

JOINT INTENTIONS AND COMMITMENTS

Enhanced student achievement based upon high standards and expectations must be the driving force behind every activity of New York City public schools. To accomplish this, we must reinvent schools so that decision making is shared by those closest to students, including parents, teachers, administrators and other stakeholders. Layers of bureaucratic impediments must be peeled away so that flexibility, creativity, entrepreneurship, trust and risk-taking become the new reality of our schools. Before the millennium, the factory model schools of the 1900s must make way for the child-centered schools of the next century.

To this end, the Union and the Board mutually agree to join together with other partners in the redesign and improvement of our schools, including closing those that have failed and supporting their restructuring. We must challenge ourselves each day to improve student learning, based upon academic rigor, newfound flexibility, meaningful assessments and true accountability. Roles and responsibilities of parents, staff and other partners must be defined. The standards to which we hold our students must never be lower than those we hold for our own children. To accomplish this, we must focus on both the depth and breadth of each proposed instructional and operational change, each designed to support the children and their teachers, whom we expect to meet these rigorous standards.

Change must be service-oriented, supportive and sufficiently flexible so that each school's educational vision can become a reality. It must be practical, possible, efficient and timely. Respect for each other and for every student must be unconditional if we are to accomplish what we must.

To reach these goals, we commit to working together along with other stakeholders to develop specific recommendations in areas requiring immediate attention. These will include, but not be limited to:

- School Based Budgeting
- Early Intervention and Prevention of Inappropriate Referrals to Special Education
- Professional Development
- Parent Outreach and Support
- Workload Standards.

This commitment is our pledge to the children of the City of New York, not just to a promise but to a reality of educational excellence.

AGREEMENT MADE AND ENTERED INTO by and between the BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK (hereinafter referred to as the "Board") and GUIDANCE COUNSELORS CHAPTER, UNITED FEDERATION OF TEACHERS, LOCAL 2, AMERICAN FEDERATION OF TEACHERS, AFL-CIO (hereinafter referred to as the "Union" or the "Chapter").

WHEREAS, the Board has voluntarily endorsed the practices and procedures of collective bargaining as a peaceful, fair and orderly way of conducting its relations with its employees insofar as such practices and procedures are appropriate to the special functions and obligations of the Board, are permitted by law and are consonant with the paramount interests of the school children, the school system and the public; and

WHEREAS, in a special referendum conducted among the professional educational personnel, over 70 percent of those who participated favored collective bargaining as a way of conducting their relations with the Board; and

WHEREAS, the Board on March 8, 1962, adopted a Statement of Policies and Practices with Respect to Representation of Pedagogical and Civil Service Employees for Purposes of Collective Bargaining with the Board of Education (hereinafter referred to as the "Statement of Policies"); and

WHEREAS, pursuant to the Statement of Policies, the Association of Guidance Counselors filed a request to be certified as the exclusive bargaining representative of all employees employed by the Board of Education in the titles of Educational and Vocational Counselor, Guidance Counselor and Teacher of Educational and Vocational Guidance and submitted petitions signed by more than 50 percent of the employees in such titles authorizing the Association to act as their representative for purposes of collective bargaining with the Board, and the Superintendent determined the unit to be appropriate, and the Board issued a Certificate of Exclusive Bargaining Status on October 11, 1962; and

WHEREAS, the Association of Guidance Counselors became affiliated with the United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO, as a functional chapter known as Guidance Counselors Chapter, United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO, and the Union has shown by satisfactory evidence that it represents a majority of those employed as per session counselors, and of counselors assigned to central headquarters and district offices; and

WHEREAS, an agreement heretofore entered into by and between the parties effective on June 1, 2003 expired on October 12, 2007; and

WHEREAS, the parties entered into a Memorandum of Agreement on November 6, 2006 effective from October 13, 2007 through October 31, 2009; and

WHEREAS, designated representatives of the Board have met with representatives of the Union and fully considered and discussed with them, in behalf of the counselors in the bargaining unit, changes in salary schedules, improvement in working conditions, and machinery for the presentation and adjustment of certain types of complaints, it is agreed as follows:

ARTICLE ONE UNION RECOGNITION

The Board recognizes the Union as the exclusive bargaining representative of all persons employed in the titles of Educational and Vocational Counselor and Guidance Counselor in the regular day school instructional program (hereinafter referred to as "day school counselors" or "counselors" or "employees") of all counselors assigned to central headquarters or district offices and of all per session counselors.

During the term of this agreement should the Board employ a new title or category of employees having a community of interest with employees in an existing bargaining unit described herein, employees in such new title or category shall be included within the existing bargaining unit where they have a community of interest, and upon request of the Union the parties shall negotiate the terms and conditions of employment for such new title or category of employees; but nothing contained herein shall be construed to require re-negotiation of terms and conditions of employment applicable to employees in an existing bargaining unit as a result of the Board's re-designation of the title or category of employees in the unit.

It is understood that all collective bargaining is to be conducted at Board headquarters level. There shall be no negotiation with the Union at any other level.

Nothing contained herein shall be construed to prevent any Board official from meeting with any employee organization representing counselors for the purpose of hearing the views and proposals of its members except that, as to matters presented by such organizations which are proper subjects for collective bargaining, the Chapter shall be informed of the meeting and, as to those matters, any changes or modifications shall be made only through negotiation with the Chapter.

Nothing contained herein shall be construed to prevent any individual employee from informally discussing a complaint with his/her immediate supervisor.

Nothing contained herein shall be construed to deny to any employee his/her rights under Section 15 of the New York Civil Rights Law or under the State Education Law or under applicable civil service laws and regulations.

ARTICLE TWO FAIR PRACTICES

The Union agrees to maintain its eligibility to represent counselors by continuing to admit persons to membership without discrimination on the basis of race, creed, color, national origin, sex, marital status, sexual orientation, handicapping condition or age and to represent equally all employees without regard to membership or participation in, or association with the activities of, any employee organization.

The Board agrees to continue its policy of not discriminating against any employee on the basis of race, creed, color, national origin, sex, marital status, sexual orientation, handicapping condition, age or membership or participation in, or association with the activities of, any employee organization.

The Board agrees that it will not require any employee to complete an oath or affirmation of loyalty unless such requirement is established by law.

The Board of Education agrees that, as a result of the strike and its related activities, it will not dismiss, demote, discipline, or otherwise act against any staff member because of his or her participation in said strike or related activities. Specifically excluded from the foregoing are any and all provisions of the Taylor Law (New York Civil Service Law, Section 200 *et seq.*), none of which are waived hereby.

Any records of court proceedings or other memoranda relating to job action or strike shall not be put in a staff member's permanent file, except as required by law.

ARTICLE THREE SALARIES AND BENEFITS OF DAY SCHOOL COUNSELORS

A. Salaries and Differentials

1. Salary Schedules

The salaries and differentials of day school counselors, and the eligibility requirements therefor, shall be as follows:

Guidance Counselor Salaries Effective October 13, 2007

Step	VIh	VIh2
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1A	\$48,749	\$54,448
1B	\$48,749	\$54,448
2A	\$51,797	\$57,496
2B	\$51,797	\$57,496
3A	\$52,165	\$57,864
3B	\$52,165	\$57,864
4A	\$52,833	\$58,532
4B	\$52,833	\$58,532
5A	\$53,745	\$59,444
5B	\$55,389	\$61,088
6A	\$56,841	\$62,540
6B	\$58,499	\$64,198
7A	\$59,918	\$65,617
7B	\$64,475	\$70,174
8A	\$67,164	\$72,863
8B	\$70,534	\$76,233
8B+L10	\$74,491	\$80,190
8B+L13	\$75,312	\$81,011
8B+L15	\$78,516	\$84,215
8B+L18	\$79,840	\$85,539
8B+L20	\$87,506	\$93,205
8B+L22	\$92,255	\$97,954

Effective May 19, 2008

Step	VIh	VIh2
1A	\$51,186	\$57,170
1B	\$51,186	\$57,170
2A	\$54,387	\$60,371
2B	\$54,387	\$60,371
3A	\$54,773	\$60,757
3B	\$54,773	\$60,757
4A	\$55,475	\$61,459
4B	\$55,475	\$61,459
5A	\$56,432	\$62,416
5B	\$58,158	\$64,142
6A	\$59,683	\$65,667
6A+L5	\$60,683	\$66,667
6B	\$61,424	\$67,408
6B+L5	\$62,424	\$68,408
7A	\$62,914	\$68,898
7A+L5	\$63,914	\$69,898

7B	\$67,699	\$73,683
7B+L5	\$68,699	\$74,683
8A	\$70,522	\$76,506
8A+L5	\$71,522	\$77,506
8B	\$74,061	\$80,045
8B+L5	\$75,061	\$81,045
8B+L10	\$78,216	\$84,200
8B+L13	\$79,078	\$85,062
8B+L15	\$82,442	\$88,426
8B+L18	\$83,832	\$89,816
8B+L20	\$91,882	\$97,866
8B+L22	\$96,868	\$102,852

All regularly appointed day school counselors will advance to the next step in the salary schedule on the anniversary date of their appointment and on March 1 of each year until they have advanced to the last step of the salary schedule.

2. Longevity Increments

a. Effective September 16, 1998 (May 19, 2008 for the five year longevity increment) or on such date thereafter as the requirements shall be met, additional compensation shall be paid to those counselors eligible therefor pursuant to the conditions and at the rates set forth below. Such additional compensation shall be known as the “longevity increment” and the gross annual salary rates of counselors to whom said longevity increment is payable shall be computed by adding the sum provided per annum to the rates ascertained without consideration of said longevity increment. Longevity increments shall be payable as follows to appointed counselors with the requisite years of pedagogical service in the New York City public schools:

Longevity Increments

<u>Years of NYC Public School Service</u>	<u>Effective Date</u>	
	<u>October 13, 2007</u>	<u>May 19, 2008</u>
5 but less than 10	\$0	\$1,000
10 but less than 13	\$3,957	\$4,155
13 but less than 15	\$4,778	\$5,017
15 but less than 18	\$7,982	\$8,381
18 but less than 20	\$9,307	\$9,771
20 but less than 22	\$16,972	\$17,821
22 or more	\$21,721	\$22,807

b. Pursuant to law, the service required for these longevity increments shall include teaching service outside the New York City public school system and/or related non-teaching experience for which salary credit was granted by the Board prior to April 12, 1971.

3. Salary Placement

An appointee as a day school counselor who, immediately preceding such appointment, was a teacher on an annual salary under appointment by the Board of Education shall be placed in the counselor's salary schedule at the same salary step as he/she had been placed as a teacher provided the counselor placement on that step is higher than the teacher salary. Otherwise the counselor shall remain in the teacher salary schedule until the counselor salary exceeds the teacher salary (including longevity).

4. Additional Compensation

Counselors currently receiving additional compensation because of their assignment in a special education program shall continue to receive such additional compensation at their current rate so long as they serve in any special education assignment. Counselors newly assigned or employed in special education assignments after September 8, 1978 shall not be eligible for the additional compensation.

5. Eligibility Requirements

a. In any and all schedules herein set forth, advancement by increments to salary steps shall be conditioned upon regulations adopted by the Board of Education upon the recommendation of the Chancellor.

b. Rates under Schedule VIh shall be paid to all employees who do not meet the requirements for Schedule VIh2 as hereinafter set forth.

c. Commencing September 1, 1969, eligibility for the differential (Schedule VIh2) shall be acquired by a counselor who

(1) Holds an approved doctorate issued by a recognized college or university; or

(2) Holds an approved master's degree issued by a recognized college or university and who, after having earned the baccalaureate, has satisfactorily completed 30 semester hours of approved credits in college or university study; and/or effective September 1996, professional development courses and/or activities approved by the Chancellor.

Provided, however, that a counselor regularly employed by the Board of Education on June 30, 1967, who had satisfied the conditions of eligibility then existing or who satisfied those conditions not later than June 30, 1970, shall not be affected by this alteration of the conditions of entitlement.

d. Rates under Schedule VIh2 shall be paid to an employee who was regularly employed on June 30, 1967, and who qualified for a salary differential not later than June 30, 1970, by reason of

(1) Having completed 60 semester hours of approved study beyond the baccalaureate degree, or

(2) Having completed 60 semester hours of approved study beyond such courses offered for and accepted by the Board of Examiners as the equivalent of a baccalaureate degree for eligibility for the license under which the employee is serving at the time of filing application for salary differential. In either case qualification for the differential and the effective date thereof shall be evidenced by a certificate issued by the Chancellor in accordance with appropriate regulations approved by the Board of Education.

e. Effective through June 30, 1970, all college credits creditable toward college work in excess of the number required for the baccalaureate, whether earned before or after graduation, shall be applicable for differential purposes.

f. Effective for courses commenced after September 8, 1980, correspondence courses will no longer be acceptable for salary differentials or advancement on the increment schedule.

B. Staff Development Rate

The hourly rate paid for attendance at training sessions shall be:
Effective October 13, 2007.....\$18.21
Effective May 19, 2008.....\$19.12

C. Credit for In-Service Courses

Where records of in-service courses needed to establish eligibility for salary differential are not available, an affidavit by the counselor applicant for salary differential shall be accepted by the Board in lieu of other evidence of course completion, provided that such affidavit includes the following:

1. Approximate date of completion of the course;
2. Such description of the course as the applicant can furnish;
3. A statement that the counselor-applicant received a salary increment during the year that he or she completed the course and that such increment was granted upon submission of evidence of completion of the course;
4. A statement that the counselor-applicant did not during the year in question qualify for salary increment on any basis other than completion of the in-service course.

D. Vacation Pay

1. Summer Vacation Pay

Summer vacation pay shall be pro-rated for the school year in which employees are appointed and for the school year in which their service ceases on the following basis: Employees who are appointed after the start of the school year and employees who are terminated, laid off, resign or retire at/or before the end of the school year shall receive vacation pay for the summer following their appointment or cessation of service as follows: one-tenth of the amount of the vacation pay which would be payable for a full school year's service shall be paid for each month of service or major fraction thereof during the school year in which they are appointed or cease service except that service of less than a major fraction during the first month of appointment shall be credited for summer vacation pay. The pro-rating of summer vacation pay for the year in which employees are appointed and for the year in which their service ceases in accordance with this provision shall not diminish the employee's entitlement to any other benefit including health insurance and welfare coverage he/she would have received under the prior method of payment.

An employee who serves as a regular or per diem substitute in a different license and is appointed after the beginning of the school year as a guidance counselor shall be entitled to the additional vacation pay of a regular or per diem substitute in the other license for the year in which he/she is appointed as a guidance counselor on the basis of his/her substitute service prior to his/her appointment.

2. Vacation Pay Credit and Service Credit

a. The estate of a counselor who dies during the school year shall receive a pro-rata amount, based on the length of his/her employment during the school year, of the vacation pay he/she would have received had he/she been employed during the entire school year. This section shall not apply to those counselors who are presumed to have retired on the day immediately preceding their death pursuant to Section B 20-410 of the Administrative Code of the City of New York, as amended.

b. A counselor who has rendered actual service during any school year covered in part by leave of absence for maternity and child care shall be given credit for salary increment purposes for any pro-rata vacation pay received for such service.

E. Health Insurance and Welfare Fund Benefits

1. Choice of Health Plans

The Board agrees to arrange for, and make available to each day school counselor, a choice of health and hospital insurance coverage from among designated plans and the Board agrees to pay the full cost of such coverage.

Regularly appointed employees who are laid off and who are covered by a health and hospital insurance plan at the time they are laid off shall continue to be so covered for ninety days from the day on which they are laid off, and the Board will pay the full cost of such coverage.

The Board, the Union and the City of New York ("City") continue to discuss, on an ongoing basis, the citywide health benefits program covering employees represented by the Union and employees separated from service. Any program-wide changes to the existing basic health coverage will be expressly incorporated into and made a part of this Agreement.

The provisions of Appendix B (Health Insurance) shall apply as modified herein.

The parties acknowledge that collective bargaining regarding health benefits is within the purview of negotiations between the Municipal Labor Committee and the City. Cost-containment initiatives and program modifications in the City Health Benefits Program shall be discussed with the Municipal Labor Committee.

2. Supplemental Benefits

a. The Board will provide funds at the rate of \$1,685 (\$1,720 effective October 21, 2009) per year on a pro-rata basis per month on behalf of each employee, for the purpose of making available for each employee supplemental welfare benefits and for the purpose of making available college scholarships for children from low income families graduating from the city's public high schools under a plan to be devised and established jointly by representatives of the Union and of the Board. The Board will continue to make payments for supplemental benefits at the rates per year set forth herein on a pro-rata basis per month for ninety days from the day of layoff on behalf of each regularly appointed employee who is laid off.

b. Domestic partners of covered employees will be provided with welfare fund benefits in the same manner in which covered employees who are married receive such benefits for their spouses.

c. The Union has established a supplemental welfare benefits fund program for employees represented by the Union who have separated from service subsequent to June 30, 1970, who were eligible to receive supplemental welfare benefits and who were covered by a welfare fund at the time of such separation pursuant to a separate agreement between the Board of Education and the certified union representing such employees, who remain primary beneficiaries of the New York City Health Insurance Program and are entitled to benefits paid for by the City through such program.

The Board of Education shall contribute the following annual amounts on a pro-rata monthly basis for each eligible individual for remittance to the Union to such supplemental benefits fund pursuant to the terms of the supplemental agreement:

(1) Eligible employees separated from service from July 1, 1970 through September 8, 1982	
Effective October 13, 2007	\$1,125
Effective October 21, 2009	\$1,160
(2) Eligible employees separated from service after September 8, 1982	
Effective October 13, 2007	\$1,565
Effective October 21, 2009	\$1,600

d. Effective May 1, 2008, there shall be a one-time payment to the Welfare Fund in the amount of \$166.67 on behalf of each covered employee, as defined in the UFT Welfare Fund Supplemental Agreement, who is receiving benefits on May 1, 2008.

e. Employees who are separated from service and thereafter return to active service will be entitled to the same Welfare Fund benefits as other active employees. For the period of their active employment, such employees will not also receive retiree benefits. Accordingly, the Union Welfare Fund will receive only one contribution on behalf of each such employee, which shall be at the applicable contribution rate for active employees.

f. The Health Benefits Agreement, dated July 22, 2005 is deemed to be part of this Agreement. The side letter agreements between the City Commissioner of Labor Relations James F. Hanley, and UFT President Randi Weingarten, dated June 30, 2004 and July 13, 2005 are deemed to be part of this Agreement. Pursuant to those Agreements, the parties have agreed to a series of payments to the Welfare Fund.

g. Pursuant to the Municipal Labor Coalition Benefits Agreement, the Union Welfare Fund shall provide welfare fund benefits equal to the benefits provided on behalf of an active Welfare Fund-covered employee to widow(ers), domestic partners and/or children of any active Welfare Fund-covered employee who dies in the line of duty as that term is referenced in Section 12-126(b)(2) of the New York City Administrative Code. The cost of providing this benefit shall be funded by the Stabilization Fund.

3. Health Care Flexible Spending Account

a. A flexible health care spending account has been established pursuant to Section 125 of the Internal Revenue Code. Those employees covered by this Agreement are eligible to participate on the same basis as they are eligible to participate in the city-wide health benefits program. Participating employees shall contribute at least \$260 per year up to a maximum of \$5,000 per year. The labor-management health committee which includes Union and City representatives may modify these contribution levels, based on experience of the plan.

b. Expenses covered by the account shall include but not be limited to deductibles, co-insurance, co-payments, excess expenses beyond plan limits, physical exams and health related transportation costs for vision, dental, medical and prescription drug plans where the employee and dependents are covered. In no case will any of the above expenses include those non-deductible expenses defined as non-deductible in IRS Publication 502.

c. An administrative annual fee of \$48.00 shall be charged for participation in the program. Pursuant to Section 125 of the Internal Revenue Code, an employee's participation in the account is irrevocable during any plan year and any excess funds in an employee's account at the close of any plan year is retained by the plan and not refundable to the employee.

4. Dependent Care Assistance Program

a. A dependent care assistance program has been established pursuant to Section 125 of the Internal Revenue Code. Those employees covered by this Agreement are eligible to participate on the same basis as they are eligible to participate in the citywide health benefits program. Participating employees shall contribute at least \$500 per year up to a maximum of \$5,000 per year. The labor-management health committee which includes Union and City representatives may modify these contribution levels, based on experience of the plan.

b. An annual administrative fee of \$48.00 shall be charged for participation in the program. Pursuant to Section 125 of the Internal Revenue Code, an employee's participation in the account is irrevocable during any plan year and any excess funds in an employee's account at the close of any plan year is retained by the plan and not refundable to the employee.

F. Reimbursement for Medical Expenses

Counselors shall be reimbursed by the Board for reasonable medical expenses, not exceeding \$750, incurred because of injuries in the line of duty, to the extent that such expenses are not covered by insurance. In accordance with existing regulations, as they may be modified by the parties, this limit is waived for employees injured as a result of an unprovoked assault while on duty or while on school premises.

G. Damage or Destruction of Property

1. The Board will reimburse counselors, in an amount not to exceed a total of \$100 in any school year, for loss or damage or destruction, while on duty in the school, or while on duty on a field trip, of personal property of a kind normally worn to or brought into school, or on a field trip, when the counselor has not been negligent, to the extent that such loss is not covered by insurance.

The term “personal property” shall not include cash. The terms “loss,” “damage” and “destruction” shall not cover the effects of normal wear and tear and use.

2. Counselors shall not be held responsible for loss within the school of school property or children's property when such loss is not the fault of the counselor.

This does not exonerate the counselor from responsibility for school property in his/her charge.

H. Salary Payment

1. The parties agree that a biweekly payroll gives employees a date certain for receipt of their pay. Therefore, the Board will convert the pedagogical payroll to a biweekly payroll from a semimonthly payroll as soon as practicable. The parties will make whatever contractual changes are technically necessary to accomplish this goal.

2. The Board will recommend to the Comptroller of the City of New York that he/she itemize more fully employee pay checks and that he/she provide accompanying explanations when lump sum payments are made.

3. The Board and the Union will use their best efforts to establish procedures which will provide itinerant counselors with their paychecks at the school or site to which they are assigned on the days on which checks are issued.

4. On the last day of the school year, employees shall receive five (5) paychecks which are not to be cashed until the date appearing on the paychecks dated on or about June 30, July 15, July 30, August 15, and August 31.

The Board and the Union agree that any employee who attempts to cash or cashes any of these five paychecks prior to the date on the paycheck(s) shall thereafter reimburse the Board and/or the City of New York for any costs resulting from such action by deduction of such costs from the payments due to said employee.

The early distribution of these five paychecks shall end if five (5) percent of the paychecks in any one summer are prematurely cashed and the practice in existence prior to this Agreement shall resume.

5. The Board has in place an electronic funds transfer (EFT) program without resort to a payroll lag for those bargaining unit members who are regularly scheduled employees in titles paid on the Q Bank and who elect the receipt of their paychecks by electronic funds transfer. Annual enrollments will take place each March

6. As of school year 2007-2008, all newly-hired employees of the Board of Education shall have their wages paid through direct deposit.

I Transportation Benefits

1. Reimbursement for Travel Expenses

a. Counselors shall be reimbursed for reasonable travel expenses incurred in making visits on official business to schools, homes or agencies. Such visits must be approved in advance by the head of the school. Reimbursement for such authorized travel expenses will be made in accordance with generally applicable rules and regulations issued by the Chancellor.

b. Counselors who are authorized to use their personal cars on official business shall be reimbursed in accordance with the allowance established by the City Comptroller.

2. Transportation Benefit Program

Employees are eligible to participate in the NYC Transit Chek program.

The parties agree that the City will expand the current Transit Chek program to offer to eligible employees the ability to purchase a Transit Debit Card through payroll deductions in accordance with IRC Section 132. In addition to the current MTA Surface and Subway lines, the Transit Debit Card may be used to purchase tickets for mass transit commutation only (i.e., LIRR, LI MTA Buses, MetroNorth). The administrative fee for this benefit will be borne by the participants and will be deducted on a prorated basis from the participating employee's paycheck. After one year of experience with this benefit, the City will examine the level of participation and the associated costs of providing this benefit to determine whether or not the administrative fee requires adjustment.

The parties further agree to examine the possible expansion of this benefit to include other regional mass transit carriers.

J. Performance Incentives Committee

A committee co-chaired by the Chancellor, the President of the UFT and the New York City Commissioner of Labor Relations, or his or her high-ranking designee, shall be established to investigate the viability and desirability of merit pay and to address other compensation issues such as comparability, skills and responsibility, shortage and hard to staff areas and potential career ladder opportunities.

K. Lump Sum Payment

Effective January 1, 2007, a lump sum cash payment shall be paid to all employees covered by this Agreement ("Eligible Employees").

The lump sum cash payment shall be pensionable, consistent with applicable law, and shall not become part of the employee's basic salary rate.

Full-time employees shall be paid \$750. Other Eligible Employees shall have the amount of their cash payment pro-rated based on their hours worked during the applicable payroll periods between mid September and mid December compared to the full-time hours of Employees in their title.

ARTICLE FOUR PENSION AND RETIREMENT PROGRAM

A. Annuity Fund

The Board shall contribute at the rate of \$400 per year to the Teachers' Retirement System to be credited monthly to the annuity account of each counselor who is at the maximum step of his/her salary schedule.

The Board will seek such legislation as may be necessary to provide for these annuity contributions. In the event that necessary enabling legislation is not enacted, the Board will pay monthly to each counselor covered in the preceding paragraph at the rate specified above.

B. Support for Program

With respect to pensions and retirement, the Board hereby affirms its support of the following program:

1. One year of pension credit shall be granted for each 170 days of substitute service.
2. Counselors shall be entitled to credit for all teaching service in New York City or elsewhere rendered before entry into the Teachers' Retirement System of the City of New York.
3. The Teachers' Retirement Board should be adequately staffed to provide prompt and efficient service.

C. Board of Education Retirement System

For members of the Board of Education Retirement System, the Board agrees to provide, effective September 8, 1969, the same pension benefits as were heretofore approved by the Board of Education for other members of the Board of Education Retirement System.

D. Pension Legislation

The parties have agreed to jointly support pension legislation as set forth in the letter attached as Appendix D

E. Tax Deferred Annuity Plan

The parties agree to enroll newly-hired employees who do not enroll in a retirement or pension system maintained by the City of New York in the Board's 403(b) Annuity Plan at the time the employee is hired. It is further agreed that such employees will be provided with the option to withdraw from enrollment in the Board's 403(b) Annuity Plan.

F. Pension Benefits Agreement and Deferred Compensation Plan

1. The Pension Benefits Agreement dated June 6, 2000 is deemed to be a part of this Agreement.
2. The Board and the City shall promptly make available to the employees covered by this Agreement an eligible deferred compensation plan under Section 457 of the Internal Revenue Code in accordance with all applicable laws, rules and regulations.

ARTICLE FIVE LICENSURE AND APPOINTMENT

A. Regularized Licensure

The Board of Education shall provide for the regular licensure of guidance counselor personnel consistent with the needs of the instructional program and subject to applicable law and the by-laws of the Board of Education. The Board will take the following actions:

The Board has established regular licenses valid for service as a guidance counselor under regular appointment, or for day-to-day per diem service, or for full-term assignment, or for other service as a guidance counselor, including bi-lingual service. All positions will be filled by persons holding such regular licenses except under the following circumstances.

1. Where a position must be filled to provide the services of a guidance counselor for which no person holding such regular license is immediately available after all efforts have been made to fill the position by a person holding such regular license;
2. Where the kind of guidance counselor work is not normally performed in the public schools and is temporary in nature.

B. Provisional Counselors

1. A Certified Provisional Counselor (CPC) is a person who has not yet been appointed, who holds a New York State provisional or permanent certificate, a New York City regular license or a New York City substitute license issued on or before June 30, 1969. CPC's do not require annual renomination.

2. A Preparatory Provisional Counselor (PPC) is a person who has not yet completed all the requirements for New York State provisional certification, but who holds a New York State temporary license. Pursuant to Commissioner's regulations, a PPC will be eligible for annual renomination for a state temporary license for a period of three years provided that for each year of service the PPC has been rated satisfactory and has shown progress toward state provisional certification. For any PPC who satisfies these conditions the Chancellor will seek state renomination.

3. Appointments and assignments to counseling positions shall be made in accordance with State education law, Commissioner's regulations and applicable Board of Education regulations and provisions of this Agreement. Appointments shall be made from eligible lists of persons holding regular licenses. After all available persons with regular licenses have been appointed and where positions still remain vacant or arise during the course of the school term, certified provisional counselors shall have priority for any assignment. Where no certified provisional counselor is available for assignment, preparatory provisional counselors will be eligible for such assignment.

Except in cases of emergency, any CPC or PPC employed to fill a full term or balance of term assignment will be retained for at least the duration of that term.

C. Withdrawal of Resignation and Subsequent Re-Employment

1. Requests for withdrawal of resignation on the part of counselors who attained permanent tenure prior to their resignation shall be effectuated, subject only to medical examination and the approval of the Chancellor, provided that application for such withdrawal of resignation is made on or before the opening of school in September next following five years after the effective date of resignation. In all other cases of withdrawal of resignation, the requirements of former Section 255 of the Board of Education by-laws shall continue in effect.

2. Counselors who resign and subsequently are re-employed following the effectuation of their request to withdraw resignation shall be placed in the salary step at which they were at the time of resignation and shall be given the sick leave "bank" and sabbatical leave rights which they held at the time of resignation.

D. Absence Without Notice

Counselors who are absent for 20 consecutive school days without notice shall be deemed to have resigned unless they have reasonable cause for failure to notify. The issue of the reasonableness of the cause and the penalty, if any, shall be subject to the grievance procedure, including binding arbitration, set forth in Article Fifteen.

E. Return to Former License of Appointment

To open more opportunities to serve in the New York City public schools, and to encourage the use of shortage area licenses, the parties have agreed to the following system for license reversion, which supplements the existing procedure. This new system requires application and approval to revert to a former license and appointment. Except in unusual cases, approval will not be given to change from a shortage to a non-shortage license area. However, pedagogues serving in agreed-upon shortage areas may apply under Section 248 of the Chancellor's Regulations to revert to a former license and appointment.

Except for pedagogues serving in agreed-upon shortage areas, pedagogues who have been previously appointed under different license(s) may apply to serve under any such license(s) according to the following guidelines:

1. The former license was validated by serving one year satisfactorily under that license and is still valid, and
2. The most recent three years of active service have been rated satisfactory, and
3. A vacancy in the school, district or city exists in the former license.

A pedagogue whose application to return to a former license is approved will be placed at the next reorganization in a vacant position in the same school or program in which he/she is serving. If no such vacancy exists he/she will be placed in a vacancy in the same community school district or superintendency. If no vacancy exists in the community school district or superintendency, the Division of Human Resources will place the pedagogue in a vacancy in the city.

For the purpose of this provision, a vacancy is defined as an unencumbered position, an anticipated vacancy, or a position currently held by a substitute.

A pedagogue who returns to a former license must serve a minimum of two school years in the license before being eligible to apply again under this provision.

A pedagogue who reverts to a license in an agreed-upon shortage area pursuant to this provision has the right to return to the license from which he/she reverted after at least two years of service in the shortage area.

F. Creation of F-Status Positions

1. Every one or more F-Status position(s) in a single school that equal 1.0 FTE (i.e. positions equaling 5 days per week) in the same license will be considered one full-time position. Only if no appointed counselors are reasonably available (through excesses, transfers and/or new hires assigned by the Division of Human Resources) may such school create F-Status positions equaling 1.0 FTE.

2. Notwithstanding the restriction in the preceding paragraph F 1, a school will be allowed to create such F-Status positions in order to accommodate a hardship for a previously appointed pedagogue or because of the particular needs of the program.

ARTICLE SIX HOURS

A. Hours of Work

1. Except as otherwise specifically provided herein, counselors shall work six hours and thirty minutes on each school day, exclusive of a lunch period, and such additional time as the by-laws provide.

2. The gross annual salary of employees covered by this agreement will be increased in accordance with the salary schedules herein.

3. In single session schools the day will start no earlier than 8:00 a.m. and end no later than 3:45 p.m.

4. On professional development days the school day shall be six hours and fifty minutes.¹

B. Activities Included in Working Time

¹ The parties disagree about the applicability of this sentence to guidance counselors.

Time spent by a counselor in visiting homes or agencies, in attendance at professional conferences, in preparing special reports, and in related guidance activities which may be performed outside the school or outside of regular school hours shall be deemed a part of the counselor's prescribed working time if such activities have been approved by the head of the school as part of the program of guidance for the school.

C. Work Year

Guidance counselors shall report for professional days on the Thursday and Friday preceding Labor Day and on Brooklyn-Queens Day.

The official school year calendar shall provide a one week February mid-winter recess which includes Washington's Birthday, without reducing the number of instructional days for students.

**ARTICLE SEVEN
ASSIGNMENTS AND COUNSELING CONDITIONS**

A. Selection for Available Assignments

Licensed guidance counselors will be given an opportunity to apply for available guidance assignments within the school and selection will be made on the basis of layoff seniority where qualifications are equal.

B. Limitation on Assignments

Counselors shall not be assigned to cover classes, represent the school in lieu of a teacher or supervisor, or perform other duties normally performed by classroom teachers. Counselors shall not be required to schedule and administer large-scale testing programs or to score and record test data resulting from such programs. Counselors shall not be involved in the mechanical details of grade-wide or school-wide programming or grade organization. Counselors shall not be given any administrative assignments such as but not limited to lunch, hall, bus or yard duty. It is recognized that emergency situations may develop because of the unavailability of other school staff. In such situations of emergency, the right of the principal to make an emergency assignment is fully recognized.

C. Conferences with Teachers

Counselors serving in schools shall be permitted, through arrangements made by the head of the school, to meet with classroom teachers during the school day for necessary consultation on guidance matters.

D. Split Assignments

Upon request, a counselor serving in a split assignment shall be reassigned in accordance with his/her layoff seniority to a full position in the district or superintendency or program before a newly hired employee. Such reassignment shall be effectuated at the next reorganization.

E. Regular Part-Time Assignments for Appointed Counselors

1. A limited number of regularly appointed counselors (including counselors on unpaid leaves) may be assigned to less than full-time positions where such an assignment meets a particular need of the school system, including, but not limited to, filling a vacancy where no full-time counselor is available, alleviating a shortage area, or sharing a full-time position with another counselor on unpaid leave. The number of these positions in any school year will be decided jointly by the Board and the Union and awarded on the basis of agreed-upon criteria.

2. Counselors in these positions will be entitled to full health and welfare benefits and pro rata salary (including vacation pay) and pro rata sick leave.

3. Service performed in this program shall be considered for all seniority and salary credit consistent with current Board policy.

4. The Board and the Union shall seek appropriate legislation, where necessary to secure pension rights.

5. All provisions of this Agreement shall apply except Articles Six A (Hours of Work), Nineteen (Rates of Pay and Working Conditions of Per Session Counselors), Twenty (Counselors Assigned), and Twenty-One (Schools and Programs with Modified Work Schedules).

F. Basic Instructional Supplies

The Board and the Union agree that schools should provide appropriate and sufficient basic instructional supplies and books to deliver an effective educational program. Basic instructional supplies and books are those that must be provided for use by students without which classroom instruction will be impaired.

In the event a member or members of the faculty believe that such supplies and books are not available to students and faculty, the chapter may request a meeting with the principal. Upon the request of the chapter leader, the principal shall meet with the UFT chapter committee to resolve the issue. If no resolution is achieved at the school level, the district representative and the appropriate superintendent will meet within five (5) school days to attempt to resolve it. If they are unable to do so, the dispute will be forwarded by the Union to the Chancellor for his prompt review and response.

G. Involvement in Planning

1. Counselors will be involved in the planning of the school's guidance program.

2. Counselors in the department, and Union-designated committees of counselors in the district, program and high school superintendency shall be consulted in planning the agenda for their staff meetings.

H. Return from Leave

Counselors who return from a leave of one year or less shall be returned to the school or facility where they served at the time of the leave, in accordance with their seniority. The return shall be effectuated at the next reorganization unless the superintendent permits an earlier return.

I. Guidance Counselors Serving as Education Evaluators²

1. Education evaluators shall have a continuous workday of six hours and forty minutes exclusive of lunch, which shall be not less than thirty minutes per day and no longer than the lunch period at the school or facility in which they are serving. Such workday shall be scheduled to start no earlier than 8:00 A.M. and to end no later than 4:00 P.M.

The workday of employees selected for after-school per session positions may be scheduled to start before 8 a.m. on days necessary to assure timely arrival of the employee at the per session site.

The preference of the employee shall not be unreasonably denied. If denied, the reason shall be set forth in writing to the employee.

2. Effective September 2002, education evaluators and guidance counselors are required to attend open school nights and faculty conferences.

3. A counselor who requests a return to his/her former position within one year after being initially assigned as an education evaluator shall be reassigned to his/her former superintendency in accordance with seniority.

² The parties disagree about the applicability of this Article 7 I to employees covered by this Agreement.

4. Education evaluators shall have the right to return within one year from a leave to their assignment in accordance with their seniority.

5. One of the five (5) days per year of menu-driven staff development currently available to school psychologists, school social workers and education evaluators shall be designated systemwide on a day when students are not scheduled to attend school. The joint UFT/Board Committee on Staff Development will determine the programs that are available.

J. Workload Disputes

Upon receiving a written complaint from a guidance counselor regarding an existing workload, the principal or his/her designee shall meet with the employee making the complaint, and his/her representative, and reach a determination within five (5) school days. If the complaint is not resolved, the chapter leader may forward it to the appropriate superintendent, within five (5) school days of the determination, for review.

If a timely request for review is received by the superintendent, s/he shall designate a representative to jointly investigate with a UFT appointed representative the workload that is alleged to be inappropriate. The two representatives will then submit recommendations to the Superintendent for his/her written determination, which shall be made within (10) school days of receipt of the recommendation(s).

The UFT shall have the right to appeal the superintendent's determination to the Chancellor within five (5) school days of the Superintendent's written determination of the complaint, or if the Superintendent does not timely render a determination, to seek review at the Chancellor's level within forty-five (45) days of the principal's receipt of the original written complaint, whichever is earlier. Such appeal shall contain a detailed written statement of the reasons for dissatisfaction with the Superintendent's determination. The Chancellor or his/her designee shall review the workload complaint and make a final determination, not subject to further review, within fifteen (15) school days of receipt of the appeal.

K. District 79 Reorganization

The Memorandum of Agreement controlling the rights of employees regarding the 2007 reorganization of District 79 is contained in Appendix F.

ARTICLE EIGHT SAFETY AND HEALTH

A. Assistance in Assault Cases

1. The principal shall report as soon as possible but within 24 hours to the Office of Legal Services and to the Chief Executive of School Safety and Planning and to the Victim Support Program that an assault upon an employee has been reported to him/her. The principal shall investigate and file a complete report as soon as possible to the Office of Legal Services and to the Chief Executive of School Safety and Planning. The full report shall be signed by the employee to acknowledge that he/she has seen the report and he/she may append a statement to such report.

2. The Office of Legal Services shall inform the counselor immediately of his/her rights under the law and shall provide such information in a written document.

3. The Office of Legal Services shall notify the counselor of its readiness to assist the counselor.

This assistance is intended solely to apply to the criminal aspect of any case arising from such assault.

4. Should the Office of Legal Services fail to provide an attorney to appear with the employee in Family Court, the Board will reimburse the employee if he/she retains his/her own attorney for only one such appearance in an amount up to \$40.00.

5. An assaulted employee who presses charges against his/her assailant shall have his/her days of court appearance designated as non-attendance days with pay.

6. The provisions of the 1982-83 Chancellor's Memorandum entitled "Assistance to Staff in Matters Concerning Assaults" shall apply.

B. School Safety Plan

The principal is charged with the responsibility of maintaining security, safety and discipline in the school. To meet this responsibility he/she shall develop in collaboration with the Union chapter committee and the parents association of the school a comprehensive safety plan, subject to the approval of the Chief Executive of School Safety and Planning.

The safety plan will be updated annually using the same collaborative process, and reports of any incidents shall be shared with the chapter leader.

A complaint by a counselor or the chapter leader that there has been a violation of the safety plan may be made to the principal as promptly as possible. He/she will attempt to resolve the complaint within 24 hours after receiving the complaint.

If the counselor or chapter is not satisfied, an appeal may be made to the Chief Executive of School Safety and Planning who will arrange for a mediation session within 48 hours.

If the counselor/chapter is not satisfied with the results of the mediation, an appeal may be made by an expedited arbitration process to be developed by the parties.

C. Citywide Security and Discipline Committee

The Union and the Board shall establish a joint committee which shall meet on a regular basis to discuss and consider appropriate means of resolving safety and discipline issues. Other city agencies will be invited to participate when the Union and the Board deem it appropriate.

The joint committee or joint designees and any experts the Union and/or Board may designate will have access to all schools and other Board workplaces in which staff represented by the Union are assigned for the purpose of investigating and assessing allegedly unsafe working conditions. If possible, such visits shall be made on reasonable notice to the school and in a manner that minimizes disruption to the school or other workplace.

The joint committee, from time to time, may establish sub-committees to deal with special safety/discipline issues. It shall establish a sub-committee to deal with the issues of safety and discipline in special education schools and programs.

D. Environmental Health and Safety Joint Committee

1. The Union and the Board shall establish a joint committee which shall meet on a regular basis to discuss and consider appropriate means of resolving health and safety issues. The School Construction Authority will be invited to participate on issues raised by school capital modernization projects.

2. The joint committee or joint designees, and any experts the Union and/or the Board may designate, will have access to all schools and other Board workplaces in which staff represented by the UFT are assigned for the purpose of investigating and assessing allegedly hazardous working conditions. Such visits will be made upon reasonable notice to the Board's office of occupational safety and health and in a manner that minimizes disruption to the school or other workplace.

E. Safe Environment

1. In recognition of the importance of employee safety and health, the Board agrees to provide the appropriate recognized standards of workplace sanitation, cleanliness, light, and noise control, adequate heating and ventilation. The Board of Education agrees to eliminate recognized hazards that are likely to cause serious physical harm.

2. If the Union believes a situation has arisen that is likely to cause serious physical harm, it may bring it to the attention of the Chancellor or designee who shall immediately assess the situation, including on-site inspection where appropriate, and take such action as the Chancellor deems appropriate. In the event the Union seeks to contest the Chancellor's determination, it may exercise its statutory rights under New York State Labor Law Section 27a (PESH) or other legal authority.

3. The Board will issue a circular advising staff of their rights under PESH and other applicable law and post the notices required by law.

F. Renovation and Modernization

The Union and the Board believe that modernization and renovation projects are vital to enable children to receive the educational services to which they are entitled. However, in order to limit any educational disruption that a modernization project can create, and to protect the health and safety of the staff and students that use a school setting undergoing modernization, the Board and Union have agreed to standard procedures that help to ensure that health, safety and educational standards are maintained during school capital modernization projects. These standard procedures will be applied in school capital modernization projects undertaken by the School Construction Authority and will be posted and reviewed with all staff in any school undergoing modernization. Where conditions require it, the standard procedures may be modified after consultation with the Union.

ARTICLE NINE EDUCATION REFORM

A. School-Based Management/Shared Decision-Making (SBM/SDM)

The Union and the Board agree that SBM/SDM is a process in which all members of the school community collaborate in identifying issues, defining goals, formulating policy and implementing programs. The uniqueness of each school community requires that the SBM/SDM process and the organizational and instructional issues discussed are determined by the staff, parents, administration and students (where appropriate) at individual schools through the SBM/SDM team. The Union and the Board agree that in order to achieve SBM/SDM at the school level significant restructuring of instruction must occur, and the parties agree to work cooperatively in an effort to bring about these changes.

1. Eligibility and Involvement

a. All schools are eligible to apply for participation in SBM/SDM. School participation shall be voluntary and subject to approval by fifty-five (55) percent of the voting, non-supervisory school based staff (e.g. teachers, paraprofessionals, support staff and others) and agreement of the principal, the appropriate superintendent and parents. Similarly, schools involved in SBM/SDM may choose to opt out of the program at any time. The decision to opt out shall be voluntary and subject to approval by at least fifty-five (55) percent of the voting, non-supervisory school based staff.

b. All votes of non-supervisory school based staff concerning participation in SBM/SDM shall be conducted by the UFT chapter.

c. Schools involved in SBM/SDM shall conduct ongoing self-evaluation and modify the program as needed.

2. SBM/SDM Teams

a. Based upon a peer selection process, participating schools shall establish an SBM/SDM team. For schools that come into the program after September 1993, the composition will be determined at the local level. Any schools with a team in place as of September 1993 will have an opportunity each October to revisit the composition of its team.

b. The UFT chapter leader shall be a member of the SBM/SDM team.

c. Each SBM/SDM team shall determine the range of issues it will address and the decision-making process it will use.

3. Staff Development

The Board shall be responsible for making available appropriate staff development, technical assistance and support requested by schools involved in SBM/SDM, as well as schools expressing an interest in future involvement in the program. The content and design of centrally offered staff development and technical assistance programs shall be developed in consultation with the Union.

4. Waivers

a. Request for waivers of existing provisions of this Agreement or Board regulations must be approved in accordance with the procedure set forth in Article 8B (School Based Options) of the Teacher Agreement i.e., approval of fifty-five (55) percent of those UFT chapter members voting and agreement of the school principal, UFT district representative, appropriate superintendent, the President of the Union and the Chancellor.

b. Waivers or modifications of existing provisions of this Agreement or Board regulations applied for by schools participating in SBM/SDM are not limited to those areas set forth in Article 8B (School Based Options) of the Teacher Agreement.

c. Existing provisions of this Agreement and Board regulations not specifically modified or waived, as provided above, shall continue in full force and effect in all SBM/SDM schools.

d. In schools that vote to opt out of SBM/SDM, continuation of waivers shall be determined jointly by the President of the Union and the Chancellor.

e. All School-Based Option votes covered by this Agreement including those in Circular 6R, shall require an affirmative vote of fifty-five percent (55%) of those voting.

B. School Allocations

Before the end of June and by the opening of school in September, to involve faculties and foster openness about the use of resources, the principal shall meet with the chapter leader and UFT chapter committee to discuss, explain and seek input on the use of the school allocations. As soon as they are available, copies of the school allocation will be provided to the chapter leader and UFT chapter committee.

Any budgetary modifications regarding the use of the school allocations shall be discussed by the principal and chapter committee.

The Board shall utilize its best efforts to develop the capacity to include, in school allocations provided pursuant to this Article 9B, the specific extracurricular activities budgeted by each school.

C. Reduction of Paperwork

1. Committees composed equally of representatives of the Board and the Union shall be established at the central, district and division levels to review and reduce unnecessary paperwork required of employees.

Any proposed additional paperwork shall be reviewed by the appropriate level committee and such committee may make recommendations to the Chancellor, community superintendent or division head as appropriate. The Board shall not act unreasonably on the committee's recommendation.

2. Representatives of the parties at the central level will meet as soon as is practicable after the execution of this agreement in order to develop recommendations to the Chancellor to reduce or eliminate unnecessary, excessive or redundant paperwork or data collection responsibilities of classroom personnel that diminish instructional time. Issues not resolved at the school or pursuant to Article 8I may be referred to this central level committee for recommendations for resolution to the Chancellor.

D. Evaluation/Observation Joint Committee

The UFT and the Board of Education are committed to attracting and retaining the most competent staff and will strive towards the creation of an evaluation and professional development plan that gives each staff member choices and a role in his/her own professional growth. This program should enable staff to assist in the professional development of less experienced colleagues.

To this end the UFT and the Board of Education will establish a joint committee to seek out and put into place a high quality prescriptive evaluation and professional growth system.

We will seek to enhance and develop skills and knowledge as well as provide a means of identifying those whose competence is in question.

E. Professional Development and Differential

As one aspect of the parties' interest in professional development, a joint Board-UFT committee comprised of three (3) designees of the UFT President and three (3) designees of the Chancellor was established to expand and professionalize available staff development opportunities. As a priority, the joint committee focused on new professional development opportunities for teachers seeking their second differential, and for other pedagogues seeking a comparable differential, and made its initial recommendations to the Chancellor. It is the intention of the parties to make such opportunities available to staff at no or modest cost, and with no additional cost to the employer. The Chancellor may establish limits on the number of these credits which can be earned per term toward the second differential via this professional development initiative (the P-credit program). It is understood that the Chancellor's decisions about all aspects of the Committee's recommendations, the design of the P-credit program and regulations for implementation of the P-credit program shall be final and binding on the parties and not subject to the grievance process. Any claim concerning the arbitrary, capricious and/or discriminatory application of such regulations to individuals will be grievable and arbitrable.

F. Labor-Management Committee on Long Term Reforms

With regard to the long term recommendations the 2005 Fact Finders made subject to adequate CFE funding, the parties shall establish a Labor Management Committee to discuss the following issues: a) bonuses, including housing bonuses, for shortage license areas; b) a pilot project for school-wide based performance bonuses for sustained growth in student achievement; c) salary differentials at the MA-5 through MA-7 levels; and d) a program for the reduction of class size in all grades and divisions. If the parties agree on the terms of any or all of these issues, they may be implemented by the Board using whatever funds may be identified.

G. School Wide Bonus Program

1. As set forth in Article 9F above, the New York City Board of Education and the United Federation of Teachers jointly support, and pledge to work together to implement on a pilot

basis, a school-wide based bonus program pursuant to which educators will be awarded substantial cash bonuses for student achievement gains.

2. The program will be initiated immediately, with bonuses awarded for achievement gains in the 2007-2008 school year. Subject to the successful solicitation of private funds, which the BOE and UFT commit to work together to raise as soon as practicable, approximately 15% of the City's highest need schools will be eligible to participate in the program this first year. In consultation with the UFT, the BOE will identify approximately 200 of the highest-need schools in the City. Each will be invited to participate in the program, and the BOE and UFT jointly pledge to work in good faith to encourage them to do so both this year and throughout the life of the program.

3. In future years, if the school-wide bonus program continues, awards will be funded from public appropriations which supplement and do not supplant funds available for collective bargaining.

4. In 2008-09 at least 30% of BOE schools will be eligible to participate in the program. In consultation with the UFT, the BOE will identify approximately 400 of the highest-need schools in the City.

5. Participation in the program will be at the option of each school as determined by a vote of fifty-five percent (55%) of the UFT-represented school staff and with the assent of the principal of the school. The vote shall be conducted by the UFT Chapter in the school, held within six weeks of the announcement of the program and shall be an up or down vote without conditions or restrictions on the terms of the program as set out herein. Each year the bonus program is available eligible schools shall exercise the option to participate ("Participant Schools") or not by the same voting procedure.

6. A school's agreement to participate in the bonus program shall be considered, along with other criteria, as a positive factor in determining whether the Participant School is to be phased out or given a year's moratorium on a possible phase-out. Nothing herein alters applicable law with regard to school closings.

7. Each Participant School will be eligible for a dollar award ("the pool"), which will be distributed to the school as a whole on the basis of the Progress Report or some other neutral criterion derived from the Progress Report.

8. In consultation with the UFT, the BOE will set the criteria for awarding funds to schools. The criteria will provide objective standards /benchmarks aligned with Progress Report factors and the specific details of those standards/benchmarks will be communicated to schools when the program is announced. All Participant Schools that achieve the announced standards/benchmarks shall receive the applicable money award. There shall be no cap or ceiling imposed on the number of Participant Schools receiving the award, provided the school meets the standards/benchmarks. Neither shall the relative standings of the Participant Schools affect their entitlement to the award once they have met the standards/benchmarks.

9. To account for variation in the size of schools, the size of the award each Participant School is eligible to receive will be determined by appropriate objective criteria.

10. The amount of the average per-person award should be sufficiently substantial to make a material difference to each awardee. As outlined below, each Participant School will determine the methodology for distributing any award it earns for school-wide performance. The size of each Participant School's total award for distribution in 2007-08 shall be the number of full-time UFT-represented employees on the school's table of organization times three thousand dollars (\$3,000). In light of year-to-year appropriations uncertainties, nothing in this paragraph restricts

the ability of the BOE to increase or decrease the total amount set annually for distribution pursuant to the program.

11. Each Participant School will form a compensation committee composed of the principal and a principal's designee (e.g., an assistant principal) and two UFT-represented staff members elected in a Chapter supervised election by the UFT-represented staff on an annual basis from among volunteers. The compensation committee will determine, by consensus, matters related to both eligibility for and the size of individual awards to UFT-represented staff members. However the compensation committee shall presume that all UFT-represented staff employed at a school that meets the targets for the bonus have contributed to the school's achievement to some extent and therefore should share in the bonus. If there is no consensus the pool of money will not be distributed to the school.

12. Among the topics each Participant School compensation committee may decide to consider, after receiving guidance from the BOE and UFT, are whether to make equal individual awards to all eligible UFT staff, equal awards to all those in the same title, or whether to make differential awards.

13. In making awards, a compensation committee shall not consider an awardee's length of service, provided however that it may make particular determinations for individuals who served at the school for less than a full academic year.

14. The school compensation committee shall make its decisions free of pressure from the BOE or UFT.

15. Funds will be awarded to schools as soon as practicable after the BOE's Office of Accountability has received and analyzed the information necessary to make the awards. To the extent such award is made after the beginning of the school year following the year that was the basis for the award, eligible staff who have left the school shall nevertheless share in the award for their contribution the prior year.

16. The pilot school-wide bonus program shall be comprehensively evaluated by a mutually agreed upon outside independent entity which shall provide the parties with a written report and analysis of all aspects of its operation together with associated recommendations for future years the program is in operation.

17. The Chancellor and the President of the UFT, or their designees, will constitute an Oversight Committee (OC) to review appeals of individual awards. However if the awards made by the compensation committee are ratified by a simple majority of the UFT Chapter voting by secret ballot, no appeal may be taken to the OC. The OC may modify a determination of a school compensation committee only if the OC, by consensus, finds that it was arbitrary, capricious or in clear violation of law or of the procedures and standards set out herein.

18. This provision is contingent on the implementation and passage of the legislation referred to in Paragraph 6 of the October 2005 Memorandum of Agreement between the parties entitled "Pension and Retirement Program".

ARTICLE TEN LEAVES

A. Cumulative Absence Reserves and Sick Leave

1. Counselors reinstated after retirement will be credited with the cumulative reserves remaining to their credit upon retirement and such reserves as they accumulated as regular substitutes.

2. Counselors called to military duty will be credited upon their return with the same sick leave allowance for the period of their military service as they would have been entitled to in Board service.

3. Counselors whose licenses are terminated will be credited with their unused cumulative reserves if appointed anew.

4. A Counselor who has exhausted his or her cumulative sick leave may borrow up to 20 days of additional sick leave. However, to assure that borrowed sick leave is repaid, the employee may be required to sign an appropriate document prepared by the Board acknowledging a legal obligation to repay upon the cessation of service. For purposes of this provision "cessation of service" means resignation, retirement, termination for cause or death.

5. Sick leave privileges shall extend to the taking of annual physical checkups or the taking of annual laboratory tests. Such absences shall be limited to one day in each school year.

6. Counselors shall be granted absence refunds for illness on application, without a statement from a physician, for a total of no more than 10 days in any school year. Counselors will be allowed to use three of such 10 days of sick leave for personal business provided that reasonable advance notice is given to the head of the school. Counselors may use two of the three days allowed for personal business in any school year for the care of ill family members. For the purpose of this provision, family member shall be defined as: spouse; natural, foster or step parent; child; brother or sister; father-in-law; mother-in-law; any relative residing in the household; and domestic partner, provided such domestic partner is registered pursuant to the terms set forth in the New York City Administrative Code Section 3-240 *et seq.* Days off for personal business are intended to be used only for personal business which cannot be conducted on other than a school day and during other than school hours.

7. Counselors serving in schools shall not suffer loss of sick bank days for absence due to illness from the following children's diseases: rubella (measles), epidemic parotitis (mumps), and varicella (chicken pox). It is understood that this paragraph does not apply to rubella (German measles).

8. The Board will approve absences without loss of sick bank days for counselors who contract Hepatitis B as a result of working with children who have been evaluated as presenting a substantial risk of exhibiting acting out behavior.

9. Employees who are absent due to allergic or positive reaction from a skin test shall not suffer loss of sick bank days.

10. Counselors who resign or retire shall, upon application, receive termination pay on the basis of one-half of up to 200 days of the unused sick leave accumulated as a regularly-appointed counselor. If the resignation or retirement becomes effective at any time other than the end of a school year, sick leave for the period of service during that school year shall be paid at the rate of one day for each two full months of service. Termination pay pursuant to this provision shall be paid in three equal cash installments payable two months, fourteen months and twenty-six months following his/her termination date.

11. The estate of a counselor who dies during the term of this contract shall receive termination pay calculated on the same basis. This paragraph shall not apply to those counselors who are presumed to have retired on the day immediately preceding their death pursuant to Section 13-545 of the Administrative Code of the City of New York, as amended.

12. Absence for illness after September 1, 1967, will be charged on a day-for-day basis to any unused sick leave accumulated prior to September 1, 1967.

13. Absence immediately prior to resignation shall be paid on the same basis as termination pay.

14. Unused sick leave accumulated as a paraprofessional shall be transferable to the counselor's bank.

15. Employees on sabbatical leaves of absence shall not accrue days in their cumulative absence reserves for the period of the sabbatical leave.

B. Sabbatical Leaves

1. Counselors on regular appointment will be eligible for sabbatical leave for study or restoration to health after each 14 years of service. The first 14 years of service may include a maximum of three years of substitute service for which salary credit was granted. Courses for study sabbatical shall be job related in accordance with criteria established by the Chancellor.

2. Approval of the school medical director is required for all sabbaticals for restoration to health. Counselors on regular appointment who have less than 14 years of service will be eligible only for a "special sabbatical leave for restoration to health" after seven years of service on regular appointment.

A "special sabbatical leave for restoration to health" shall be for a period of six months, beginning on August 1 and ending on January 31 of the following year or beginning on February 1 and ending July 31 of the same year. However, a "special sabbatical leave for restoration to health" may be taken for a period of at least one month but less than six months under the following circumstances:

a. The counselor meets all the eligibility criteria for a six-month "special sabbatical leave for restoration to health".

b. The counselor has exhausted his/her cumulative absence reserve.

c. The school medical director will determine when the counselor is fit to return to duty. The superintendent will return the counselor to his/her assignment in the school as soon as possible, but in no event later than the beginning of the next marking period following the date of return determined by the school medical director, unless there is a valid educational reason for a different assignment in the school.

d. The counselor will be deemed to have exhausted years of service for sabbatical eligibility based upon the formula

$$\frac{\text{Calendar Days of Leave} \times 7 \text{ years}}{180}$$

3. A sabbatical leave shall be for a period of one year, beginning on August 1 and ending on July 31 of the following year.

4. A counselor on sabbatical leave of absence shall receive compensation at the rate of seventy (70) percent of the counselor's regular salary. The sabbatical leave pay of counselors who receive a bonus shall be based upon their annual salary and the amount of the annual bonus received. The sabbatical leave pay of counselors who receive a license salary differential shall be based upon their annual salary and the amount of the license differential.

5. Counselors on "special sabbatical leave for restoration to health" (as defined in paragraph 2 above) shall receive compensation at the rate of sixty (60) percent of their regular salary during such leave. The pay for the "special sabbatical leave for restoration to health" (as defined in paragraph 2 above) of counselors who received a bonus shall be based upon their annual salary and the amount of the annual bonus received. The pay for the "special sabbatical leave for

restoration to health" of counselors who receive a license salary differential shall be based upon their annual salary and the amount of the license differential.

6. Counselors serving their probationary period in the counselor license shall be permitted to take a sabbatical leave of absence or a "special sabbatical leave for restoration to health" (as defined in paragraph 2 above) during such period if they are otherwise eligible; however, there shall be no reduction, by reason of such leave, of the total probationary period which they are required to serve.

7. An application for a sabbatical leave of absence or for a "special sabbatical leave for restoration to health" (as defined in paragraph 2 above) will not be denied to an eligible counselor unless the leave would be contrary to applicable regulations. When the number of eligible applicants in any school or organizational unit exceeds the number of sabbatical leaves and "special sabbatical leaves for restoration to health" (as defined in paragraph 2 above) permissible under applicable regulations, applications shall be granted in the school or organizational unit in order of the city-wide seniority of the applicants. For this purpose, in the case of applications for sabbatical leave, seniority shall be determined by the number of years of service usable for eligibility for sabbatical leave, minus the years required for each sabbatical leave or "special sabbatical leave for restoration to health" (as defined in paragraph 2 above) already taken.

8. In accordance with the LOBA determination and award in Case No. IA-1-85, the sabbatical cap shall be 5%. Notwithstanding the 5% sabbatical cap, the taking of a sabbatical shall not cause a hardship in any department or subject area.³

9. In accordance with the LOBA determination and award in Case No. IA-1-85, sabbaticals shall be conditional upon the employee remaining in the New York City school system for two (2) years after the employee's return. Sabbaticals of six months or less shall be conditional upon the employee remaining in the New York City school system for one (1) year after the employee's return. Failure to comply with the applicable return provision shall make the employee liable to the New York City Board of Education for the salary that the employee received during the sabbatical period. If upon return from sabbatical, the services of the employee are terminated during the applicable return period, the requirement for any refund shall be eliminated. If an employee is unable to return from a sabbatical or is unable to complete the applicable service requirement upon return from a sabbatical due to a medical incapacity which has developed since the commencement of the sabbatical such employee shall receive a hardship exception to this return provision. Such hardships shall be reviewed and approved by the Board's Medical Bureau on a case by case basis.

C. Special Study Sabbatical to Achieve Certification

1. Counselors on regular appointment may apply for a special one year or six month sabbatical leave of absence for study to be granted for the following purposes:

a. study to meet certification requirements for a license designated by the Board of Education and the Union as a shortage area; and/or

b. study to become certified in the license appropriate to the counselor's current assignment.

The Board and the Union will meet annually to decide the number of these special sabbatical leaves for study to be granted depending on the funds available for this purpose.

2. These special sabbatical leaves of absence for study will be granted to the senior applicants with priority for those who need 16 credits or less to complete certification.

³ The Union disputes the applicability of this sentence to any employees covered by this Agreement.

3. This special sabbatical leave of absence for study may be for a period of one year or for a period of six months. One year special sabbatical leaves of absence for study begin on August 1 and end on July 31 of the following year. Six month special sabbatical leaves of absence for study begin on August 1 and end on January 31 of the following year or begin on February 1 and end on July 31 of the same year.

4. A counselor on special sabbatical leave of absence for study shall receive compensation at the rate of seventy (70) percent of the counselor's regular salary. The sabbatical leave pay of counselors who receive a bonus shall be based upon their annual salary and the amount of the annual bonus received. The sabbatical leave pay of counselors who receive a license salary differential shall be based upon their annual salary and the amount of the license differential.

5. A counselor who receives this special sabbatical leave of absence for study will commit to completing certification and will accept assignment to serve in the license area for a minimum of two years.

6. The Board and the Union will jointly seek funding to provide tuition reimbursement for counselors on these sabbaticals.

7. These special sabbatical leaves of absence for study are not subject to the five percent cap, but shall count as used sabbaticals in determining eligibility for any future sabbatical.

8. The substitute service creditable toward sabbatical leave eligibility pursuant to paragraph 1 of Section B above may be applied to a twelve month special sabbatical leave of absence for study. Furthermore, such substitute service, if otherwise creditable toward sabbatical leave eligibility, shall not be lost or diminished as a result of taking a six-month special sabbatical leave of absence for study.

9. Administrative procedures for the effectuation of these provisions are to be formulated by the Board in consultation with the Union.

D. TB Sabbaticals

Counselors excused from service by the Board of Health of the City of New York because of tuberculosis may be granted up to five terms of sabbatical leave. Approval of the School Medical Director is required. Sabbaticals of this type are granted without reference to other regulations at the rate applicable to special sabbatical leaves for restoration to health.

E. Leaves of Absence Without Pay

1. Purposes for Which Granted

Leaves of absence without pay shall be granted upon application for the following purposes:

- a. Study related to the counselor's license field;
- b. Study to meet eligibility requirements for a license other than that held by the counselor;
- c. Acceptance of a teaching position in a foreign country for one year, with such leave renewable for an additional year. Such teaching position shall be sponsored or approved by the government of the United States.

The Board will recommend to the Teachers' Retirement Board the granting of retirement credit for the duration of the aforesaid leaves.

Counselors may be granted a leave of absence without pay of up to two years to adjust personal affairs (such as the winding up of a family business on the death or incapacitation of the family member in charge) in accordance with existing rules and regulations. The counselor may consult with the Union with respect to the matter. Counselors who are denied such a leave may refer the matter to the Chief Executive of the Division of Human Resources for review and final determination.

“Urgent needs” of the school or other program to which the counselor is assigned may be asserted by the Board as justifying a temporary denial of any application for leave without pay.

The Board will implement a liberal policy concerning the granting of leaves of absence without pay to UFT bargaining unit members who meet the stated criteria for such leaves. Bargaining unit members who are denied such a leave at the school or district level may appeal to the Chief Executive of the Division of Human Resources, for review and final determination.

2. Per Diem Service While on Leave

Counselors on maternity or child care leave and counselors on leave of absence without pay for study and related professional experience shall be permitted to perform counseling on a regular part-time basis. Such counselors who are appropriately credentialed to teach shall be permitted to perform per diem teaching service.

F. Military Service Pay

1. Excuse for Selective Service Examination

Counselors called for selective service physical examination shall be excused without loss of pay for such purpose.

2. Pay During Military Service

Counselors who enter the military service shall be on leave of absence with pay during the first 30 days of such service unless the Board is otherwise required to make payment of salary during such military service.

G. Payment for Jury Duty

Counselors who are required to serve on jury duty will receive full salary during the period of such service, subject to their prompt remittance to the Board of an amount equal to the compensation paid to them for such jury duty.

H. Terminal Leave

Terminal leave with pay shall be allowed to those counselors who are about to retire who are members of the Board of Education Retirement System. Such terminal leave shall be allowed as follows:

1. In the case of employees with ten or more years of service it shall be in an amount equivalent to the amount of sick leave balance to the employee's credit, with the following exceptions:

- a. the maximum allowable terminal leave shall not exceed one month for every ten years of service, pro-rated at the rate of three calendar days per year, or major fraction thereof;
 - b. the minimum allowable terminal leave shall be one month.

2. In the case of an employee with less than ten years of service, it shall be in the amount of three calendar days per year of service or major fraction thereof, without regard to sick leave balance.

ARTICLE ELEVEN EXCESSING AND LAYOFF

A. Excessing Rules--Appointed Counselors

Before applying the Rules for involuntary excessing, the senior counselor within license who volunteers will be excessed from the school or program to a vacancy within the same district or, in the case of high schools, within the jurisdiction of the responsible high school superintendent. If no senior counselor volunteers, the following excessing rules shall be adhered to in all levels:

Rule 1. Within the school, district, or other organizational unit, the guidance counselor with the least seniority within license will be the first to be excessed and probationers will be excessed before those who have completed probation.

When excessing occurs at the time of reorganizing a school or facility, all counselors serving in full-time positions at the school or facility, including related service providers, shall be grouped together for purposes of applying the excessing rules.

For purposes of excessing only:

(i). Any one or more F Status positions within a license that equals 1.0 FTE (i.e. positions equaling 5 days a week) will be considered a single position (if in one school) or a single position on split assignment (if in different schools within a district).

(ii) Prior to an employee being excessed out of a district s/he will be offered the position described in the preceding sentence.

(iii) Notwithstanding the restrictions in this paragraph, a school will be allowed to create or maintain the F status positions described in (i) in order to accommodate a hardship for a previously appointed pedagogue or because of the particular needs of the program.

Rule 2. In determining the seniority of a guidance counselor for purpose of excessing, layoff seniority shall apply.

Rule 3. Guidance counselors in excess in a school unit or district office under the jurisdiction of a community district must be placed in vacancies within the district to the fullest degree possible. For school units, districts, or other organizational units under the jurisdiction of the central Board, guidance counselors in excess must be placed in appropriate vacancies within the district or central office.

Rule 4. A counselor under the jurisdiction of the Special Education District Superintendent who is excessed from an elementary or junior high school shall be placed within license in a vacancy under the jurisdiction of the central Board located within the community school district. Where possible the wishes of the counselor will be taken into account in his/her placement by the central Board. Should a city-wide excess condition, as defined in Section 2588 3 (a) of the Education Law, occur Section C of this Article shall apply.

Rule 5. To minimize movement of personnel, excessed guidance counselors shall be assigned within the district/superintendency to appropriate openings or vacancies.

Rule 6. The central Board has the responsibility for placing guidance counselors who are excessed from a school or community district office and cannot be accommodated by their own district/superintendency. Where possible, the wishes of the guidance counselor will be taken into account in his/her placement by the central Board. Should a city-wide excess condition, as defined in Section 2588 3 (a) of the Education Law, occur Section C of this Article shall apply.

Rule 7. When a guidance counselor position in central headquarters is abolished, the occupant of that position is excessed, and he/she shall be granted the same rights for placement as a guidance counselor who is excessed from a community district.

Rule 8. A guidance counselor who has been excessed to another school or district may request an opportunity to return to the school or district from which he/she was excessed if within a year a vacancy should occur in that school or district. Such a request will have priority over any other transfer or appointment to that vacancy.⁴

⁴ The right of return to a vacancy in New Programs of District 79 counselors excessed from Closing Programs is set forth in Appendix F, paragraph 10.

Rule 9. Unless a principal denies the placement, an excessed counselor will be placed by the Board into a vacancy within his/her district/superintendency. The Board will place the excessed counselor who is not so placed in an Alternate Counselor Reserve (ACR) position in the school from which he/she is excessed, or in another school in the same district or superintendency.⁵

Rule 10. Counselors identified as being at risk of being excessed at the commencement of the following school year will be informed of this no later than June 15, or as soon as is practicable if identified as being at risk of excess after June 15. The deadlines for excessing counselors will continue to be governed by applicable law.

B. Appointment to New Program, License or Title

Counselors who are displaced by the establishment of a new program, license or title shall be given an opportunity to present their qualifications and if found qualified shall be given preference for appointment to such new program, license or title.

C. Layoff

1. If a city-wide excess condition causes a layoff of staff in any licensed position, applicable provisions of law will be followed to determine the staff member to be laid off, without fault and delinquency with the understanding that said member of staff is to be placed on a preferred list for reinstatement to his/her former position.

2. Employees on layoff who may be placed on a preferred list in another license other than the one in which they are laid off will be so placed.

D. Tipping

Beginning the Spring term in 1992 education funds in the Mayor's Safe City/Safe Streets Program will be utilized to eliminate tipping by establishing a dispute resolution program staffed by teachers.

E. Voluntary Severance for Personnel Excessed For More than One Year

The BOE may offer excessed personnel who have not secured a regular assignment after at least one year of being excessed, a voluntary severance program in an amount to be negotiated by the parties. If the parties are unable to reach agreement on the amount of the severance payment, the dispute will be submitted to arbitration pursuant to the contractual grievance and arbitration procedure. Such a severance program, if offered, will be offered to all personnel who have been in excess for more than one year.

In exchange for receipt of such severance, an excessed person shall submit an irrevocable resignation or notice of retirement.

ARTICLE TWELVE TRANSFERS AND STAFFING

A. General Transfers

Effective school year 2005-2006, principals will advertise all vacancies. Interviews will be conducted by school-based human resources committees (made up of pedagogues and administration) with the final decision to be made by the principal. Vacancies are defined as positions to which no counselor has been appointed, except where a non-appointed counselor is filling in for an appointed counselor on leave. Vacancies will be posted as early as April 15 of each year and will continue being posted throughout the spring and summer. Candidates (counselors wishing to transfer and excessed counselors) will apply to specifically posted

⁵ Placement rights of Guidance Counselors excessed from District 79 Closing Programs are set forth in Appendix F, paragraphs 3, 4 and 5.

vacancies and will be considered, for example, through job fairs and/or individual application to the school. Candidates may also apply to schools that have not advertised vacancies in their license areas so that their applications are on file at the school should a vacancy arise.

Selections for candidates may be made at any time, however, transfers after August 7th require the release of the counselor's current principal. Counselors who have repeatedly been unsuccessful in obtaining transfers or obtaining regular counseling positions after being excessed, will, upon request, receive individualized assistance from the Division of Human Resources and/or the Peer Intervention Program on how to maximize their chances of success in being selected for a transfer.

B. Hardship Transfers

Transfers on grounds of hardship shall be allowed independent of the plan. Transfers of counselors after three years of service on regular appointment may be made on grounds of hardship on the basis of each particular case, except that travel time by public transportation of more than one hour and thirty minutes each way between a counselor's home (or City line in the case of counselors residing outside the City) and school may be deemed to constitute "hardship" entitling the applicant to a transfer to a school to be designated by the Division of Human Resources which shall be within one hour and thirty minutes travel time by public transportation from the counselor's home, or City line in the case of counselors residing outside the City.

C. Staffing New or Redesigned Schools⁶

The following applies to staffing of New or Redesigned Schools ("Schools"):

1. A Personnel Committee shall be established, consisting of two Union representatives designated by the UFT President, two representatives designated by the community superintendent for community school district schools or by the Chancellor for schools/programs under his/her jurisdiction, a Principal or Project Director, and where appropriate a School Planning Committee Representative and a parent.

In the first year of staffing a new school, the UFT Personnel Committee members shall be school-based staff designated from a school other than the impacted school or another school currently in the process of being phased out. The Union will make its best effort to designate representatives from comparable schools who share the instructional vision and mission of the new school, and who will seek to ensure that first year hiring supports the vision and mission identified in the approved new school application.

In the second and subsequent years, the Union shall designate representatives from the new school to serve on its Personnel Committee.

2. For its first year of operation the School's staff shall be selected by the Personnel Committee which should, to the extent possible, make its decisions in a consensual manner.

3. If another school(s) is impacted (i.e., closed or phased out), staff from the impacted school(s) will be guaranteed the right to apply and be considered for positions in the School. If sufficient numbers of displaced staff apply, at least fifty percent of the School's pedagogical positions shall be selected from among the appropriately licensed most senior applicants from the impacted school(s), who meet the School's qualifications. The Board will continue to hire pursuant to this provision of the Agreement until the impacted school is closed.

4. Any remaining vacancies will be filled by the Personnel Committee from among transferees, excesses, and/or new hires. In performing its responsibilities, the Personnel

⁶ The rights of Guidance Counselors to staff the New Programs in District 79 are set forth in Appendix F, paragraph 2.

Committee shall adhere to all relevant legal and contractual requirements including the hiring of personnel holding the appropriate credentials.

5. In the event the Union is unable to secure the participation of members on the Personnel Committee, the Union will consult with the Board to explore other alternatives. However the Union retains the sole right to designate the two UFT representatives on the Personnel Committee.

ARTICLE THIRTEEN UNION ACTIVITIES, PRIVILEGES AND RESPONSIBILITIES

A. Restriction on Union Activities

No counselor shall engage in Union activities during the time he/she is assigned to duty. Members of the Chapter's negotiating committee shall, upon proper application, be excused without loss of pay for working time spent in negotiations with the Board or its representatives.

B. Time for Chapter Leader

The Chapter leader shall be allowed two days per week for the investigation of grievances and for other appropriate activities relating to the administration of the Agreement and to the duties of the office.

C. Exclusive Check-Off

The Board will honor, in accordance with their terms, only such written authorizations as are properly executed by employees in the unit covered by this agreement for the deduction of their dues in behalf of the Union.

The Board will honor individual written authorizations for the deduction of Union dues in accordance with their terms, including authorizations stating that they are irrevocable until the following June 30 and automatically renewable for another year unless written notice is given to the Board between June 15 and June 30.

D. Agency Fee Deduction

The Board shall deduct from the wage or salary of employees in the bargaining unit who are not members of the UFT the amount equivalent to the dues levied by the UFT and shall transmit the sum so deducted to the UFT in accordance with Section 208 (3)(b) of Article 14 of CSL. The UFT affirms it has adopted such procedure for refund of agency shop deduction as required in Section 208 (3)(b) of Article 14 of CSL. This provision for agency fee deduction shall continue in effect so long as the UFT establishes and maintains such procedure.

The Union shall refund to the employees any agency shop fees wrongfully deducted and transmitted to the Union.

The Union agrees to hold the Board harmless against claims arising out of the deduction and transmittal of agency shop fees where there is a final adjudication by a court or arbitrator or by PERB that said agency shop fees should not have been deducted and/or transmitted to the Union.

The agency shop fee deductions shall be made following the same procedures as applicable for dues check-off, except as otherwise mandated by law or this Article of the Agreement.

E. Consultation Meetings

1. The Chapter and appropriate representatives of the Board of Education designated by the Chancellor will consult monthly on matters of policy involving the professional interests of counselors.

2. The Chapter and appropriate representatives of the Board of Education designated by the Chancellor will consult with respect to facilities and supplies for itinerant counselors.

F. Information to the Chapter

1. Lists of vacancies and any lists which may be established by the community school district or by the central Board showing seniority of counselors for purposes of implementing provisions of this agreement shall be made available to the Chapter. In individual cases specific information as to seniority will be made available to the Chapter upon request.

2. Upon request, the Chapter will be advised of the city-wide index (ratio of licensed counselors to counseling positions) and the index in each local school district.

3. Copies of all official guidance circulars and directives shall be sent to the Chapter.

G. Official Circulars

All official circulars pertaining to counselors or to the guidance program shall be made available to all counselors unless specifically indicated to be confidential. Special circulars concerning duties of counselors shall be distributed directly to all counselors.

H. Political Check-Off

The Board will arrange for voluntary payroll deduction contributions for federal political contests in accordance with Title 2, Section 441b of the U.S. Code.

**ARTICLE FOURTEEN
MATTERS NOT COVERED**

With respect to matters not covered by this Agreement which are proper subjects for collective bargaining, the Board agrees that it will make no changes without appropriate prior consultation and negotiation with the Union.

The Board will continue its present policy with respect to sick leave, sabbatical leaves, vacations and holidays except insofar as change is commanded by law.

All existing determinations, authorizations, by-laws, regulations, rules, rulings, resolutions, certifications, orders, directives, and other actions, made, issued or entered into by the Board of Education governing or affecting salary and working conditions of the employees in the bargaining unit shall continue in force during the term of this agreement, except insofar as change is commanded by law.

**ARTICLE FIFTEEN
DUE PROCESS AND REVIEW PROCEDURES**

A. Counselor Files

Official counselor files in a school shall be maintained under the following circumstances:

1. No material derogatory to a counselor's conduct, service, character or personality shall be placed in the files unless the counselor has had an opportunity to read the material. The counselor shall acknowledge that he/she has read such material by affixing his/her signature on the actual copy to be filed, with the understanding that such signature merely signifies that he/she has read the material to be filed and does not necessarily indicate agreement with its content. However, an incident which has not been reduced to writing within three months of its occurrence, exclusive of the summer vacation period, may not later be added to the file.

2. The counselor shall have the right to answer any material filed and his/her answer shall be attached to the file copy.

3. Upon appropriate request by the counselor, he/she shall be permitted to examine his/her file.

4. The counselor shall be permitted to reproduce any material in his/her file.

5. Employees may not grieve material in file, except that if accusations of corporal punishment or verbal abuse against a UFT-represented employee are found to be unsubstantiated, all references to the allegations will be removed from the employee's personnel file. However, the employee shall have the right to append a response to any letter. If disciplinary charges do not follow, the letter and response shall be removed from the file three years from the date the original material is placed in the file.

B. Counseling Memos

Supervisors may issue counseling memos. Counseling memos are not disciplinary. Counseling memos provide the opportunity for supervisors, in a non-disciplinary setting, to point out to employees areas of work that the supervisor believes need improvement. Counseling memos should include the supervisor's proposals for how such improvement may be achieved. Any employee who receives a counseling memo may request from the supervisor either suggestions for how to improve or requests for the supervisor to model such improvement for the counselor. Counseling memos are a vehicle for supportive improvement.

1. A counseling memo may only be written to an employee to make him/her aware of a rule, regulation, policy, procedure, practice or expectation. A counseling memo cannot include any disciplinary action or threat of disciplinary action.

a. "Counseling Memo" must appear at the top of the memo in bold print and capital letters.

b. At the conclusion of the memo the following must appear in bold print: "A counseling memo is not disciplinary in any manner and cannot be used in any action against an employee except to prove notice if the employee denies notice." If the language required in a) and b) is not included in the memo, it must be added.

c. A counseling memo must be presented to an employee within one (1) month of the latest incident recounted in the memo. The memo may only reference similar prior incidents that occurred no more than four (4) months from the date of the latest incident.

2. Counseling memos may not be used in any action or evaluation involving an employee in the bargaining unit ("U" rating, per session job, etc.) except to establish that the employee who denies knowledge of a rule, regulation, policy, procedure, practice or expectation was given prior notice of it, or to impeach factual testimony.

a. Counseling memos may not be used in the rating of an employee in the bargaining unit.

b. Counseling memos may not be referred to in, or attached to, any other letter sent to an employee for their official school file.

3. Counseling memos may not be grieved. Any employee who receives a counseling memo shall have the right to answer within one (1) month of receipt of the counseling memo and the answer shall be attached to the file copy of the counseling memo.

4. All counseling memos will be permanently removed from employee's official school files three (3) years after the latest incident referred to in the memo.

C. Summons

1. A counselor summoned by the principal to a conference which may lead to disciplinary action for reasons of misconduct may be accompanied, at his/her option, by the chapter leader or his/her designated alternate.

2. Counselors summoned to the office of a community or high school superintendent or to the Division of Human Resources shall be given two days notice and a statement of the reason

for the summons, except where an emergency is present or where considerations of confidentiality are involved.

Whenever an employee is summoned for an interview for the record which may lead to disciplinary action, he/she shall be entitled to be accompanied by a representative who is employed by the city school system, or by an employee of the Union who is not a lawyer, and he/she shall be informed of this right. However, where the community or high school superintendent or the Division of Human Resources permits an attorney who is not a member of the city school system to represent any participant in the interview, the employee shall be entitled to be represented by an attorney. An interview which is not held in accordance with these conditions shall not be considered a part of the employee's personnel file or record and neither the fact of the interview nor any statements made at the interview may be used in any subsequent Board proceeding involving the employee. It is understood that informal conferences such as those between a community or assistant superintendent and a counselor, or the Division of Human Resources and a counselor, for professional improvement, may be conducted off the record and shall not be included in the employee's personnel file or record.

3. Incidents investigated by the Chancellor or by a governmental investigatory agency must be reduced to writing by the appropriate supervisor within 6 months and 12 months respectively from the date the incident either occurred or should have been discovered by the appropriate school officials. Employees must receive a complete copy of any such writing and an opportunity to answer in writing and to have such response attached. The writing may not be incorporated into the employee's personnel file or record, unless this procedure is followed, and any such writing will be removed when an employee's claim that it is inaccurate or unfair is sustained.⁷

D. Discontinuance of Probationary Service and Appeals of Unsatisfactory Ratings

1. Counselors on probation, except as provided in subparagraph 2 below, shall be entitled to the review procedures before the Chancellor as prescribed in Section 4.3.2 of the by-laws of the Board of Education.

By-law 4.3.2 procedures for the review of a recommendation by a superintendent for discontinuance of probationary service shall be modified to provide for the following:

a. The 4.3.2 committee shall be a tripartite committee of professional educators, one selected by the employee, one by the Board and a third selected by the other two from a list agreed upon by the Board and the Union.

b. The committee will make an advisory recommendation to the community school board or the Chancellor for central programs within 20 days after the hearing.

c. The costs of the employee's representative shall be paid by the employee. The costs of the Board's representative shall be paid by the Board. The costs of the mutually selected member of the committee shall be shared by the Board and the employee.

2. Counselors on probation who have completed at least three years of service on regular appointment in the school shall be entitled, with respect to the discontinuance of their probationary service, to the same review procedures as are established for the tenured teaching staff under Section 3020-a of the Education Law.

3. Counselors who receive doubtful or unsatisfactory ratings may appeal under Section 4.3.1 of the by-laws of the Board of Education.

E. Suspension

⁷ The parties disagree as to the applicability of Section 10 of the October 2005 MOA to this Article 15C3.

Any counselor who is suspended pending hearing and determination of charges shall receive full compensation pending such determination and imposition of any penalty except as set forth in Article 15G5 and 15G6.

F. Rating “Not Applicable”

A rating of “Not Applicable (NA)” is to be used only in situations where a pedagogical employee is reassigned out of his/her regular assignment for disciplinary reasons. The “NA” rating will apply only for the period of reassignment, cannot be used in any proceeding as evidence of wrongdoing and will not otherwise affect any other rights afforded in the Agreement where ratings are an issue.

G. Education Law §3020-a Procedures

Tenured pedagogues facing disciplinary charges filed, or in the case of Section 1, “Time and Attendance”, discipline pursuant to that Section, will be subject to section 3020-a of the Education Law as modified by paragraphs 1 to 10 below.

1. Time and Attendance

If the Board seeks to discipline a tenured pedagogue regarding absences and/or lateness but seeks a penalty short of termination, the following expedited procedure will apply:

The Board will notify the employee that it intends to bring disciplinary action against the employee pursuant to this section. The Board will include in this notice the employee’s attendance record and any other documentation it intends to introduce at the hearing and a statement that pursuant to this section the arbitrator may award any penalty, or take other action, short of termination.

Within 15 calendar days following this notice, the employee must notify the Board in writing of the nature of his/her defense and submit any documentation s/he intends to submit into evidence as well as a medical release for any medical documents related to such defense.

If either party believes that it requires additional documents, it may request a telephonic conference with the arbitrator.

The expedited hearing will occur within one month of the Board’s notification to the employee mentioned above. The hearing will be informal and the normal rules of trial procedure and evidence shall not apply. The arbitrator will issue an award and short decision within 15 calendar days of the hearing. The arbitrator’s award will be final and binding on all parties. The award may be introduced in a 3020-a hearing and any findings shall be binding on the 3020-a arbitrator.

One arbitrator, agreed upon between the parties, will hear all absence and lateness cases hereunder. The parties may expand the number of arbitrators if necessary. The arbitrator will hear 4 cases per hearing date on a staggered schedule, but in no situation will one case take more than half (½) a day. The parties may expand the number of cases heard in a day if they deem it practical.

2. Rotational Panel

As discussed and agreed upon, all parties would be served better by the implementation of a permanent arbitration panel. The panel members must be agreeable to both sides. However, if the parties cannot agree to a full complement of 20 panel members, additional impartial arbitrators shall be selected by the parties in accordance with the American Arbitration Association (AAA) procedures (strike and rank method) from list(s) provided by the AAA until the desired number (20) is reached to establish such permanent panel.

Panel members shall serve for a maximum of a one-year term. At the expiration of such term, the parties must agree to have arbitrators continue to serve on the panel, and if not

replacement members will be selected by the method outlined above. Removal prior to the end of the one-year term must be for good and sufficient cause upon mutual agreement of the parties.

Any arbitrator who agrees to serve on the rotational panel must agree to the following terms:

a. Each arbitrator selected to serve on this rotational panel must agree to provide five (5) consecutive hearing dates per month for the months of September through June and 2 hearing dates for the months of July and August. Consecutive days may be construed to mean five (5) dates within two (2) weeks unless otherwise agreed.

b. Arbitrators must provide three (3) dates, within ten (10) to fifteen (15) calendar days from the date a case was assigned to him or her, for a pre-hearing conference. One of the dates shall be at 9:00 a.m. Advocates must accept one (1) of the three (3) dates offered or it will be assumed that the date or dates offered at 9:00 a.m. is (or are) acceptable. Said dates must be in compliance with Education Law Section 3020-a (within 10 to 15 days from the date selected to serve).

c. At the pre-hearing conference, arbitrators must provide and parties must accept five (5) consecutive hearing dates within the statutory timeframe as delineated in Education Law Section 3020-a. Consecutive days may be construed to mean five (5) dates within two (2) weeks unless mutually agreed.

d. The parties are committed to having these cases heard in an expeditious manner. For this reason, absent extraordinary circumstances, arbitrators are not to adjourn hearing dates. It should be noted that normally attorney or party scheduling conflicts are not extraordinary circumstances.

e. In all cases, as delineated in Education Law Section 3020-a the final hearing shall be completed no later than 60 days from the pre-hearing conference and the written decision must be rendered within 30 days from the final hearing date.

f. There is a presumption that charges against the same employee will be consolidated unless the arbitrator finds that to do so would deny a fair hearing. Additionally, in routine matters, any motions must be made and responded to orally. Thereafter, a decision shall be rendered on the issue the same date the motion was made. Should the arbitrator find that written motion practice is necessary, either party reserves the right to respond orally but, in no case, shall motion practice take place outside the scope of the timelines as outlined in Education Law, Section 3020-a.

Failure to abide by these rules shall be “good and sufficient” grounds for removal of an arbitrator.

3. Expedited Hearings

Prior to the pre-hearing conference, the Board shall determine whether the nature of the case would permit offering Respondent expedited arbitration rather than regular arbitration of the case. If the Respondent accepts the offer of expedited arbitration, the hearing shall proceed in accordance with the expedited procedure set forth below and the Board may not seek a penalty to exceed six (6) months or the equivalent monetary penalty. Should the Respondent reject the offer of expedited arbitration, the case shall proceed in accordance with the regular arbitration proceeding and the board may seek any penalty including termination.

Where the offer of expedited arbitration was rejected, the arbitrator (or the arbitration panel) shall not be informed of the offer of expedited arbitration nor that the offer was rejected.

Cases heard under the expedited arbitration procedure shall be completed in three (3) consecutive days. Each advocate shall be provided equal time to present his or her respective

case. Cross-examination usually will not go beyond the scope or duration of the direct examination.

During the course of the hearings, should the evidence reveal more serious misconduct than originally charged, the arbitrator, upon his or her initiative, or upon the Board's motion, is empowered for good cause to end the expedited proceeding and order a new, regular arbitration proceeding before a different arbitrator. At the regular arbitration, the Board may seek any penalty including termination. Upon a showing of unavailability during the regular arbitration, the prior record of a completed witness who testified in the expedited arbitration shall be admissible.

4. Investigations

Where the Board conducts an investigation of an employee and the employee has been reassigned to administrative duties pending the outcome of such investigation, the parties agree that the employee will be restored to service no later than 6 months from the date of his or her removal unless Education Law §3020-a charges have been preferred against the employee. Should the employee be restored to service, this event does not preclude the Board from subsequently preferring Education Law §3020-a charges against the employee. If charges are preferred, the employee shall remain reassigned, at the Board's discretion, pending the outcome of the disciplinary process. This requirement to restore an employee to service after 6 months does not include investigations conducted by the Special Commissioner of Investigation or investigations that are related to criminal prosecutions.

5. Serious Misconduct

The parties agree that certain types of alleged misconduct are so serious that the employee should be suspended without pay pending the outcome of the disciplinary process. Serious misconduct shall be defined as actions that would constitute:

- the felony sale, possession, or use of marijuana, a controlled substance, or a precursor of a controlled substance or drug paraphernalia as defined in Article 220 or 221 of the Penal Law, or
- any crime involving physical abuse of a minor or student, (Crimes involving sexual abuse of a minor or student are addressed in paragraph 6 below.)
- any felony committed either on school property or while in the performance of counseling duties, or
- any felony involving firearms as defined in Article 265 of the Penal Law.

If an employee is accused of committing serious misconduct, the employee shall be removed from payroll for a term not to exceed two (2) months after a finding by the "probable cause arbitrator" that there is probable cause to believe that the actions alleged were committed by the employee and that they constitute "serious misconduct" as defined above. Probable cause exists when evidence or information which appears reliable discloses facts or circumstances making it likely that such conduct occurred and that such person committed the conduct. To establish probable cause, the investigator assigned to the matter must be present and testify under oath before the arbitrator. The Board may also be required to produce signed statements from the victim or witnesses, if any. Thereafter, the respondent shall have an opportunity to respond orally to the offer of proof. The arbitrator may ask relevant questions or may make further inquiry at the request of Respondent. The hearing shall not require testimony of witnesses nor shall cross-examination be permitted.

Said probable cause hearing usually shall not exceed one half of a hearing day.

One arbitrator, agreed to by both parties, shall be assigned to hear all probable cause matters for a period of one year. If the parties cannot agree upon one arbitrator, each party shall select one arbitrator who together will select the probable cause arbitrator.

Should the Board meet its burden of establishing probable cause of serious misconduct, the employee shall remain suspended without pay during the pendency of the disciplinary action, but in no event shall such period exceed two months except as set forth herein.

The parties expect that these cases shall be completed within two (2) months. However, where it is not possible to complete the hearing within the two (2) month period despite the best efforts of all parties, and where the arbitrator believes that the evidence already presented tends to support the charges of serious misconduct, the arbitrator may extend the period of suspension without pay for up to thirty (30) days in order to complete the proceedings.

If the Respondent requests not to have the case proceed for a period of thirty (30) days or more and that request is granted, during the period of this adjournment, the Respondent shall remain in non-paid status. As noted above, however, the parties are committed to having these cases heard in an expeditious manner. For this reason, absent extraordinary circumstances, arbitrators are not to adjourn hearing dates.

While suspended without pay pending the arbitration hearing on serious misconduct charges, the Respondent may continue his or her existing health coverage, except that no event shall the Respondent be entitled to continue his or her existing health coverage for more than six (6) months while on non-paid status except at the absolute discretion of the Chancellor. In the event that the Respondent is exonerated of all serious misconduct charges, the employee shall be restored to his or her position and be entitled to receive back pay and be made whole for the amount of time he/she remained off payroll. In the event that the arbitrator finds the employee guilty of the serious misconduct and imposes a penalty less than termination, the arbitrator shall decide whether and to what extent a reinstated employee shall be entitled to receive any back pay for the time the employee was suspended without pay.

The parties agree that these types of cases shall receive the highest priority, and, upon the Board's request, hearings may be held on such matters during any days previously committed by a rotational panel to other employees, as set forth above. In other words, hearings for serious misconduct take precedence over other disciplinary matters, and the Board may require adjourning other cases previously scheduled before the assigned arbitrator during that time frame in order for that arbitrator to hear serious misconduct cases within the two-month time frame.

6. Sexual Offenses Involving Students or Minors

A tenured pedagogue who has been charged under the criminal law or under §3020-a of the New York State Education Law with an act or acts constituting sexual misconduct (defined below) shall be suspended without pay upon a finding by a hearing officer of probable cause that sexual misconduct was committed.

A rebuttable presumption of probable cause shall exist where the Special Commissioner of Investigations ("SCI") substantiates allegations of sexual misconduct, or a tenured pedagogue has been charged with criminal conduct based on act(s) of sexual misconduct.

A report from the Chancellor's Office of Special Investigations ("OSI") substantiating allegations of sexual misconduct is relevant evidence of probable cause but does not create a rebuttable presumption of probable cause.

In §3020-a proceedings, a mandatory penalty of discharge shall apply to any tenured pedagogue a) found by a hearing officer to have engaged in sexual misconduct, or b) who has pleaded guilty to or been found guilty of criminal charges for such conduct.

The 3020-a hearing should be completed within two months, but the suspension without pay shall be extended one additional month if the hearing has not been completed, unless the Board has received an adjournment or otherwise delayed the proceeding. The suspension without pay shall also be extended until a criminal action is resolved and any 3020-a proceeding is also completed.

If the 3020-a hearing results in a dismissal of the charges or if the criminal proceeding ends in an acquittal or dismissal (and the Board has decided not to prefer charges), the pedagogue shall be entitled to back pay with interest for the entire period of the suspension without pay.

For purposes of this section, sexual misconduct shall include the following conduct involving a student or a minor who is not a student: sexual touching, serious or repeated verbal abuse (as defined in Chancellor's Regulations) of a sexual nature, action that could reasonably be interpreted as soliciting a sexual relationship, possession or use of illegal child pornography, and/or actions that would constitute criminal conduct under Article 130 of the Penal Law against a student or minor who is not a student.

A letter of agreement dated October 2, 2005 regarding sexual misconduct is attached as Appendix E.

7. Other Felony Offenses

Tenured pedagogues who have been convicted of, or who have pled guilty to, any felony not addressed in paragraph 5, above shall be suspended without pay pending the final outcome of the Education Law §3020-a disciplinary proceeding. The §3020-a hearing should be completed within two months, but the suspension without pay shall be extended one additional month if the hearing has not been completed, unless the Board has received an adjournment or otherwise delayed the case.

8. Discovery Procedures

To effectuate the purpose of the statute, the parties agree that Education Law Section 3020-a authorizes the following in advance of the hearing:

Both sides will exchange witness lists, witness statements, and physical evidence (e.g., photographs) at least before the presentation of their direct case and earlier upon motion to the arbitrator.

The Respondent shall receive copies of investigatory statements, notes, other exculpatory evidence, and relevant student records after and subject to *in camera* review.

The Board shall receive evidence and documents from the respondent upon a showing during the hearing that it is relevant.

Additionally, if the case has stemmed from an investigation conducted by the Special Commissioner of Investigation (SCI), the Board will provide the entire SCI file to Respondent, including exculpatory evidence, during the discovery phase of the 3020-a hearing unless such information is privileged. Failure to do so shall form the basis of such evidence being precluded from introduction in the 3020-a proceedings. This provision remains subject to the Family Educational Rights and Privacy Act.

9. Incompetence Cases

The parties agree that in the spirit of progressive discipline, rather than necessarily charge an employee with incompetence, an employee, who receives an unsatisfactory rating for the first time, may be offered the opportunity to enroll in the Peer Intervention Program (PIP) for a term of one year. Refusal to enter the PIP program is admissible in any future disciplinary proceedings. The parties further agree that during the first school term of the intervention, no formal observations will be made. During the second school term, although the employee will

still be in the PIP, the administration is free to conduct observations and to rate the employee accordingly. Since the end-of-year rating will be based on these observations, a minimum of two (2) observations shall be conducted during the second school term. PIP may not be invoked by the employee once the disciplinary process has commenced.

Pursuant to, and as further described in section I “Peer Intervention Plus Program” below, during their participation in the Peer Intervention Plus Program (“PIP Plus”), participating counselors shall not be charged with incompetence pursuant to Education Law §3020-a. The fact that an employee has declined to participate or that the BOE has denied a request to participate or has not offered the counselor an opportunity to participate in the programs will be admissible in §3020-a proceedings. Observation reports of the consulting counselors will be admissible in §3020-a proceedings.

10. Attorney Teams

Each Board attorney will be paired with a union attorney for four (4) consecutive cases. Should one case settle, another case between the same attorneys shall be substituted for the case settled in an effort to utilize the dates set by the parties with the arbitrator.

H. False Accusations⁸

Knowingly false accusations of misconduct against employees will not be tolerated.

If an accusation of sexual misconduct or physical abuse against an employee is found by the Board or Special Commissioner of Investigation to have been knowingly false when made, the Board will take the following actions to restore the falsely accused employee’s reputation: removing all references to the charges from the employee’s personnel file(s) and adding evidence of the unfounded nature of the charge to any Board files that may have to be maintained to satisfy other legal requirements, if any; and restoring any back pay owed with interest and, at the employee’s request, confirming to any regulatory agency the finding that the employee was falsely accused. In addition, where the knowingly false accusation was made by a student of the employee, absent compelling and extraordinary circumstances the student will be permanently reassigned from the employee’s class.

I. Peer Intervention Program (PIP)

The Board and the Union recognize that instructional services should be delivered by a highly qualified and motivated staff, accorded the respect and professional treatment to which they are entitled.

Towards that end the Board and the Union have agreed to provide resources and to provide peer assistance on a voluntary confidential basis to staff who have completed probation and who believe that their competence will benefit from that assistance in the manner provided below:

1. The peer intervention panel shall be composed of nine members, six of whom shall be selected by the Union and three of whom shall be administrators selected by the Board.

2. This Panel will set qualifications and procedures for the selection of intervenors, and alternative careers liaison and a coordinator of the program. The Panel shall advertise, as needed, the intervenor, coordinator and alternative careers liaison positions on a city-wide basis, posting the qualifications and procedures previously developed. The program's professional staff shall be selected in accordance with the posted procedure.

3. The Panel will also design and continually monitor a professional development program that enables the selected staff to meet the goals set forth above.

4. The intervenors shall serve for four year renewable terms.

⁸ See Appendix G. This Section H of Article Fifteen corresponds to Article 21 H of the Teacher Contract.

5. Any counselor who has a reasonable basis for needing such assistance and/or receives a U-rating or formal warning may request assistance from the peer intervention program, in writing on a form promulgated by the Panel. The Panel will review the requests and promptly notify the counselor of its determination as to whether assistance will be provided in that case. Such communications will be kept completely confidential.

6. The intervenor will develop a plan to assist the participating counselor tailored to the specific needs of that counselor and will work with the counselor directly for not more than one year.

7. For three months following the start of the intervention period, supervisors will not evaluate or observe the participating counselor. However, supervisors will otherwise continue to exercise their responsibilities.

8. The Board, the Union, and the participating counselor agree that for any disciplinary action other than an appeal of a previous U-rating, all time limitations within which to bring such actions will be tolled for the three month period in which the supervisor does not evaluate or observe the participating counselor. For such U-rating appeals, the parties agree that the time limitations are tolled for the entire period of intervention.

9. All communications between the intervenor and the participating counselor shall be completely confidential. As a condition of involvement in the program, all participants in the program, including the intervenor and the participating counselor, must consent to the confidentiality provisions set forth in this paragraph. The Board and Union agree that the intervenor, or any other person involved in the peer intervention program shall not be subpoenaed by the Board or the Union or called to testify, produce documents or participate in any other way concerning the intervention in any proceeding involving the participating counselor including potential subsequent proceedings under Section 3020-a of the Education Law as modified by ¶G above (hereinafter “3020-a proceeding”). No arbitrator, in any proceeding under the parties' control, shall accept evidence regarding such communications.

If PIP is used as a remedy in a 3020-a proceeding or if the parties agree to use it as a settlement to such a proceeding, this paragraph continues to apply except that if the intervention was not successful a statement from the program saying “PIP was attempted and was not successful” may be submitted into evidence in any subsequent 3020-a proceeding with respect to charges concerning competence.

10. Except as otherwise herein provided, the Union, the Board or any participating counselor may exercise any constitutional, statutory, regulatory or contractual right otherwise provided by law, regulation or contract.

11. The Board agrees to make available on a best efforts basis alternative career opportunities in the Board and/or the City for counselors who decide to leave the profession in the course of or following intervention through access to other employment alternatives within the system and/or City; or retraining/redeployment through the Board of Education or New York City.

12. Administrative procedures for effectuation of these provisions will be formulated by the Panel in consultation with the Board and the Union and thereafter distributed by the Panel.

13. These procedures relate solely to issues of competency and no other grounds for discipline.

14. The acts of the Panel, intervenor, coordinator, Union and Board shall be final.

J. Peer Intervention Plus Program (“PIP Plus”)

1. The existing Peer Intervention Program (PIP) will work with any counselors who would like assistance (as capacity permits) except those in danger of receiving charges pursuant to Education Law §3020-a for incompetence who have been recommended for the new program established below.

2. A new program (PIP Plus) will be created for tenured counselors in danger of receiving charges pursuant to §3020-a for incompetence, which will be staffed by independent consulting counselors. These consulting counselors will not be employed by the Board of Education and will not be active members of the UFT, and instead will be provided by an independent third party vendor, mutually agreed to by the parties, pursuant to a contract in a form developed by the Board and approved by the UFT.

3. Consulting counselors in the PIP Plus will develop plans to assist the participating U-rated tenured counselors, tailored to the specific needs of the counselors. During their participation in the PIP Plus, participating counselors will not be charged with incompetence pursuant to §3020-a. Observation reports of the consulting counselors will be provided to the participating counselors, and will be admissible in §3020-a proceedings. Participation in the program is voluntary. A principal may recommend participation or a counselor may volunteer to participate. The fact that an employee has declined to participate or that the Board has denied a request to participate or has not offered the counselor an opportunity to participate in the programs will be admissible in §3020-a proceedings.

4. A labor/management committee will review the PIP Plus program annually and agree on necessary changes, if any.

5. The existing Peer Intervention Program will not be decreased in size because of the establishment of this new PIP Plus program.

K. Medical Review Procedures

1. Requests for Medical Examination

The report of the immediate supervisor requesting examination of a counselor pursuant to Education Law Section 2568 shall be made in duplicate. A copy of the report shall be forwarded to the counselor.

2. Injury in the Line of Duty

In order to provide for an expeditious handling of injury in the line of duty claims, the following is provided:

a. Within five school days of a claim of injury in the line of duty requiring an employee to be absent, the superintendent shall make a determination as to whether the accident occurred in the line of duty.

b. Where the employee is in a non-pay status pending a determination by the Medical Bureau of the duration of absence attributable to injury in the line of duty, the Medical Bureau will make its determination within ten days of the employee's submitting himself for the required physical examination.

3. Medical Report and Review

a. The report of the Medical Bureau on a counselor who was called for medical evaluation shall, upon written request of the counselor, be sent to the counselor's physician within 25 days after the evaluation.

b. Upon the employee's request to the Medical Bureau, his physician shall have the right to examine his medical file.

c. A counselor shall have the right to an independent evaluation by a medical arbitrator selected from rotating panels of doctors to be selected by mutual agreement of the Board and the Union if the finding of the Medical Bureau to the Chancellor has resulted in:

(1) Placement of the counselor on a leave of absence without pay for more than one month; or

(2) Termination of the counselor's services; or

(3) A recommendation for disability retirement; or

(4) A denial of a leave with or without pay for more than one month.

A request for an independent evaluation of the finding of the Medical Bureau shall be submitted in writing by the employee to the Division of Human Resources within ten school days of receipt of notice from the Division of Human Resources that he/she has been placed on leave of absence without pay for more than one month, or that his services have been terminated, or that he/she has been recommended for disability retirement, or that he/she has been denied a leave with or without pay for more than one month.

The Board and the Union may agree on a case by case basis to permit, in special circumstances, an independent medical evaluation to counselors who do not otherwise qualify for one under this Agreement.

The medical arbitrator shall examine the employee and consult with the employee's physician and the Board's physician. The arbitrator's authority shall be limited to determining the medical aspects of the employee's claim. The arbitrator's decision shall be rendered within ten days after he/she has completed the evaluation of the employee, and if made within his/her authority under this agreement shall be accepted as final and binding by the Board and the employee.

The fee of the medical arbitrator shall be shared equally by the Board and the employee.

ARTICLE SIXTEEN GRIEVANCE PROCEDURE

It is the declared objective of the parties to encourage the prompt and informal resolution of employee complaints as they arise and to provide recourse to orderly procedures for the satisfactory adjustment of complaints. A resolution should occur at the earliest possible step in every case that can reasonably be resolved.

In order to accomplish its stated purpose, a grievance conference must be attended by those individuals who may be able to promote resolution or, if resolution is not possible in a particular case, to provide the necessary information for a fair determination of the grievance. At the Chancellor's level, principals will be expected to attend or to have a suitable representative present at the conference. Failure to attend may result in sustaining the grievance on procedural grounds.

A. Definition

A "grievance" shall mean a complaint by an employee in the bargaining unit (1) that there has been as to him a violation, misinterpretation or inequitable application of any of the provisions of this agreement or (2) that he has been treated unfairly or inequitably by reason of any act or condition which is contrary to established policy or practice governing or affecting employees, except that the term "grievance" shall not apply to any matter as to which (1) a method of review is prescribed by law, or by any rule or regulation of the State Commissioner of Education having the force and effect of law, or by any by-law of the Board of Education or (2) the Board of Education is without authority to act.

In the case of per session employees, a “grievance” shall mean a complaint by a per session counselor that there has been as to him a violation, misinterpretation or inequitable application of any of the provisions of this agreement covering his particular per session employment.

As used in this article, the term “employee” shall mean also a group of employees having the same grievance.

B. Adjustment of Grievances

Grievances of employees within the bargaining unit shall be presented and adjusted in the following manner:

1. General Procedure

a. First Level

Any employee within the bargaining unit may, either orally or in writing, present a grievance within thirty school days after the employee has knowledge of the act or condition which is the basis of the complaint, (1) to the head of the school if the complaint arises out of administration of the guidance program in the school, or (2) to the supervisor of guidance if the complaint arises out of professional direction and supervision of the guidance program.

A grievance which is presented in writing shall set forth specifically the act or condition and the grounds on which the grievance is based, the contractual provision which is alleged to have been violated and the remedy sought. A Step 1 Grievance Form such as the one set forth in Appendix A shall be used, but failure to use the form will not result in forfeiture of the grievance. A grievance which is technically flawed at Step 1 may be promptly amended or refiled without regard to the stated time limitations.

The employee and the head of the school or the supervisor of guidance shall confer on the grievance with a view to arriving at a mutually satisfactory resolution of the complaint. At the conference, the employee may appear personally or he/she may be represented by a Union representative or by any licensed counselor of his/her choice in the school system; but where the employee is represented he/she must be present. The Union representative shall be a member of the Chapter's grievance committee.

Whenever a grievance presented to the head of the school or to the supervisor of guidance by the employee personally or through a personal representative would involve the application or interpretation of the terms of this agreement, or would affect the working conditions or welfare of the employees in the bargaining unit, he shall give the Chapter the opportunity to have a grievance committee member present and state the views of the Chapter.

The head of the school or the supervisor of guidance shall communicate his/her decision to the aggrieved employee and to his/her representative and to any Chapter representative who participated in this step within five school days after receiving the complaint. Where the grievance has been presented in writing, the decision shall be in writing, and the decision shall include supporting reasons in response to the information supplied by the grievant on the Step 1 Grievance Form or its equivalent.

b. Second Level

If the grievance is not resolved at Step 1, the Union may appeal from the decision at Step 1 to the Chancellor addressed to the attention of the Deputy Executive Director, Office of Labor Relations and Collective Bargaining within 15 school days after the Step 1 decision was given to the employee. The appeal shall be in writing, shall set forth specifically the reasons for the appeal, and shall be accompanied by a copy of the appeal and the decision at Step 1. It shall state the name of the employee's Union representative.

The Chancellor or his/her designated representative shall meet and confer with the Union representative and the aggrieved employee with a view to arriving at a mutually satisfactory resolution of the complaint. The Union representative and the aggrieved employee shall be given at least two school days notice of the conference and an opportunity to be heard. The Union representative may be the representative at Step 1 or the representative designated by the Union grievance department, or both.

Notice of the conference shall also be given to the head of the school or to the supervisor of guidance who rendered the decision at Step 1. The head of the school or the supervisor of guidance, will be expected to attend the conference or to have a suitable representative present at the conference in order to promote resolution of the grievance or, if resolution is not possible, to provide the necessary information for a fair determination of the grievance.

The Chancellor shall communicate his/her decision in writing, together with the supporting reasons, to the aggrieved employee and to the Union representative who participated in this step, within twenty school days after receiving the appeal.

The head of the school or the supervisor of guidance who rendered the decision at Step 1 shall also receive a copy of the decision at this step. The Chapter shall receive a copy of any decision at this step.

2. Procedures for Special Groups

a. The procedures set forth in paragraph one of this article shall apply to all employees in the unit, except that in the case of per session employees, the grievance shall be presented at Step 1 to the head of the particular per session activity or his/her designated representative and at Step 2 to the Chancellor or his/her designated representative. The Union representative at each step shall be a member of the Union's grievance committee. The decision at Step 1 shall be communicated within five working days after receiving the complaint of employees employed in summer per session activities and within ten school days after receiving the complaint of employees employed in other per session activities.

However, grievances arising under Article 19 B 2 (Retention) or 4 (Preference for Positions) must be presented within two working days after the employee has knowledge of the act or condition which is the basis of the complaint. The decision at Step 1 shall be communicated within two working days after receiving the complaint. The grievance may be appealed by the Union to the Chancellor within five working days after the decision at Step 1 has been received. The Chancellor shall communicate his/her decision within ten working days after receipt of the appeal. If the grievance is not resolved at the Chancellor's level, it may be appealed to arbitration by the Union within 15 working days and the parties shall arrange for the prompt hearing and resolution of the grievance at arbitration. The parties will make every effort to process these grievances more expeditiously than the time limits prescribed above. The arbitrator shall render the award within five days after the close of the hearing.

The special procedures set forth in paragraph 3 of this article shall not apply to per session employees.

b. Chapter 683 grievances regarding summer assignments shall be heard according to the following procedure:

(1). All internal District 75 postings, vacancy notices and turnaround (retention rights) lists will be prominently posted and made available to employees in all District 75 sites.

(a). All internal application notices/postings for District 75 staff who do not claim retention rights shall be posted in the schools no later than April 30.

(b).Retention rights turnaround documents shall be posted in the schools no later than May 15.

(c). The Final Assignment list shall be posted in all schools no later than June 7.

(2).Subsequently, an employee who has a complaint regarding a non-per session summer assignment shall attempt to resolve it informally. If the complaint has not been resolved, the complainant shall file a grievance with the Superintendent no later than the 10th workday from the posting of the final assignment list, or in the case of assignments that were not contained in the final assignment list, no later than the 10th workday from knowledge of the assignment which is the basis for the complaint. The Superintendent or his or her designee shall meet and confer with the aggrieved employee with a view to arriving at a mutually satisfactory resolution of the complaint. The employee shall be entitled to Union representation. The employee shall be present at this conference. The Superintendent shall communicate his/her decision in writing, together with supporting reasons, to the aggrieved employee and to the Union District Representative within five (5) working days after having received the appeal.

If the grievance is not resolved at the Superintendent's level, the Union may appeal the decision to the Chancellor within five (5) working days after the decision by the Superintendent or his or her designee has been issued. The appeal shall be in writing, shall set forth specifically the reasons for the appeal and shall be accompanied by a copy of the appeal and decision at Step 1. The Chancellor or his/her designated representative shall meet and confer with the Union Representative and the aggrieved employee with a view to arriving at a mutually satisfactory resolution of the complaint. The Chancellor shall communicate his/her decision in writing, together with the supporting reasons, to the aggrieved employee and to the Union Representative who participated in this step within five (5) working days after receiving the appeal. If the grievance is not resolved at the Chancellor's level, or if no decision is issued within five (5) working days from the receipt of the appeal, the UFT may proceed to arbitration. The UFT shall notify the Superintendent and the Board's Office of Labor Relations and Collective Bargaining of its intent to proceed to arbitration no later than the Monday following Labor Day of the year in which the grievance arose.

The Superintendent shall also receive a copy of the decision at this Step. The Union shall receive a copy of any decision at this Step.

c. In the case of counselors assigned the grievance shall be presented at Step 1 to the appropriate community or assistant superintendent or his/her designee, or the Executive Director responsible for the office, and at Step 2 to the Chancellor. The Union representative at each step shall be a member of the Union's grievance committee. The decision at Step 1 shall be communicated within ten working days after receiving the complaint of the employee

3. Special Procedures for Grievances Relating to Salary and Leave Matters

Any grievance relating to salary and leave matters shall be filed by the Union directly with the Executive Director of the Division of Human Resources. In such cases, the provisions of the general procedures relating to Step 2 shall apply to the presentation and adjustment of the grievance at the level of the Executive Director except that (1) the grievance shall be filed within a reasonable time not to exceed three months after the employee has knowledge of the act or condition which is the basis of the complaint and (2) the employee need not be present at any conference. The Executive Director shall render a decision on behalf of the Chancellor and such decision shall be considered a decision at the level of the Chancellor under this article.

4. Special Procedures for Grievances Arising out of School Reorganization

Where the grievance arises out of school reorganization, the time limits prescribed above shall be modified in these respects:

a. The grievance must be presented within two school days after the employee has knowledge of the act or condition which is the basis of the complaint.

b. The head of the school or borough supervisor shall communicate his/her decision within two school days after receiving the complaint.

c. The grievance must be appealed to the Chancellor by the Union within five school days after the decision at Step 1 has been received.

d. The Chancellor shall communicate his/her decision within ten school days after receipt of the appeal.

e. If the grievance is not resolved at Step 2 it may be appealed by the Union to arbitration within 15 school days and the parties shall arrange for the prompt hearing and resolution of the grievance at arbitration.

5. Priority Handling of Grievances

The Board and the Union will consult periodically on the priority of handling grievances pending at Step 2 with a view to expediting the processing of grievances which require prompt disposition.

6. Initiation or Appeal of Special Types of Grievances or Complaints

a. Grievances arising from the action of officials other than the head of a school or the supervisor of guidance may be initiated with and processed by such officials in accordance with the provisions of Step 2 of this grievance procedure. Where appropriate, such grievances may be initiated with the Chancellor by the Union.

b. Where a substantial number of employees in more than one school have a complaint arising from the action of authority other than the head of a school or the supervisor of guidance, the Chapter, upon their request, may initiate a group grievance in their behalf.

c. The Chapter has the right to initiate or appeal a grievance involving the alleged violation of the agreement. Such grievance shall be initiated with the community or assistant superintendent or the director or, where appropriate, with the Chancellor.

7. Appearance and Representation

a. Conferences held under this procedure shall be conducted at a time and place which will afford a fair and reasonable opportunity for all persons entitled to be present to attend. When such conferences are held during Board of Education working hours, all persons who participate shall be excused without loss of pay for that purpose.

b. No officer or executive board member, delegate, representative, or agent of a minority organization shall represent the aggrieved employee at any step in the grievance procedure. An agent shall include any person who, acting in an official capacity for a minority organization, regularly performs for that organization such acts as: distributing literature, collecting dues, circulating petitions, soliciting membership, or serving as spokesman at counselors' conferences. An agent shall not include any person who performs such duties occasionally or without any official designation by the minority organization involved. A minority organization shall mean any organization, other than the Union, which exists or acts for the purpose of dealing with the head of a school or any Board official for the improvement of working conditions, or the handling of grievances, of employees in the bargaining unit.

8. Time Limits

a. Failure at any step of this procedure to communicate the decision on a grievance within the specified time limits shall permit the aggrieved employee to proceed to the next step. Failure at

any step of this procedure to appeal a grievance to the next step within the specified time limits shall be deemed to be acceptance of the decision rendered at that step.

b. The time limits specified in any step of this procedure may be extended, in any specific instance, by mutual agreement.

C. Arbitration

A grievance dispute which was not resolved at the level of the Chancellor under the grievance procedure may be submitted by the Chapter to an arbitrator for decision if it involves the application or interpretation of this agreement.

Grievances involving the exercise of Board discretion under any term of this agreement may be submitted to arbitration to determine whether the provision was disregarded or applied in a discriminatory or arbitrary or capricious manner so as to constitute an abuse of discretion, namely: whether the challenged judgment was based upon facts which justifiably could lead to the conclusion as opposed to merely capricious or whimsical preferences, or the absence of supporting factual reasons.

A grievance may not be submitted to an arbitrator unless a decision has been rendered by the Chancellor under the grievance procedure, except as provided in Section B 4 g of this article, and except in cases where, upon expiration of the 20-day time limit for decision, the Chapter filed notice with the Chancellor of intention to submit the grievance to arbitration and no decision was issued by the Chancellor within five school days after receipt of such notice.

The proceeding shall be initiated by the Union filing with the Board a notice of arbitration. The notice shall be filed within 15 school days after receipt of the decision of the Chancellor under the grievance procedure or, where no decision has been issued in the circumstance described above, three days following the expiration of the five school day period provided above. The notice shall include a brief statement setting forth precisely the issue to be decided by the arbitrator and the specific provision of the agreement involved. The parties shall jointly schedule the arbitration hearings.

A panel of seven arbitrators shall be designated by mutual agreement of the parties to serve for any case or cases submitted to them in accordance with their ability to promptly hear and determine the case or cases submitted.

The parties agree to enter into a stipulation of facts whenever possible in advance of the hearing.

The parties seek the most expeditious decisions in arbitrations and will not normally file briefs or order transcripts. If either or both parties order transcripts, it shall be on an expedited basis. The parties may agree to file post-hearing briefs. However, if a party unilaterally files a brief, it shall be filed within five working days of the hearing or receipt of the transcript, if one is ordered. The other party shall have the right to file a reply brief within five working days of receipt of the brief.

The voluntary labor arbitration rules of the American Arbitration Association shall apply to the proceeding insofar as they relate to the hearings and fees and expenses.

The arbitrator shall issue his/her decision not later than 30 days from the date of the closing of the hearings or, if oral hearings have been waived, then from the date of transmitting the final statements and proofs to the arbitrator. The decision shall be in writing and shall set forth the arbitrator's opinion and conclusions on the issues submitted. The arbitrator shall limit his/her decision strictly to the application and interpretation of the provisions of this agreement and he/she shall be without power or authority to make any decision:

1. Contrary to, or inconsistent with, or modifying or varying in any way, the terms of this agreement or of applicable law or rules or regulations having the force and effect of law;

2. Involving Board discretion or Board policy under the provisions of this Agreement, under Board by-laws, or under applicable law, except that the arbitrator may decide in a particular case whether the provision was disregarded or applied in a discriminatory or arbitrary or capricious manner so as to constitute an abuse of discretion, namely whether the challenged judgment was based upon facts which justifiably could lead to the conclusion as opposed to merely capricious or whimsical preferences or the absence of supporting factual reasons.

3. Limiting or interfering in any way with the powers, duties and responsibilities of the Board under its by-laws, applicable law, and rules and regulations having the force and effect of law.

The decision of the arbitrator, if made in accordance with his/her jurisdiction and authority under this Agreement, will be accepted as final by the parties to the dispute and both will abide by it.

The arbitrator may fashion an appropriate remedy where he/she finds a violation of this Agreement. To the extent permitted by law, an appropriate remedy may include back pay. The arbitrator shall have no authority to grant a money award as a penalty for a violation of this Agreement except as a penalty is expressly provided for in this Agreement.

The arbitrator's fee will be shared equally by the parties to the dispute.

The Board agrees that it will apply to all substantially similar situations the decision of an arbitrator sustaining a grievance and the Union agrees that it will not bring or continue, and that it will not represent any employee in, any grievance which is substantially similar to a grievance denied by the decision of an arbitrator.

D. General Provisions as to Grievances and Arbitration

1. The filing or pendency of any grievance under the provisions of this Article shall in no way operate to impede, delay or interfere with the right of the Board to take the action complained of, subject, however, to the final decision on the grievance.

2. Nothing contained in this Article or elsewhere in this Agreement shall be construed to permit the Union to present or process a grievance not involving the application or interpretation of the terms of this Agreement in behalf of any employee without his/her consent.

3. Nothing contained in this Article or elsewhere in this Agreement shall be construed to deny to any employee his/her rights under Section 15 of the New York Civil Rights Law or under the State Education Law or under applicable Civil Service Laws and Regulations.

4. (a) Procedural arbitrability objections based upon the asserted: untimeliness of a grievance or appeal, or failure to follow or properly adhere to contractual grievance procedures will, normally, be raised at the Chancellor's level. In instances where the employer could not reasonably have been able to raise such a claim at the Chancellor's level, but intends to raise such a claim at the arbitration level for the first time, the employer shall communicate to the Union within one week prior to the scheduled hearing of such intent.

(b) These guidelines are not intended to be applied to preclude a party from raising an arbitrability objection at a hearing where such preclusion would appear to be unfair or substantially prejudicial to a party's interest in the ultimate outcome of a case.

(c) Nothing contained herein shall be construed as a waiver of any substantive arbitrability objection or to preclude any other resort to judicial proceedings as provided by law.

ARTICLE SEVENTEEN

SPECIAL COMPLAINTS

It is the declared objective of the parties to encourage the prompt and informal resolution of special complaints not covered by the grievance procedure and to dispose of such complaints as they arise and to provide recourse to orderly procedures for their adjustment.

A. Definition

A "special complaint" is a complaint by an employee in the bargaining unit that persons or groups are engaging in a course of harassing conduct, or in acts of intimidation, which are being directed against him/her in the course of his/her employment and that the school principal or community or assistant superintendent has not afforded the employee adequate relief against such course of conduct or acts of intimidation.

B. Filing and Priority Handling

A special complaint shall be promptly filed with the Chancellor by the Union. Such complaint shall receive expedited handling pursuant to this article.

C. Joint Investigation and Informal Resolution

Within twenty-four (24) hours after the special complaint is filed with the Chancellor, a joint investigating committee consisting of one representative designated by the Chancellor and one representative designated by the Union shall investigate the complaint at the school level to ascertain the facts and bring about a prompt resolution of the problem without resort to formal procedures. In the course of its investigation, the joint committee shall confer with the principal of the school, the community or assistant superintendent and other persons involved in the controversy.

D. Administrative Hearing and Continued Attempt at Informal Resolution

If the complaint is not resolved by the joint investigating committee the Union shall request a hearing before the Chancellor. Within forty-eight (48) hours after receipt of the request for hearing, the Chancellor, or a representative designated by him/her, shall hold a hearing at which the joint investigating committee shall report its findings and all persons involved, including the affected employee, shall have an opportunity to be heard. The complaining employee shall be represented by the Union.

At the hearing the Chancellor or his/her representative shall make every effort to resolve the complaint informally and all persons involved shall cooperate toward this end.

E. Decision of the Chancellor

Within seventy-two (72) hours following the close of the hearing, the Chancellor shall notify all parties of his/her decision and the manner in which it shall be effectuated.

F. Fact Finding and Recommendations

If the complaint is not resolved by the Chancellor the Union shall submit it for hearing and fact finding before an arbitrator selected in accordance with Article Sixteen (C) of this agreement. The submission shall be made within ten (10) school days after the issuance of the Chancellor's decision.

The voluntary labor rules of the American Arbitration Association shall apply to the proceeding in so far as they relate to the hearing, fees and expenses.

The fact finder shall render findings not later than seventy-two (72) hours from the date of the close of the hearings or, if oral hearings have been waived, then from the date of transmitting the final statements and proofs to the fact finder. The findings of fact shall be in writing. The fact finder shall limit his/her findings strictly to the question whether the employee's complaint

has been substantiated by the evidence. If the fact finder finds the complaint to be substantiated and unremedied, he/she shall recommend an appropriate remedy.

The fact finder shall not interpret or apply the provisions of this agreement or exercise any of the other functions specified in Article Sixteen of this contract, nor shall he/she exercise any of the powers conferred pursuant to 3020-a of the Education Law.

G. Board Consideration

Within ten (10) days after receipt of the fact finder's report, the Board shall make a determination.

H. Expansion of Special Complaint Procedure to Include Supervisors

Complaints against supervisors may be considered in an expeditious manner in accordance with the provisions of this Article.

ARTICLE EIGHTEEN PROFESSIONAL CONCILIATION

The Board and the Union agree that professional involvement of counselors in educational issues should be encouraged. However, it is recognized that there may be differences in professional judgment.

A. School Level

1. Where differences related to school-based decisions in one of the following areas cannot be resolved, a conciliation process will be available to facilitate the resolution of these differences:

- a. Procedures for evaluation of individual students;
- b. Counseling strategy, technique and methodology.

In order to utilize the conciliation process, the UFT chapter may request, through the Union, the service of a person(s) identified as expert in conciliation. Selections of such person(s) will be made by the Board and the Union from a list of conciliators mutually agreed upon by the Board and the Union.

2. Within five school days, the Board Coordinator will contact the appropriate superintendent who will promptly advise the Board Coordinator as to whether he/she will directly address the issue.

a. If the issue is addressed by the superintendent, he/she should resolve it within ten school days. If not resolved, the Board Coordinator will assign a Conciliator at the end of that period.

b. If the superintendent does not respond to the Board Coordinator or advises that he/she is not addressing the issue, the Board Coordinator will assign a Conciliator within five school days.

3. The Conciliator will initiate the conciliation process within ten days. This stage of the process is expected to be completed within a month unless the participants, including the Conciliator, believe it beneficial to continue the process.

4. At the conclusion of the conciliation:

a. If a resolution is reached, the Conciliator will prepare an agreement for both parties to confirm and sign. It is expected that both parties will adhere in good faith to the agreement. Where one of the parties believes that a good faith effort is not being made to adhere to the agreement, the party will contact the superintendent and district representative who will assess the situation and take actions as necessary to assure implementation of the agreement. If the superintendent and district representative cannot resolve it, the issue will be forwarded to the Chancellor and Union President for resolution.

b. If there is no resolution, the Conciliator will send letters to the parties confirming termination of the conciliation process. In addition, the Conciliator will send letters to the Board and Union Coordinators advising them of the same.

B. District Level

1. A counselor(s) who wishes to conciliate a professional difference regarding a community school district, high school or citywide special education superintendency policy/procedure shall forward it to the UFT school chapter for review. If appropriate, the chapter will forward it to the district representative who will present the issue to the superintendent.

a. If the issue is addressed by the superintendent, he/she should resolve it within ten school days.

b. If the issue is not addressed at the end of that period, or, if the superintendent elects not to address the issue in this fashion, the district representative may refer the issue for conciliation to the UFT Coordinator.

2. After a decision to proceed with conciliation has been made the Board Coordinator will assign a Conciliator within five school days. The Conciliator will initiate the conciliation process within ten school days with the district representative and the superintendent. This stage of the conciliation process is expected to be completed within a month unless the participants, including the Conciliator, believe it beneficial to continue the process.

3. At the conclusion of the conciliation:

a. If a resolution is reached, the Conciliator will prepare an agreement for both parties to confirm and sign. It is understood that for any agreement that requires a waiver of policy adopted by a community school board, the superintendent would be expected to seek the waiver. It is expected that both parties will adhere in good faith to the agreement.

b. If there is no resolution, the Conciliator will send letters to the parties and the Board and Union Coordinators confirming termination of the conciliation process.

ARTICLE NINETEEN RATES OF PAY AND WORKING CONDITIONS OF PER SESSION COUNSELORS

A. Rates of Pay

Except as otherwise provided in the following paragraph, the hourly compensation of each per session counselor, as defined in Article One, shall be 1.075 times the rate of pay for per session teachers.

Counselors employed in the New Suspension Program's summer school program ("the Suspension Program") will be paid at the rate of 1/1241 of their regular annual salary per hour.⁹

B. Working Conditions

1. Sick Leave

Counselors employed on a regular basis in per session activities will be granted sick leave with pay for absence from duty due to personal illness, as follows:

a. One session during each month of service, or two sessions during the month of August, will be granted to those employed in summer schools.

b. One session after each period of 20 sessions of service will be granted to those employed in evening guidance centers and in after school guidance activities.

⁹ See paragraph 6 of Appendix F.

c. Applications for excuse with pay for absence due to personal illness must be accompanied by a certificate of a physician, except that counselors in summer schools shall be granted refunds for illness on application without a statement from a physician for no more than one session per summer.

d. Such sick leave shall not be cumulative from one school year to another school year nor from one per session activity to another per session activity, but shall be transferred to the counselor's regular cumulative absence reserve.

2. Retention

Prior service shall govern in the retention of per session counselors employed on a regular basis in per session activities as follows:

a. Counselors with at least two years of continuous satisfactory service in a particular activity shall have priority for retention in the same activity for the following school year. Counselors with retention rights in an activity will not lose those rights if their service is interrupted for a period of not more than one year because of sick leave without pay or involuntary change of day school session, or sabbatical leave. Such counselors must return to service in the same activity at the first reorganization of the activity following the interruption of their service for the reasons stated above.¹⁰

b. Counselors who have been granted priority for retention in one per session activity shall not be granted such priority for any other per session activity.

c. Counselors will be permitted to serve in more than one per session activity only if no other qualified applicants are available. The Union shall be given a list of per session positions which are held by counselors who have no retention rights in those positions and who are serving in more than one per session activity. Per session activities of 25 hours or less and certain other activities as mutually agreed between the Board and the Union are not counted when determining the number of per session activities served in.

3. Appeals from Unsatisfactory Ratings

Per session counselors who receive unsatisfactory ratings shall be entitled to the review procedures before the Chancellor as prescribed in Section 5.3.4 of the by-laws of the Board of Education.

4. Preference for Positions¹¹

Licensed guidance counselors shall be given preference for all per session guidance positions. Licensed guidance counselors within a district shall have preference for selection among other licensed guidance counselor applicants for any guidance positions within a district.

Applicants for per session employment who are not employed in the Board's regular day school program shall be considered for selection only if no qualified day school counselor is available.

5. Counselor Files

The procedures of Article Fifteen A, entitled "Counselor Files" shall apply to counselor files maintained for their per session employment.

6. Sabbatical Leaves

Counselors whose sabbatical leave begins August 1 will complete the per session activity in which they are serving, but may not return to the activity until the summer following completion of the sabbatical.

¹⁰ Certain former SOS employees have retention rights for work in the 2008 Suspension Summer Program in accordance with paragraph 7 of Appendix F.

¹¹ Selection rights of counselors in the Suspension Summer Program are set forth in Appendix F, paragraph 6.

ARTICLE TWENTY COUNSELORS ASSIGNED

A. Benefits and Working Conditions

Counselors assigned shall be covered by the provisions of this Agreement except that:

1. A counselor assigned who has been granted additional compensation by Board resolution shall continue to receive such additional compensation while in such assignment in accordance with the terms of the Board resolution.

2. Only the following provisions of Article Five entitled "Licensure and Appointment" shall apply: Section C, "Withdrawal of Resignation and Subsequent Reappointment." Only the following provision of Article Seventeen entitled "Special Complaints" shall apply; Section H, "Expansion of Special Complaint Procedure to Include Supervisors". Only the following provision of Article Eighteen entitled "Professional Conciliation" shall apply: Section B, "District Level."

3. The following Articles of this Agreement shall not apply: Article Six A, "Hours of Work"; Article Seven, "Assignments and Counseling Conditions"; Article Fourteen, "Matters Not Covered" (third paragraph); Article Nineteen, "Rates of Pay and Working Conditions of Per Session Counselors"; and Article Twenty-One "Chapter 683 Program".

B. Assignment as a Counselor Assigned

1. Notice of openings for positions as counselors assigned to district offices or central headquarters shall be posted. The notice shall set forth the job description and qualifications for the positions. Selection for the positions shall be from among qualified applicants who are regularly appointed counselors. Such notices shall be posted in all schools in the district for a position in a district office; or in all schools in the system for a position at central headquarters.

2. Assignment to a district office or central headquarters will be on a voluntary basis for a specified period of time or without limit of time. At the end of the assignment the counselor shall have the right to return to the district from which he/she was assigned. In the case of assignment from a high school or bureau the counselor shall have the right to return to his/her former school or to the bureau.

3. A counselor assigned who requests a return to his/her former position within one year or, if his/her assignment terminates sooner, at the end of the assignment, shall be returned to his/her former school in accordance with his/her seniority.

4. An appropriately selected counselor assigned who requests an opportunity to return to the position from which he/she was excessed shall be returned to that position if within a year a vacancy should occur in that position. If the counselor is serving in a school when the vacancy occurs, the return to position shall be effectuated at the next reorganization unless the school principal agrees to an earlier release.

5. After at least one year as a counselor assigned, a counselor assigned who returns from any leave of absence with pay or from a leave without pay of one year or less shall be returned to the position from which she/he took the leave, in accordance with his/her seniority in that position, provided he/she meets the qualifications for the position as they then exist.

6. After at least one year as a counselor assigned, a counselor assigned who returns from a leave of absence without pay of more than one year shall be returned to that position from which he/she took the leave provided a vacancy exists. If no vacancy exists the counselor will be placed in excess and Paragraph 4 above shall apply.

C. Hours of Service

The hours of service of a counselor assigned shall be thirty-seven and one-half hours per week exclusive of a daily thirty-minute lunch period. The daily schedule of work shall be 9 a.m. to 5 p.m. unless otherwise specified in the assignment.

D. Work Year

1. The work year of a counselor assigned whose work is preponderantly connected with school year instructional programs, their staff and/or students shall be the same work year as a day school counselor and in addition the counselor assigned may be required to serve a week during the Christmas recess, Easter recess or the summer vacation period

2. The work year for all other counselors assigned shall commence on September 1 of each year and end on the following August 31. During each such work year the counselor assigned shall be granted 31 days vacation to be scheduled during the Christmas recess, Easter recess, summer vacation period and such other periods as can be mutually arranged with the bureau or office head.

ARTICLE TWENTY-ONE CHAPTER 683 PROGRAM

Employees who elect to be employed in the Board's program which implements Chapter 683 of the Laws of 1986 ("Program") shall serve under the following terms and conditions of employment during July and August:

1. The gross annual salary rate of each such employee who serves the same student population during the regular work year (September through June) as is eligible to participate in the Program during July and August shall be computed by adding the sum of either:

a. Seventeen and one-half (17½) percent of the applicable gross annual salary rate; or

b. The number of hours served during July and August multiplied by the applicable per session rate; whichever is greater, to the employee's annual salary rate ascertained without consideration of said sum.

2. The pay rate of each such employee who does not serve the same student population during the regular work year (September through June) as is eligible to participate in the Program in July and August shall be the applicable per session pay rate.

3. As set forth in the applicable Board vacancy circulars advertising the positions available, the selection procedure for the Program shall provide a priority to those employees who serve the same student population during their regular work year as is eligible to participate in the Program in July and August.

4. Employees who serve satisfactorily in the Program during July and August for two successive years shall be retained for succeeding years if they apply to serve in the Program during July and August provided they continue to serve the same eligible student population during their regular work year. Retention rights of other employees who serve satisfactorily in the Program during July and August for two successive years shall be subordinate to the rights of those employees who serve the same eligible student population during the regular work year.

5. If there is a reduction of positions in the Program during July and August, employees who are lowest in order of priority for selection will be the first to be retrenched, in inverse seniority order.

6. The work day for employees serving in the Program during July and August shall be six hours exclusive of one-half hour for a duty-free lunch.

7. Employees paid in accordance with Paragraph A of this Article will receive two sick days for use during July and August on a self-treated basis. Unused sick days shall be accrued and credited to the employee's cumulative absence reserve for use during the regular school year.

8. The sabbatical leave pay of employees paid in accordance with Paragraph A of this Article shall be based on their annual salary including the amount computed pursuant to Paragraph A of this Article. The applicable return provision applies to service in the Program with respect to that portion of the sabbatical salary attributable to Program compensation.

9. Guidance counselors serving in the Program during July and August are restricted from serving in any per session activity unless no other qualified applicants are available.

10. In light of the needs of the student population served by the Program, the Board is committed to providing air-conditioned facilities for as many sites as possible. The Board will keep the Union informed of its progress in achieving the objective of air-conditioning all sites utilized by students.

11. The Board official with responsibility for this Program shall meet and consult at times mutually agreed with representatives of the Union on matters of policy and implementation of this Article.

12. Except as otherwise set forth herein:

a. The working conditions for employees paid in accordance with Paragraph A-1 of this Article will be consistent with the standards of working conditions for the regular work year prescribed in this Agreement.

b. The working conditions of employees paid in accordance with Paragraph A-2 of this Article will be those working conditions applicable to per session employees covered by this Agreement.

ARTICLE TWENTY-TWO WORKING CONDITIONS OF PER DIEM SUBSTITUTES

A. Applicability

Per diem substitutes covered by this Agreement are:

1. Full term substitutes: serving after the fifteenth day of the school term for the duration of that term in a full-time or regularly scheduled part-time position.

2. Other-than-occasional: covering the absence of a particular employee for thirty consecutive work days or more.

Per diem substitutes covered by this Agreement shall serve under the terms and conditions of this Agreement except as otherwise set forth in this Article or elsewhere in this Agreement.

B. Pro-Rata Vacation Pay

Per diem substitutes covered by this Agreement shall continue to receive vacation pay on the same basis as heretofore.

C. Welfare Benefits

Only those full-term per diem substitutes who are assigned to a position which is expected to be vacant for the remainder of the term shall be covered by Article 3E (Health Insurance and Welfare Fund Benefits) of this Agreement. Counselors serving in a regularly scheduled part-time position (commonly known as F-status) will be entitled to full health and welfare fund benefits if scheduled to work for at least one-half of the regular full-time schedule for that particular title. Counselors in a regularly scheduled, but less than half-time position are not eligible for health insurance or welfare fund benefits.

D. Sick Leave

Per diem substitutes covered by this Agreement shall continue to receive sick leave on the same basis as heretofore.

E. Inapplicable Provisions

The following provisions of this Agreement shall not apply to any per diem substitute covered by this Agreement: Article Four A (Annuity Fund); Article Four B (Support for Program); Article Ten A (Cumulative Absence Reserves and Sick Leave), B,C,D (Sabbatical Leaves), E (Leaves of Absence Without Pay); Article Eleven (Excessing and Layoff) ; Article Twelve A and B (General Transfers and Hardship Transfers); Article Fifteen E (Suspension); Article Fifteen G (3020-a Procedures).

F. Continuation of Benefits

Nothing contained in this Article or elsewhere in this Agreement shall be construed to deprive a per diem substitute of any benefit currently granted as a matter of Board policy and practice.

ARTICLE TWENTY-THREE CHARTER SCHOOLS

A. Conversion Charter Schools

Pursuant to Article 56 of the New York State Education Law (the “Charter Schools Law”) an existing public school may be converted to a charter school. As modified below, guidance counselors of a Conversion Charter School shall be subject to this Collective Bargaining Agreement, in accordance with the Charter Schools Law, including but not limited to salary, medical, pension and welfare benefits and applicable due process procedures. The provisions regarding the right of return which follow apply to counselors in such Board schools that are converted to charter schools (“Conversion Charter Schools”).

1. At the point of conversion of a Board school to a Conversion Charter School, incumbent employees who choose not to remain as employees in the school as a charter school will have the placement rights contained in Articles 11 and 12 of this Agreement.

2. The Board agrees to extend leaves beyond the statutory two year period to the full term of their employment in the charter school for Board employees who become Conversion Charter School employees. Such employees shall have a right to return to their former geographic district or superintendency in accordance with their seniority. For such employees, service in a Conversion Charter School and Board service shall be combined for all contractual purposes where length of service is a factor.

3. Conversion Charter School pedagogical employees placed at the Board shall be eligible for up to a total of two years credit toward tenure based upon satisfactory service at a Conversion Charter School and any applicable prior Board service.

4. The contractual salary limitations for Conversion Charter School employees placed at the Board shall not apply to certified pedagogical employees.

5. If a Conversion Charter School closes or if the employee is laid off due to economic necessity beyond their control, certified pedagogical Conversion Charter School employees who were not Board employees when hired by the Conversion Charter School shall have placement rights in the Board equal to a certified provisional teacher with no seniority.

6. If a Conversion Charter School closes or if the employee is laid off due to economic necessity beyond their control, uncertified pedagogical Conversion Charter School employees

shall have no placement rights in the Board, but the Board will use its best efforts to place such employees in available vacancies.

7. Conversion Charter Schools shall be required to maintain the same medical, pension and welfare benefits as apply to Board employees covered by this Agreement.

8. Except as otherwise set forth herein, pursuant to and in accordance with the Charter Schools Law, the terms and conditions of this collective bargaining agreement applies to counselors serving in the Converted Charter Schools. However, nothing shall limit the Board of Trustees of the converted Charter School from exercising their rights to modify the collective bargaining agreement for the purposes of employment in the charter school, in accordance with and pursuant to the provisions of Section 2854 3(b) of the Charter Schools Law.

9. While the Charter Schools Law, as written, provides that the decision to apply for conversion of an existing school resides in the parents of the student body, the Board believes the participation of the UFT and its members is critical in this process. The successful conversion of schools to the Charter model necessitates the involvement of the faculty at these schools. Because of this, the Board fully intends to consult with the UFT in the conversion process, and will seek a collaborative atmosphere in moving forward. Towards that end, in Board schools that are under consideration for conversion to Charter School status, if 50% or more of the staff chooses to stay at the Board of Education, the Board and the Union shall undertake a joint review of the impact of conferring charter status on the school.

10. Also, for Board schools that convert to charter status, the Memorandum of Understanding between the Board and the Charter School shall provide that the grievance procedure for UFT employees, unless and until modified in accordance with the Charter School Law, shall be the contractual grievance procedure modified to provide that Step 1 shall be at the level of the head of the school, Step 2 shall be to the Board of Directors of the school and Step 3 shall be to binding arbitration.

B. New Charter Schools

It is agreed that UFT represented employees who leave the Board to serve in a new charter school shall have the following rights:

1. Employees shall be granted a two year leave of absence;
2. Employees returning from a leave of absence shall be credited for time served at the charter school toward their placement on the salary schedule; and
3. Employees shall have a right to return to their former geographic district or superintendency in accordance with their seniority.

ARTICLE TWENTY-FOUR CONFORMITY TO LAW-SAVING CLAUSE

If any provision of this agreement is or shall at any time be contrary to law, then such provision shall not be applicable or performed or enforced, except to the extent permitted by law and any substitute action shall be subject to appropriate consultation and negotiation with the Union.

In the event that any provision of this Agreement is or shall at any time be contrary to law, all other provisions of this Agreement shall continue in effect.

ARTICLE TWENTY-FIVE NO-STRIKE PLEDGE

The Union and the Board recognize that strikes and other forms of work stoppages by counselors are contrary to law and public policy. The Union and the Board subscribe to the principle that differences shall be resolved by peaceful and appropriate means without interruption of the school program. The Union therefore agrees that there shall be no strikes, work stoppages, or other concerted refusal to perform work, by the employees covered by this agreement, nor any instigation thereof.

ARTICLE TWENTY-SIX DEFINITIONS

1. Wherever the term "Board" is used in the agreement it shall mean the City Board, it being understood, nevertheless, that this contract is binding on all community school districts in accordance with Section 2590 of the Education Law.

2. Wherever the term "community school board" or "community board" is used in the agreement it shall mean the board of education of a community district.

3. In determining length of service for any purpose of this Agreement, continuity of service shall not be deemed to be interrupted by absence determined to be due to illness, accident or injury suffered in line of duty or by time spent in military service, the Peace Corps, or VISTA, or by layoff or leave without pay.

ARTICLE TWENTY-SEVEN NOTICE-LEGISLATIVE ACTION

The following article is required by the Public Employees' Fair Employment Act, as amended by Section 204a, approved March 10, 1969:

It is agreed by and between the parties that any provision of this Agreement requiring legislative action to permit its implementation by amendment of law or by providing the additional funds therefor, shall not become effective until the appropriate legislative body has given approval.

ARTICLE TWENTY-EIGHT COPY OF AGREEMENT

The parties will have available copies of this Agreement upon request.

ARTICLE TWENTY-NINE INCORPORATION OF DETERMINATION AND AWARD

The determination and award of the arbitration panel in Case No. 1A-1-85 is incorporated into this Agreement and made a part hereof.

ARTICLE THIRTY DURATION

This Agreement and each of its provisions shall be effective as of October 13, 2007 and shall continue in full force and effect through October 31, 2009.

Negotiations for a subsequent Agreement will commence no sooner than April 30 2009 upon request of either party filed two weeks in advance or as otherwise mutually agreed.

**APPENDIX A
GRIEVANCE FORMS
STEP 1 GRIEVANCE**

School: _____

Name of Grievant _____

Title: (teacher, guidance counselor, etc.): _____

File number: _____

Date Grievance Occurred: _____

Set forth specifically the act or condition and the grounds on which the grievance is based:
Specific contractual article and section alleged to be violated:

Specific remedy sought:

(Signature of Grievant)

Date filed:

Grievance Conference

Date:

Attendees:

Name

Title

Decision including supporting reason:

(Signature)

Date:

**APPENDIX B
USE OF GUIDANCE COUNSELOR TITLE**

September 10, 1972

Mr. Albert Shanker
United Federation of Teachers
260 Park Avenue South
New York, New York 10010

Dear Mr. Shanker:

This is to confirm the understanding reached during negotiations for the 1972-75 agreement concerning licensed guidance counselors. Specifically, that understanding is: Only licensed guidance counselors shall be designated as guidance counselors by the Board. The Board of Education will advise appropriate Board officials that only such persons shall be listed in any Board of Education or school directory or organization sheet.

Very truly yours,
Ida Klaus
Executive Director
cc: Mrs. Dorothy Popper

**APPENDIX C
HEALTH INSURANCE**

In accordance with the LOBA determination and award in Case No. IA-1-85, the following shall apply:

1. Effective July 1, 1983 and thereafter, the Employer's cost for each contract for each Employee under age 65 and for each retiree under age 65 who selects either HIP/HMO or Blue Cross/GHI-CBP (21 day plan) coverage (or a replacement plan) shall be equalized at the community rated basic HIP/HMO plan payment rate as approved by the State Department of Insurance on a category basis of individual or family, e.g. the Blue Cross/GHI-CBP payment for family coverage shall be equal to the HIP/HMO payment for family coverage.

2. If a replacement plan is offered to Employees and retirees under age 65 which exceeds the cost of the HIP/HMO equalization provided in Section 1, the City shall not bear the additional costs.

3. The Employers shall contribute on a City employee benefits plan program-wide basis the additional annual amount of \$30 million to provide a health insurance stabilization reserve fund which shall be used to continue equalization and protect the integrity of health insurance benefits.

4. The health insurance stabilization reserve fund shall be used: to provide a sufficient reserve; to maintain to the extent possible the current level of health insurance benefits provided under the Blue Cross/GHI-CBP plan; and, if sufficient funds are available, to fund new benefits.

5. The health insurance stabilization reserve fund shall be credited with the dividends or reduced by the losses attributable to the Blue Cross/GHI-CBP plan.

APPENDIX D PENSION LEGISLATION

October 17, 2007

Randi Weingarten
President
United Federation of Teachers
52 Broadway – 14th Floor
New York, NY 10004

Dear Ms. Weingarten:

This letter will confirm certain mutual understandings and agreements of the parties.

The parties agree to jointly support legislation to amend current pension provisions that will contain the following elements in order to implement an optional "25/55" retirement program for current employees in the Teachers Retirement System (TRS) and the below listed UFT-represented members in the Board of Education Retirement Systems (BERS) and to provide a revised retirement paradigm for newly-hired employees in TRS and newly-hired UFT-represented members in BERS listed below. The UFT-represented BERS titles to be included are: all nurse and therapists titles, substitute vocational assistants, all non-annualized adult education titles, directors and assistant directors of drug and alcohol programs, sign language interpreters, all military science instructor titles, and all education officer and analyst titles.

The legislation will incorporate the following:

- (1) An "opt-in period" of six months in which any incumbent employee who wishes to participate in this optional program must affirmatively submit a written election to participate.
- (2) Additional Member Contributions (AMC) – in addition to all currently required statutory contributions, an Additional Member Contribution (AMC) of 1.85% shall be paid by those employees electing to participate in this optional program as well as by all newly-hired employees participating in the TRS and newly-hired UFT-represented above listed members participating in BERS retirement systems. These additional member contributions shall become effective on the first business day after the enactment of this enabling legislation.
- (3) Current incumbent employees including those on leave who elect to participate in this optional program and who pay the requisite AMC shall be eligible to retire at age 55

with 25 years of credited service with immediate payability of pension benefits without any reduction. Assuming the legislation is effectuated in the 2007-08 school year, those who elect this pension will be eligible to retire 6/30/2008 or later.

- (4) Employees hired after enactment of this enabling legislation shall be eligible to retire at age 55 with 27 years of service and receive immediate payability of pension benefits without any reduction. This will not be construed to change the eligibility for retiree health insurance benefits (i.e., ten years of credited service and pension payability) as determined by the City and Municipal Labor Committee and in accordance with the Administrative Code.
- (5) To the extent the parties have not captured all of the necessary elements required to be enacted with enabling legislation (e.g., loan provisions, refund rules, etc.), the intent is that those elements shall be analogous to those comparable provisions contained in Chapter 96 of the Laws of 1995. Should the parties be unable to agree on those specific terms in a timely fashion, they agree that the City Actuary, in consultation with the Law Department's Pension Division and the UFT, shall determine the final language for the proposed legislation consistent with the parties' mutual understandings.

If the above accords to your understanding, please execute the signature line below.

Very truly yours,

James F. Hanley

Agreed and Accepted By:

Randi Weingarten
President
United Federation of Teachers

October 17, 2007

Date

APPENDIX E

PROCEDURES FOR PROBABLE CAUSE HEARINGS

On October 2, 2005 the following understanding was reached regarding probable cause hearings:

The UFT will conduct a meeting of lawyers who represent UFT members at 3020-a proceedings to inform them about the new procedures regarding offenses involving sexual misconduct with a student or a minor not a student. During that meeting there will be a discussion of what could constitute probable cause, including that we agree that in a probable cause hearing the hearing officer may accept hearsay as evidence of probable cause, and that a criminal complaint and corroborating affidavit or the SCI report is sufficient evidence to create a rebuttable presumption of probable cause.

APPENDIX F

DISTRICT 79 REORGANIZATION

Memorandum of Agreement entered into this 29th day of June 2007, by and between the Board of Education of the City School District of the City of New York (hereinafter referred to as the “BOE”) and the United Federation of Teachers, Local 2, AFT, AFL-CIO (hereinafter the “UFT”) amending the collective bargaining agreements for 2003-07 and 2007-09 between the UFT and the BOE governing Teachers and the corresponding provisions of the other collective bargaining agreements for 2003-07 and 2007-09 that govern other UFT-represented employees assigned to District 79 (hereinafter collectively the “Contract”) to the extent set forth below.

IN WITNESS WHEREOF, it is mutually agreed to as follows:

1. The UFT will withdraw with prejudice any currently pending grievances related to the reorganization of District 79. The UFT will withdraw with prejudice any currently pending grievances related to (i) the closure of the current GED program (ASHS, CEC, OES, and VTC), (ii) New Beginnings, (iii) Schools for Pregnant Teens, (iv) Second Opportunity Schools and (v) Off-site Suspension Centers (hereinafter collectively, the “Closing Programs”) and the creation of (i) a new GED program known as GED Plus (hereinafter “GED Plus”); (ii) a new school known as Restart; (iii) two new ACCESS schools (hereinafter, collectively, “GED Plus/Restart/ACCESS”) and (iv) a new program for students suspended for one year (hereinafter “the New Suspension Program”) (GED Plus/Restart/ACCESS and the New Suspension Program hereinafter collectively the “New Programs”). The UFT waives any claims under the Contract or under law not yet asserted as to (i) whether the Closing Programs are substantially the same as the New Programs; (ii) whether the BOE complied with its obligation to bargain with the UFT with respect to the BOE’s decision to end the Closing Programs and create the New Programs; and (iii) whether the closure of the Closing Programs, the creation of the New Programs or the resulting personnel actions violate the Contract or any applicable law. The UFT does not waive any claims other than those set forth in this paragraph 1 nor any claim that the BOE violated this Memorandum of Agreement.
2. Section 18D of the Contract will apply to the staffing of the New Programs listed above except that section 18D(3) will apply to one-hundred percent of the bargaining unit positions (not fifty percent of the bargaining unit positions). There will be one personnel committee established for each of the New Programs, but, for GED Plus/Restart/ACCESS, there will be five subcommittees, one for each borough. Grievances challenging whether the personnel committee’s decision regarding the qualifications of individual applicants will be granted if the arbitrator finds that there was no “reasonable basis” for the determination. If one subcommittee finds an applicant qualified for GED Plus/Restart/ACCESS, that applicant shall be deemed qualified for employment in any borough. The GED Plus/Restart/ACCESS personnel committee may require applicants to submit a cover letter or resume explaining how they meet the posted qualifications. The

BOE shall make every effort to have applications, including cover letters, submitted on-line. The subcommittees shall do phone interviews for applicants that have prior commitments that prevent them from coming to in-person interviews. The subcommittees will work according to a single hiring rubric created by the GED Plus/Restart/ACCESS personnel committee. The UFT and BOE will jointly conduct training sessions for members of the five subcommittees on the rubric. The GED Plus/Restart/ACCESS personnel committee and the subcommittees shall consider applicants from all employees in all license areas.

3. Employees excessed from the Closing Programs shall assert a preference as to where they will be deployed in the Absent Teacher Reserve (should they not secure a regular position) as follows: high school employees will list five individual high schools and then a borough; elementary and middle school employees will list five districts and then a borough. Preferences will be granted in seniority order up to a limit of one assignment per fully phased- in school (except in District 79, which is covered by paragraph 4 and not this paragraph 3). Should these employees still be in ATR status in subsequent school years they will be deployed in the same district or borough as the school they were deployed to under the preference system provided for in this paragraph 3.
4. Any actual vacancies in the New Programs that exist as of September 17, 2007 will be filled with excessed employees from the Closing Programs, in license (for GED Plus/Restart/ACCESS, all teaching licenses are appropriate) and in seniority order, under the following conditions: employees placed in these vacancies will serve for the balance of the 2007-2008 school year unless they are removed for disciplinary reasons. At the end of the 2007-2008 school year, if both the principal and employee agree, the employee will be appointed to fill the vacancy in the school. If either the employee or principal do not wish the assignment to continue, the employee will be placed back in ATR status and will be deployed according to the process set forth in paragraph 3 above.
5. The Second Opportunity Schools (hereinafter “SOS”) and Off-Site Suspension Centers (“OSC”) will close effective August 29, 2007. Employees currently working in SOS who wish to work in the New Suspension Program will be selected for the New Suspension Program. The second sentence of paragraph 6, the first sentence of paragraph 10 and the entire paragraph 12 of the Stipulation of Settlement executed November 17, 2006 with respect to SOS (the “Stipulation”) shall apply to the New Suspension Program (the provisions in Paragraph 12 shall apply only to alleged violations of the second sentence of paragraph 6 and the first sentence of Paragraph 10 of the Stipulation). Those employees having rights under the first sentence of paragraph 10 of the Stipulation may, alternatively, choose to be deployed as an ATR according to the process set forth in paragraph 3 of this Agreement above. Nothing contained herein shall be construed as a waiver of any provision of the Stipulation until SOS and OSC are closed. Placement in the New Suspension Program shall continue to be voluntary. Staff presently assigned to SOS will have the right to remain in the New Suspension

Program. Current SOS and OSC employees will notify the BOE by June 30, 2007 whether they will choose to work the SOS summer 2007 session. SOS employees will be given the opportunity to indicate by July 13, 2007 whether they will choose to work in the New Suspension Program or, alternatively, whether they will choose to be deployed as an ATR according to the process set forth in paragraph 3 of this Agreement above.

6. The New Suspension Program's summer school program (hereinafter the "Suspension Summer Program") will be governed in all respects by the provisions of the Contract and Chancellor's Regulations governing per session programs, except that the pay for such summer service for UFT-represented employees will be pro-rata. Employees working in the New Suspension Program shall have preference for the Suspension Summer Program.
7. Current SOS employees will be rated on their performance during the summer of 2007. Those who receive a satisfactory rating and who worked in SOS during the summer of 2006 and received a satisfactory rating for the 2005-2006 school year will have retention rights under Section 15c2(a) of the Contract for work in 2008 Suspension Summer Program.
8. The BOE will post teaching positions that will support pregnant and parenting teens across the system. 100% of the teachers currently serving in the School for Pregnant Teens who apply and meet the posted qualifications will be hired for these positions. The BOE will consult with the UFT regarding the posting for these positions. These teachers will be deployed out of the BOE's LYFE centers and referral centers ("hubs") where appropriate and the BOE will consult with the UFT regarding such deployment decisions. No LYFE Center shall be closed through at least the 2008-2009 school year.
9. The UFT will serve on a committee to be established by the BOE, which may also include advocates, community representatives and experts, to examine and make recommendations regarding best practices in supporting students across the system who are pregnant or parenting teens.
10. District 79 staff who are excessed from the Closing Programs will have the right of return to a vacancy in New Programs in seniority order if they were found qualified by an 18D committee but did not secure the position because more senior qualified applicants were selected. For the programs in which multiple licenses are appropriate, all license areas will be grouped together for purposes of determining seniority with respect to the previous sentence.

11. All other terms of the Contract shall remain in full force and effect unless it is otherwise amended by or are inconsistent with the terms of this Memorandum of Agreement.

Agreed to this ____ day of June 2007:

Department of Education

/s/ Joel Klein

United Federation of Teachers

/s/ Randi Weingarten

**APPENDIX G
FALSE ACCUSATIONS**

Joel I. Klein
Chancellor
Department of Education
52 Chambers Street
New York, NY 10007

December 17, 2007

Randi Weingarten
President
United Federation of Teachers
52 Broadway
New York, NY 10002

Dear Ms Weingarten,

Notwithstanding any provision of the Teacher CBA (and corresponding provisions in other UFT contracts) to the contrary, the parties agree that grievances may be initiated under Article 21H (False Accusations) of the Teacher Agreement (and corresponding provisions in other UFT contracts) for the purpose of securing implementation of its specific provisions, including removal of material from the employee's personnel file.

Sincerely,

Joel I. Klein