

MEMORANDUM OF UNDERSTANDING

between

**THE ORLEANS/NIAGARA BOARD OF COOPERATIVE
EDUCATIONAL SERVICES TEACHERS' ASSOCIATION**

and

**THE ORLEANS/NIAGARA BOARD OF COOPERATIVE EDUCATIONAL
SERVICES**

WHEREAS, the Orleans/Niagara Board of Cooperative Educational Services (hereinafter sometimes referred to as “the BOCES”) and the Board of Cooperative Educational Services Teachers’ Association (hereinafter sometimes referred to as “the Association” or “BOCESTA”) are parties to a collective bargaining agreement (hereinafter sometimes referred to as “the collective bargaining agreement”) pursuant to Article 14 of the Civil Service Law, term of July 1, 2020 through June 30, 2022; and

WHEREAS, the Association requested to negotiate matters pertaining to implementation of remote (virtual) instruction during the COVID-19 pandemic in the 2020-2021 school year; and

WHEREAS, the parties have engaged in discussions and have reached this Memorandum of Understanding to resolve the aforesaid matters, including the impact of the BOCES’ implementation of remote (virtual) instruction during the COVID-19 pandemic in the 2020-2021 school year; and

THEREFORE IT IS HEREBY AGREED THAT:

1. Unless otherwise required by applicable law, if at the time of a scheduled observation or evaluation, an employee in the bargaining unit is providing (synchronous or asynchronous) instruction or services remotely and also

providing in-person instruction or services, then, absent the employee's consent, the BOCES will make a reasonable effort to complete the formal observations, which are relied upon for annual performance assessment, at times when in-person instruction or services are occurring. Nothing in this Memorandum of Understanding shall restrict the right of the BOCES to counsel an employee (in person and/or in writing) and/or provide the employee with feedback to improve performance.


2. The BOCES will make training available, to employees in the bargaining unit who are assigned to perform remote (virtual) instruction or services, regarding the use of technology that is required to deliver such instruction or services.
3. Recorded lessons may be used by the BOCES in any disciplinary proceeding that involves allegations of abuse, neglect, criminal conduct, misconduct, conduct unbecoming a teacher, insubordination, neglect of duty, or any allegation that raises a reasonable question regarding the employee's moral character.
4. The BOCES will inform parents and students that recording of lessons is prohibited without the express approval of the teacher or the principal. Violations may be subject to discipline consistent with the BOCES' policies, including the code of conduct.
5. Each recording that is posted or shared by an employee shall be the intellectual property of the BOCES, which shall retain written or electronic material at its discretion and/or as required by law. An employee may request that a recording be deleted or removed from use by submitting a written request to the District Superintendent describing the rationale for such removal.

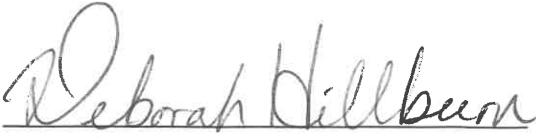
6. The parties agree that the terms and provisions of this Memorandum of Understanding shall not constitute or contribute to a custom, a practice, or a precedent.
7. Provision of remote instruction shall not be used in a manner that directly leads to the abolition of positions or layoffs. The preceding sentence shall not diminish the right of the BOCES to abolish positions and lay off employees if the BOCES determines that such action is warranted by budgetary factors, reduced service requests from school districts, or enrollment reduction(s).
8. The BOCES will consider requests from employees to be loaned technology equipment for remote use by employees in the bargaining unit. Employees may make such requests to the Director of Business Services, and such requests will be approved or denied based upon factors that include: Current availability of equipment at sites and in programs; needs of the program or site; and staff proficiency and familiarity with the technology. The decision of the Director of Business Services shall be final.
9. Remote instruction, whether synchronous or asynchronous, shall occur within the employee's work day. Any increase in the length of an employee's instructional time within the work day shall, upon the request of the Association, trigger impact bargaining between the parties.
10. The Association will support and endorse (sign off on) the BOCES' pending application to the New York State Education Department (NYSED) for a hardship waiver of the independent evaluator requirements contained in law, regulation, and the BOCES' Annual Professional Performance Review (APPR) plan. This paragraph shall also constitute a waiver and revision, for the 2020-

2021 school year, of the terms and provisions of the parties' (April 6, 2017) APPR Memorandum of Agreement (MOA) requiring that some observations be conducted by an administrator who is not regularly assigned to the teacher's building.

11. To the extent that a term or provision of this Memorandum of Understanding is not a mandatory subject of bargaining, this Memorandum of Understanding does not convert the subject matter of that term or provision to a mandatory subject of bargaining.
12. This Memorandum of Understanding shall be subject to the grievance procedures contained in the collective bargaining agreement.
13. This Memorandum of Understanding constitutes the entire understanding between the parties with respect to the subject matter addressed herein.
14. This Memorandum of Understanding shall be construed in accordance with the laws of the State of New York.
15. This Memorandum of Understanding shall cease to have any force or effect either upon the termination of the Governor's declared COVID-19 pandemic state of emergency, or at the end of the day on June 30, 2021, whichever occurs sooner.
16. This Memorandum of Understanding shall be subject to approval by resolution of the BOCES' Board of Education.

By their signatures below, the parties express their understanding of the foregoing terms and provisions.


Clark J. Godshall
BOCES Superintendent
Orleans/Niagara BOCES


Deborah Hillburn, President
BOCESTA

1/27/2021
Date

1/14/2021
Date

Dated: January 14, 2021