12. **Health screening protocols**
13. The District shall ensure all students, employees and visitors are checked for symptoms daily prior to entering school buildings or buses. Visitors with any symptom consistent with COVID-19 shall be denied entry.
14. Staff and students with any symptom consistent with COVID-19 shall be sent home or sent to an isolation room on site pending travel home.
15. Upon notification that an employee or student has been infected with COVID-19, the District-Union pandemic response team will initiate contact tracing in partnership with the Minnesota Department of Health. All persons who may have come in contact with the infected individual shall be notified. The District shall notify the Union of the location(s) where the infected individual was present on the school premises during the suspected incubation/active infection period.

The District shall ask an infected staff member’s permission to share their identity with other staff so they may independently assess their level of exposure. An individual who gives permission to the district to share their identity under this paragraph must do so in writing. The district agrees that no person will be subject to retaliation for a failure to give permission to share their identity.

1. Pursuant to CDC guidance, fully vaccinated staff should get tested 3-5 days after their exposure to a confirmed COVID-16 case with or without symptoms. Fully-vaccinated staff must also wear a mask while indoors on school property for 14 days following exposure or until their test result is negative.
2. Individuals who are not fully vaccinated or who are symptomatic must continue to observe COVID-19 quarantine protocols, including obtaining a PCR test immediately following their exposure, obtaining a second test three to five days following their last exposure, and only returning to work with proof of two negative test results.
3. Educators may perform temperature checks via District-provided no-touch thermometers at their discretion.
4. **Self-administration of COVID-19 testing**
5. The District shall ensure that the COVID-19 testing protocols laid out by the state of Minnesota in current Minnesota Department of Health guidance are followed.
6. Educators shall not be required to administer COVID-19 tests to students or other staff. Licensed school nurses for whom testing is part of their scope of practice may perform tests, as recommended by MDH.

1. **Employee leaves**
2. Employees who are required to quarantine but who are not ill themselves shall be permitted to work remotely.
3. The following protocol for leave will be provided to employees unable to work due to symptomatic COVID-19 or as advised by their doctor or who are providing care to a family member who is quarantining or who has been diagnosed with COVID-19.
4. Employees shall have access to up to 30 days of Pandemic leave. In awarding such leave, the District will adhere to recommendations of the Center for Disease Control and the Minnesota Department of Health concerning self-isolation of infected persons during pandemics. Employees will be placed on paid administrative leave for absence due to illness during any pandemic as identified by the Center for Disease Control. Employees will not be expected to provide a written explanation from a health provider to excuse the absence unless the Center for Disease Control and the Minnesota Department of Health guidelines explicitly recommend that infected individuals visit a health care provider.
5. Employees shall have access to all existing sick leave benefits under Article \_\_, Section \_\_ of the collective bargaining agreement. During the duration of a pandemic declared by the Center for Disease Control, all sick leave will be credited up front.
6. Employees shall have access to additional leave through the sick leave bank under Article \_\_, Section \_\_ of the collective bargaining agreement. The parties agree that exposure to COVID-19 represents a catastrophic condition.
7. Health insurance benefits under Article \_\_, Section \_\_ of the Master Agreement will continue in full force and effect throughout the duration of all combined leave.
8. These provisions may be modified for extenuating circumstances on a case-by-case basis by mutual agreement of the employee, employer and union.
9. **Distance learning assignments**
10. In the event that permanent distance learning assignments are necessary, the following procedures shall apply to the assignment of distance learning work:
11. The District shall post and notify all bargaining unit members of distance learning assignment vacancies via district email to all bargaining unit members. Vacancies shall also be posted on the District website. The vacancy shall contain the title and brief description of the position, the credential requirements for the position, and a closing date which is at least 5 calendar days following the posting date.
12. A Bargaining unit member's request for a distance learning assignment must be submitted via email. The request may include the reasons for the bargaining unit member’s request, including that they are seeking the assignment because either they or someone in their household is at increased risk for severe illness from COVID-19, based on CDC guidance.
13. Priority for distance learning assignments shall be given to those at increased risk of severe illness based on CDC guidance. The District will also consider requests to work remotely by staff who have child care needs or are responsible for the care of household members due to COVID-19.
14. If after giving priority of assignment to these individuals, there is additional distance learning work available, the remaining assignments shall be offered to staff in order of seniority.
15. In the event a unit member is unable to return to in-person instruction because either they or someone in their household is high risk for severe illness from COVID-19, and a distance learning assignment is unavailable to them, such bargaining unit member shall be placed on paid administrative leave and continue to receive their full salary and benefits without any deduction from the bargaining unit member’s accumulated sick leave.
16. Educators whose teaching assignment changed as a result of pandemic teaching requirements during the 2020-2021 or 2021-22 school year will retain the right to return to the work assignment held prior to the 2020-2021 school year.
17. **Workload considerations**
18. Additional workload for remote learning: Should an educator be assigned additional duties due to student remote learning, employees shall be provided compensation at their hourly rate of pay for all hours worked outside of the contractual duty day.
19. Non-bargaining unit responsibilities: any duties assigned that are traditionally outside the bargaining unit must first be bargained.
20. Substitute coverage: In the event the District is unable to find a substitute to cover an educator’s absence, other staff may be asked to volunteer to cover for the absence. Such assignment will be made only upon mutual agreement and the staff member will be compensated at the employee’s regular hourly rate of compensation.

The District understands that MDH advises keeping the same groups of students and adults together as much as possible to avoid additional infection risk and will provide substitutes for in-person classrooms in order to avoid staff and students going in between groups.

*Note: there is no one best way to address substitute coverage. Existing district practices should be assumed here.* [*Sample language on substitute coverage*](https://educationminnesota.org/members-only/bargaining/sample-language/) *can be found in the Education Minnesota contract language bank.*

*In the event that the district proposes that specialists or Title I educators are dispatched as subs, we recommend a cap on the amount of time a specialist can be working out of field. An out-of-field permission must be granted by PELSB before any out-of-field placement may occur.*

1. In the event an educator is required to livestream classes for those students being educated at home, the educator will have access to paid training on best practices and a full-time assistant in the classroom to monitor these students.
2. **Specialists**

The parties agree that the work of specialists enriches and is integral to student learning. The parties shall agree to parameters and expectations for specialists under different learning models that may be necessary based on pandemic conditions.

1. **Transition between in-person instruction, online instruction and full distance learning**
2. In the event that the District must transition to a different mode of instruction, the Union-District incident command team will jointly determine transition protocols. The parties agree that conditions surrounding the ongoing COVID-19 pandemic may necessitate periods of distance learning for some students or classes. There may be different instructional delivery models employed in such cases.
3. If and when a transition to a different mode of instruction or delivery model is made, paid planning days will be provided to all staff to ensure educators have adequate time to prepare instructional materials.
4. A delivery model is the method for delivering instruction to students. Examples include synchronous online, asynchronous online live and asynchronous recorded and in person. The educator shall determine which delivery model is necessary to meet student needs when students are not in person.
   1. In person: a traditional classroom setting with educators and students physically present in the classroom.
   2. Synchronous online: A classroom that is not in person with the educator and all students in various physical locations joining together through electronic means.
   3. In person with streaming and follow-up instruction: A classroom that is in person with the educator and almost all the students in the same physical locations, but with one or two students observing through electronic means. The educator is not expected to monitor the online students while they watch, but additional staff may be assigned for this purpose or the student may indicate to the educator that follow-up instruction is needed later. This arrangement requires mutual agreement between the educator and the building administrator.
   4. Asynchronous recorded: a recorded class that a student watches independently at an agreed upon time(s). Educator consultation as needed or scheduled later.
   5. Distance learning occurs when all students move from in-person to remote learning as determined by the District, the Minnesota Department of Health, or other health officials in collaboration with the District.
5. In cases when a full classroom quarantine is determined to be necessary by the District, the Minnesota Department of Health or other health officials in collaboration with the District, a combination of Synchronous online and Asynchronous recorded instruction may be used at the discretion of the educator. All terms and conditions of the master agreement apply.
6. In cases where students are in quarantine, the assigned educator(s) may be asked but not required to provide instruction across modes of instruction. Additional time that the educator must spend outside the duty day to provide additional communication or instruction to students in quarantine will be time-carded and paid at the educator’s daily rate of pay.
7. Employees will not be recorded without their knowledge and authorization.
8. In the event that the District uses online instruction in full or in part, the following provisions apply:
9. **Equipment and instructional materials**: The District shall provide all necessary equipment (including assistive devices for employees with disabilities) and internet connections to deliver or support distance learning, when such resources are requested by the employee. If the District cannot provide the necessary equipment, the employee will be reimbursed for pre-approved purchases. Employees shall not be liable for damage to District equipment.

If an employee is required or chooses to provide printed materials to students, the District shall be responsible for printing and distributing such materials to students. If employees produce their own copies, the District will reimburse the employee for any incurred costs. Employees who use their own vehicle for distributing distance learning materials will be reimbursed for gasoline and mileage based on existing District policies/current IRS reimbursement rates.

1. **Remote work**: Bargaining unit members shall not be directed or required to report to the district in person while working in a distance learning model unless working in assignments that the Union and District agree must be performed in person. These assignments may include but are not limited to English Language or Special Education instruction, nursing, mental health care and counseling services, nutrition services, child care for essential workers, custodial and maintenance, and any assignments involving preparation of non-digital instructional materials.
2. **Employee privacy**: Distance learning presents privacy challenges for all District employees.
3. Employees shall not be required to provide personal cellphone numbers or email addresses in communications with parents or students. If employees must communicate with parents or students via telephone and do not want to use their personal cellphones or devices, the District will either provide a cellphone or virtual option that maintains the privacy of employees’ personal contact information.
4. It is understood that District employees will be providing distance learning from their home environment. In some cases, an employee’s family member may inadvertently interrupt the lesson or distract students (for instance, background conversations). Employees shall not be disciplined for actions of employees’ household members that may be witnessed or heard by students.
5. **Distance learning workload limits and supports**
   1. Class sizes for distance learning shall not exceed class sizes for in-person instruction. Class sizes for in-person instruction will not exceed the average of the class size from the previous school year by more than 2 students.

* 1. The parties agree to create a distance learning support team with joint representation from the District and Union. Non-licensed staff shall also be represented on the team. The distance learning support team will establish:
* Professional development opportunities for all educators to support online and distance learning instruction, including training on online platforms, online instructional delivery, and trouble-shooting technology.
* A system of peer coaching that identifies educators willing to support colleagues with specific questions on online and distance learning instruction.
* Supports and resources for both synchronous and asynchronous instruction.
  1. Office hours: Educators shall provide students with weekly office hours within the duty where they are available during non-instructional time to provide student support, feedback and clarification and may be conducted via phone, email or online platforms. Employees shall establish times of the day when students and families should not expect responses to inquiries until the next working day.

1. **Substitute coverage**: In the event the District is unable to find a substitute to cover an educator’s absence, other staff can be asked to volunteer to cover for the absence. Such assignment will be made only upon mutual agreement and the staff member will be compensated at the employee’s regular hourly rate of compensation.

*Note: there is no one best way to address substitute coverage. Existing district practices should be assumed here.* [*Sample language on substitute coverage*](https://educationminnesota.org/EDMN/media/edmn-secure/bargaining/Substitute-coverage-sample-language_1.pdf) *can be found in the Education Minnesota contract language bank.*

1. **Equity and Student Considerations**

1. The District shall take clear steps to ensure that students and families are not subjected to bullying or harassment based on their race, ethnicity or perceived national origin.
2. The District must comply with existing school desegregation orders to guarantee all students have access to equal educational opportunities during COVID-19 distance learning or other scheduled modifications.
3. The District shall provide a computer and internet access to any student who needs them for distance learning. If the District cannot ensure that all students have such access, the District is responsible for developing alternative means of distance learning and safely providing the required materials to students at their home.
4. The District will provide necessary assistive technology to students or their families with disabilities.
5. The District shall provide training and/or technical assistance to parents and guardians who need it to effectively support their children or charges in distance learning. Training shall be provided in languages that students, parents and guardians can understand and shall be modified as necessary for parents with disabilities.
6. The District shall ensure that meals to students and their families continue. The District shall provide necessary protective gear and safety equipment to employees who will be preparing and distributing meals. Distribution sites should be located throughout the district to ensure that they are easily accessible to students and families who cannot drive to the site. The District shall also deliver meals via school bus routes where appropriate.
7. The District shall ensure that all students experiencing homelessness receive full access to distance learning, including cell phones, a computer, internet access and hard copies of materials. The District shall waive parental/guardian approval requirements as appropriate.

The parties further agree:

This agreement addresses the 2021-23 collective bargaining agreement only and sets no precedent, nor shall it be introduced by either party in any proceeding as evidence of a past practice.

For the District: For the Union

Dated: Dated: