

**THIS MEMORANDUM OF AGREEMENT (“MOA”) MADE ON JANUARY 10, 2024 BY AND  
BETWEEN:  
THE U.S. DEPARTMENT OF EDUCATION (“AGENCY” OR “ED”)  
AND  
THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 252, AFL-CIO  
(“AFGE” OR “UNION”), (COLLECTIVELY, THE “PARTIES”)  
CONCERNING  
GROUND RULES FOR NEGOTIATIONS FOR A SUCCESSOR TERM COLLECTIVE BARGAINING  
AGREEMENT**

The Parties will bargain in good faith as required by relevant portions of 5 U.S.C. § 7101 et. seq. and as required by these ground rules for bargaining a new term collective bargaining agreement.

All articles and sections, and associated memorandum of understanding (MOUs) covered by the Interim Agreement dated October 20, 2022, between the US Department of Education and AFGE Local 252, (the “Interim CBA”), will remain in full force and effect until all bargaining over a new term collective bargaining agreement has concluded. For purposes of these term negotiations, bargaining includes Federal Mediation and Conciliation Services (FMCS) and Federal Service Impasses Panel (FSIP) procedures, Union ratification procedures, and Agency Head review.

The following are the sole and exclusive ground rules to govern all negotiations incident to bargaining of a new term Collective Bargaining Agreement (CBA) between ED and AFGE, (these “Ground Rules”). The undersigned Parties agree and acknowledge the following:

**SECTION 1. GENERAL PROVISIONS.**

- 1.1 This ground rules agreement (“GR Agreement”) is to be interpreted in accordance with all applicable laws, rules, and regulations.
- 1.2 By entering into this GR Agreement, neither party waives any of its rights under the Federal Service Labor-Management Relations Statute (the Statute).
- 1.3 These Ground Rules are not anticipated to address every item that may arise during the negotiation process. The Chief Negotiators may amend in writing any provisions by mutual consent.
- 1.4 Unless otherwise noted, “days” refer to “calendar days”. Reference to “workdays” is understood to be Monday thru Friday (5 U.S.C. 6101) for all intents and purposes.
- 1.5 The Ground Rules will become effective upon Agency Head review and approval pursuant to 5 USC 7114 (c).
- 1.6 This GR Agreement will remain in force and effect until such time as negotiations are completed and a new CBA is in effect.

- 1.7 The current Articles and MOUs contained in the Interim CBA between the US Department of Education and AFGE Local 252 will remain in effect until the Parties have completed negotiations over a new CBA. All other MOUs between the Parties will function and expire based on their expressed terms and conditions consistent with the terms in the Interim CBA Section 8.03.
- 1.8 Each Party agrees it will bear its own expenses associated with the CBA negotiations, except as otherwise provided for in this GR Agreement, as outlined in Section 7.2 below.

## **SECTION 2. BARGAINING TEAMS.**

- 2.1 Unless otherwise provided for by law and/or regulation, each Party will provide service and all notifications required herein to the Chief Negotiator of the other Party, along with his/her/their designee.
- 2.2 Each Party may have no more than eight (8) team members, including the Chief Negotiator and second (2<sup>nd</sup>) chair. Each Party must provide to the other Party written notification of the names and contact information of their respective bargaining team members within thirty (30) calendar days of signing this GR Agreement. Any permanent changes to the Chief Negotiator and bargaining team member designations shall be in writing.
- 2.3 A quorum for each Party shall be three (3) persons consisting of the Chief Negotiator and two (2) other bargaining team members. Negotiations will not be conducted until a quorum for each Party is present. The Parties will make every reasonable attempt to make and to maintain a quorum for each scheduled bargaining session. The Parties will provide written notice, as soon as possible, generally construed to be no later than the day before the applicable session, to the other party if they are unable to meet quorum.
- 2.4 Each Chief Negotiator may substitute alternates for any member(s) of his/her/their team, including the role of Chief Negotiator. Alternates will be entrusted with the same rights and authorities as the team member he/she/they replace.
- 2.5 Absent exigent circumstances, the Party requiring substitution, of the Chief Negotiator or a team member, must notify the other Party no later than two (2) business days prior to the session in which the substitute will be participating.
- 2.6 Chief Negotiators, or their designee when acting in the role of Chief Negotiator, will have full authority to make commitments on any matter negotiated. For any given session, only those designated as Chief Negotiator may make agreements on behalf of their respective Party.

**SECTION 3. OFFICIAL TIME.**

- 3.1 The number of employees for whom official time is authorized under this GR Agreement shall not exceed the number of individuals designated as representing the Union for such purposes.
- 3.2 In accordance with 5 U.S.C. § 7131(a), members of the Union's bargaining team shall be granted official time for negotiations, including to attend associated mediation and impasse proceedings, during the time the employee would otherwise be in a duty status. On days when the Parties are actively bargaining, negotiation team members may use official time to caucus before and after a negotiation session during the time in which the employee would otherwise be in a duty status. However, time spent in such sessions will not otherwise alter or extend the bargaining schedule set forth in this GR Agreement. In accordance with 5 USC 7131(c), the Authority shall determine whether Union representatives on the bargaining team will be authorized official time for participating in proceedings before the FLRA.
- 3.3 In accordance with 5 U.S.C 7131 (d), to ensure the Union's team members are available and prepared for bargaining sessions, sixteen (16) hours per bargaining team member, per pay-period is available for the Union's bargaining team for bargaining preparation. Individual managers will release the Union bargaining team members for such purposes pursuant to the terms of Sections 14.05(A)(9) and 14.06 of the Interim CBA. The bargaining schedule is outlined in Section 6.2, below. Bargaining Team members will be released from Agency work in accordance with the terms of this GR Agreement upon its execution unless there is a bona fide work consideration. Bona fide work considerations are immediate or time-sensitive assignments that cannot reasonably be performed by another employee.
- 3.4 Pursuant to Human Capital Policy 430-1 Section VII.G.15 and, and Section 14.06(A) and 23.09(C) of the Interim CBA, the workloads of the Union's bargaining team members will be adjusted or reduced to accommodate term bargaining.
- 3.5 Pursuant to the Interim CBA, Article 14, Local 252 Officers and Stewards who are not official members of the Union's bargaining team may be granted official time to assist with CBA preparation work. A bank of eight (8) hours total of official time per pay period is available for this purpose. Requests will not be unreasonably denied.
  - 3.5.1 AFGE will provide a list of Local 252 Officers and Stewards (name, POC, and supervisor) selected to assist with CBA preparation no fewer than three (3) workdays in advance of the proposed assignment.
  - 3.5.2 Requests for official time to assist with CBA preparation will be made to supervisors, with a copy to LERD Director, Adriane Riase (and, for FSA employees, Tisha Elliott), or designee, as required by Article 14 of the Interim CBA.

**SECTION 4. OBSERVERS & SUBJECT MATTER EXPERTS.**

- 4.1 Each Party may have a maximum of five (5) observers per bargaining session. All observers who attend one (1) or more negotiation session(s) will do so in a non-duty status. Bargaining unit employees may be authorized leave or other approved non-duty status for this purpose. The Parties agree to not utilize observers as witnesses in third (3<sup>rd</sup>) party actions related to this CBA term bargaining.
- 4.2 The Parties will exchange the list of observers, including the observer's name, the employee's email address, and date and time observing, by no later than one day prior to the beginning of the negotiation session in which observers will attend.
- 4.3 Observers may only attend virtually, and may not participate in negotiations, including talking or utilizing the chat feature in MS Teams. Observers may attend caucuses with their respective team.
- 4.4 Subject Matter Experts (SMEs) may be requested and/or offered by each Party and will be permitted to participate by mutual agreement. Requests and/or offers for SMEs will not be unreasonably denied. SMEs do not serve as team members. SMEs who are Agency employees are not entitled to official time but will be on duty time.

To preserve the integrity of the bargaining process, and to promote the open exchange of interest and viewpoints, the Parties agree that any communications to parties not at the bargaining table will not contain personal attributions or attacks concerning bargaining team members from either Party. This does not restrain either Party from providing bargaining updates to their respective constituencies. This provision is applicable to all participants and/or attendees. Management is prohibited from retaliating against observers for attending bargaining sessions.

- 4.5 The Agency agrees to share a MS Team link with all pre-designated observers for all bargaining sessions, including in-person.

**SECTION 5. BARGAINING SCOPE.**

- 5.1 The Parties agree to exchange their list of proposed articles for term negotiations no later than thirty (30) days after the execution of this GR Agreement. Current articles that do not appear on either list will be rolled over to the new term agreement. Rolled over articles will be signed and dated by the Chief Negotiators before bargaining begins over the articles to be reopened.
- 5.2 By mutual agreement of the Parties, articles which the Parties initially agreed to re-open may be rolled over.

- 5.3 The Parties agree to exchange MS Word versions of their two (2) initial article proposals electronically no later than forty (40) days after the execution date of this GR Agreement. All proposals must include the existing 2022 Interim CBA language and newly proposed language.
- 5.4 The Parties will discuss their selections before bargaining begins. Thereafter, the Parties will rotate selection and presentation of articles for discussion, beginning with AFGE and then the Agency. The Parties may mutually agree to vary from this requirement as necessary.
- 5.5 The Parties agree to bargain each article to agreement or stalemate. A stalemate is defined as a circumstance where the Parties mutually agree to table an article and move on to a subsequently introduced article. The Parties shall return to tabled articles by mutual agreement or upon conclusion of bargaining for all non-tabled articles.

## **SECTION 6. BARGAINING SCHEDULE.**

- 6.1 Full-term bargaining will begin no later than sixty (60) days after the Ground Rules are effective.
- 6.2 Negotiations will be conducted every other week for three (3) consecutive days per bargaining session. For example:
  - Week 1: Tuesday - Thursday (3 days)
  - Week 2: OFF
- 6.3 In the event either Party has a negotiation scheduling conflict, the Chief Negotiator of the Party that has the scheduling conflict will contact the other Chief Negotiator to discuss potential alternative scheduling options.
- 6.4 Negotiation sessions that fall in the week of a federal holiday will be rescheduled to the following week. Subsequent sessions will remain on schedule.
- 6.5 Bargaining will be conducted on Tuesday through Thursday for 3-day bargaining sessions. All bargaining will occur from 10:00 am to 4:00 pm ET. Modifications and/or additional days or times may be added by mutual agreement of the Parties.
- 6.6 At the end of the last negotiation day of each negotiation week, the Parties will discuss the agenda for the next scheduled bargaining week.
- 6.7 Time will be allotted for a 15-minute morning and afternoon break as well as a thirty (30) minute lunch as well as any additional mutually agreed upon breaks.

**SECTION 7. BARGAINING PROCEDURES.**

- 7.1 Bargaining will be held virtually using the MS Teams, or equivalent, platform. Generally, the Chief Negotiators shall be on camera and bargaining team members' cameras should be turned on when speaking. Management will be responsible for sending out the meeting invites.
- 7.2 By mutual agreement, the Parties may substitute one (1) or more virtual bargaining session(s) for face-to-face bargaining.
  - 7.2.1 Whenever the Parties decide to engage in face-to-face bargaining, the Agency will pay reasonable travel expenses, including cost of transportation, hotel and per diem, for employee members of the Union's bargaining team and management's bargaining team. The Parties will first agree to the location of face-to-face bargaining if the Parties agree to substitute face-to-face bargaining. Reimbursement amounts will be awarded pursuant to the Federal Travel Regulations and Agency policy. If the Parties cannot agree on the location for face-to face bargaining, either Party may rescind their agreement to engage in face-to-face bargaining without repercussions.
  - 7.2.2 Negotiating team members who are not Agency employees will be on their own time and will be responsible for their own expenses.
- 7.3 Unless otherwise mutually agreed, counterproposals will be electronically provided to the Chief Negotiator as soon as possible prior to the beginning of the bargaining session where the proposal(s) will be discussed. The receiving Party may submit questions about the other Party's proposal(s) or wish to explain positions. Extensions may be requested and will not be unreasonably denied.
- 7.4 The Party introducing a proposal/counter proposal will identify any changes made and provide the meaning, objectives, and interests related to the proposal. There will be opportunity for questions and answers, additional information, requests for data pursuant to Section 7114(b)(4) of Title 5 U.S.C., and other discussion and interchange.
- 7.5 The Union's proposals/counterproposal(s) will identify newly proposed language in bold and will identify any deletions with a strikethrough. The Agency's proposals/counterproposal(s) will identify newly proposed language in underline and will identify any deletions with a double strikethrough. Existing, unchanged contract language from the 2022 Interim CBA will remain in black font. Either Party reserves the right to revert to utilization of MS Word's Track Changes should the proposed process of edits and entries become too cumbersome.
  - 7.5.1 The Parties will follow this procedure as indicated in Section 7.5 above with a good faith effort to reach agreement.

- 7.6 It is agreed that while the Parties may follow traditional approaches of exchanging proposals (as outlined above), each Party is free to employ either traditional and/or Interest Based Bargaining (IBB) techniques such as the IBB practice of discussing interests and suggesting language changes before formally proposing language changes.
- 7.7 Agreement may be reached on an article, an article section, or a proposed article provision. Once agreement is reached, AFGE's Chief Negotiator, or designee will indicate the parties' final agreement in WORD. AFGE's Chief Negotiator, or designee, will create an Adobe Acrobat PDF of the agreed upon terms. After agreed upon language is transferred to the PDF and the PDF is reviewed for accuracy, each Chief Negotiator will confirm tentative agreement by affixing their signature, electronically or physically, as appropriate, and date to the PDF agreement. Tentatively agreed upon articles, sections, or individual provisions are not subject to further negotiation, except by mutual agreement.
- 7.8 By mutual agreement, the Chief Negotiators may determine that matters presented for midterm bargaining may be completed during the term bargaining. However, such matters bargained during term bargaining may include an expiration date separate and apart from the new term agreement. Should the Parties disagree on the termination date of a MOU for a midterm matter, either Party may elect to sever that matter from the term bargaining agreement with negotiations to be completed as a midterm bargaining matter.
- 7.9 Each Party may call caucuses at any time. The length of the caucus will be determined by the Party who calls the caucus. The Chief Negotiator of the team in caucus will update his/her/their counterpart no fewer than fifteen (15) minutes prior to the end of the called caucus if additional time is needed. If the additional time is projected to go beyond the time allotted for bargaining, the Chief Negotiator of the Party who called the caucus will immediately inform his/her/their counterpart, and the Parties agree to close out bargaining for the day.

## **SECTION 8. RECORDS OF MEETINGS.**

- 8.1 Absent mutual consent of the Parties, recording devices, including, but not limited to, cell phones and tape recorders, will not be used in the negotiations, nor will verbatim transcripts or formal minutes of the proceedings of any negotiation session be made.
- 8.2 Each Party is responsible for keeping its own record of the negotiations; however, these records will not be interpreted as minutes of the sessions.
- 8.3 Each Party may employ at their own expense one (1) note-taker. However, note-takers may not participate in the bargaining process and will not be counted as team members for the purposes of the bargaining teams maximums.

## **SECTION 9. NEGOTIABILITY APPEALS.**

- 9.1 Pursuant to 5 U.S.C. § 7117, management has the right to declare proposals non-negotiable. Before pursuing the involvement of the FLRA in any negotiability dispute, the Parties may explore alternative language that will achieve the purpose of the proposal and would not render the proposal non-negotiable. If the Parties are unable to settle a negotiability dispute, the Union reserves the right to file a negotiability appeal with the FLRA in accordance with 5 U.S.C. § 7117. The Agency will present a formal declaration of non-negotiability upon the request of the Union. The Union may appeal the declaration of non-negotiability of an article to the FLRA pursuant to Authority regulations.
- 9.2 If there is a negotiability dispute that arises during bargaining, the Parties agree to first request the assistance of FLRA's alternative dispute resolution service, currently known as Collaboration and Alternative Dispute Resolution Office (hereinafter "CADRO"), and to fully participate in the proceedings.
- 9.3 Any pending action, negotiability appeal or unfair labor practice, related to the scope of articles in term bargaining will not delay continued bargaining on other, unrelated, issues associated with a particular article, other articles, and/or proposed article provisions. Where appropriate, the Parties will make every attempt to reach agreement on all other provisions in the subject article at issue and will initial/sign articles and article provisions once agreement is reached.
- 9.4 If the use of the FLRA's CADRO or equivalent service is successful in resolving an issue of negotiability but not the merits of a proposal(s) that were the source of the negotiability issue, the Parties will resume negotiations regarding the merits of the proposal(s). This procedure does not apply to proposals where the negotiability issue is not resolved by CADRO or equivalent service.
- 9.5 The Parties agree to be bound by final decisions issued by the FLRA, or, where applicable, any appropriate third (3<sup>rd</sup>) party decision maker.
- 9.6 If management withdraws its allegation of non-negotiability, or if the FLRA determines that the proposal(s) declared non-negotiable is (are) negotiable, the Parties within three weeks of the determination, or receipt of the FLRA's decision on the matter, or as soon as is reasonably possible, will negotiate over the negotiable proposal(s).

## **SECTION 10. IMPASSE PROVISIONS.**

- 10.1. After all proposals have been discussed, the Parties, individually or jointly may request the assistance of the Federal Mediation and Conciliation Service (FMCS) to help resolve final issues. If a request to the FMCS is made individually, the requesting Party will notify the other Party of the request at the time the assistance is sought.
- 10.2 The Parties will work in good faith with the mediator to find resolution of outstanding issues. Mediation will continue until an agreement is reached or the mediator determines the parties are at impasse.



- 10.3 In the event the mediator declares that the Parties are at impasse, the Parties, individually or jointly, may submit the matter(s) to the Federal Services Impasses Panel (FSIP). Only those articles or provisions for which impasse has been officially declared will be submitted to the FSIP. If a request to the FSIP is made individually, the requesting Party will notify the other Party of the request at the time the assistance is sought.
- 10.4 The utilization of mediation and the involvement of the FSIP does not, in any respect, preclude the Parties from engaging in direct negotiations at any time to attempt to resolve the dispute(s) at issue.

## **SECTION 11. RATIFICATION.**

- 11.1. No more than fifteen (15) workdays after the completion of term negotiations, management shall consolidate the articles tentatively agreed and forward to the Union for concurrence of the accuracy of the consolidation. The Union shall have fifteen (15) workdays to complete its review and notify management of any errors. Upon receipt of the Union's response, management will have fifteen (15) workdays to validate and, if required, apply corrections. The Parties will execute the consolidated agreement no later than twenty (20) workdays after the Parties finalize all articles (the "Consolidated Agreement").
- 11.2. The Union will have up to thirty (30) days after the Parties execute the Consolidated Agreement to conduct a ratification vote. The Union will notify the Agency in writing of the results of any ratification vote no later than five (5) workdays following the ratification vote.
- 11.3. If the Consolidated Agreement is not ratified, the Union will notify the Agency within the five (5) workdays provided for in Section 11.2 above. Such notification will include the specific article(s) and/or article provision(s) that prevented ratification, as well as proposed language that, if adopted, would allow for ratification. Absent a mutually agreed extension, failure to notify the Agency of the failed ratification within the five (5) workdays constitutes an adoption of the Consolidated Agreement in full and a waiver of the right to renegotiate any portion thereof, notwithstanding the results of a ratification vote.
- 11.4. Following notice of failure to ratify, management will have fourteen (14) workdays to notify the Union if the Union's proposed language is agreeable or if negotiations need to resume. If management chooses not to adopt any of the Union's proposed language, the Parties shall reconvene to renegotiate within seven (7) workdays of the Agency's written notification to the Union. The Parties will have thirty (30) workdays to re-negotiate the article(s) and/or article provision(s). Renegotiations will be conducted pursuant to the terms of this GR Agreement and restricted to those articles and/or article provisions that prevented ratification, unless otherwise mutually agreed by both Parties. If agreement is reached on the article(s) and/or article provision(s) that were renegotiated, the Union will then have ten (10) days to ratify the Consolidated Agreement. The articles and article

provisions therein that were previously ratified will not be subject to the ten (10) day ratification vote.

- 11.5. If the Parties are unable to reach agreement on the unratified term(s) within the thirty (30) workdays timeframe, the Parties jointly will request assistance from the FSIP. In this instance, all other articles signed off and agreed to will be considered “executed.”
- 11.6. Upon full ratification of the Consolidated Agreement, the Chief Negotiators, or their designees, shall engage in mutual review of the Consolidated Agreement for grammatical or typographical errors, and update as appropriate cross-referenced language in rolled-over articles that are impacted by or inconsistent with reopened articles. The Chief Negotiators must mutually agree to any resulting updates and/or corrections and execute the resulting version of the Consolidated Agreement no later than ten (10) workdays after mutual review is completed (the “Final Agreement”).
- 11.7. Management will forward the Final Agreement for Agency Head Review no later than three (3) workdays from the date the Final Agreement is executed. The date upon which the Parties sign the Final Agreement shall serve as the date of execution for the purposes of Agency Head Review pursuant to subsection 7114(c) of Title 5 U.S.C. (that is, the date that triggers the Agency Head Review pursuant to subsection 7114(c) of Title 5 U.S.C.).

## **SECTION 12. AGENCY HEAD REVIEW.**


- 12.1. If the Agency Head disapproves the Final Agreement and asserts one (1) or more provisions is(are) contrary to law, the official Agency Head decision shall be served to the Union’s chief negotiator and [afgelocal252@ed.gov](mailto:afgelocal252@ed.gov) in writing, by electronic mail with delivery and read receipts. The Agency’s decision shall clearly cite in writing the specific law(s) and/ or regulation(s) violated and provide with specificity the article(s) and section(s) so disapproved. In demonstrating service on the Union by electronic mail, the written disapproval shall be sent to the electronic mail address on file with management at the time of service.
- 12.2. In the event the Agency Head disapproves any provision of the Final Agreement, and all requirements noted in section 12.1 above have been met, the parties shall reconvene to begin renegotiations for those article(s) and/or article section(s) that were disapproved in accordance with the procedures outlined in this GR Agreement no later than ten (10) days from the date the disapproval was issued to the Union. Renegotiations will be conducted pursuant to the terms of this GR Agreement. The Parties may request the assistance of FMCS mediation. If an agreement is not reached by the end of thirty (30) workdays, either Party may then request the assistance of the FSIP.
- 12.3. By mutual agreement, the Parties may agree to implement final articles that were not explicitly disapproved at Agency Head Review.

- 12.4. Following the Agency Head's disapproval of any provisions, the Parties may mutually agree to sever the challenged Article(s) from the Agreement and the remaining finalized Articles will go into effect.
- 12.5. If the Agency Head fails to approve or disapprove the Final Agreement within the thirty (30) day period, the Final Agreement and provisions therein shall take effect on the thirty-first (31st) day from the date of execution and shall be binding on the Parties. The effective date of the new CBA will be clearly stated on the Agreement's cover page.

By my signature below, I attest that I am duly authorized to sign on behalf of my organization:

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James E Wesley III, Chief Negotiator  
Agency (Department of Education)



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Sheria Smith, Chief Negotiator  
Union (AFGE, Local 252)