

## **School Board Resolution for Collective Bargaining in Alexandria City Public Schools**

**WHEREAS**, the Virginia Constitution vests authority to supervise schools in local school boards; and

**WHEREAS**, the 2020 General Assembly amended Virginia Code § 40.1-57.2 to repeal the prohibition against collective bargaining for school board employees beginning May 1, 2021; and

**WHEREAS**, the legislation grants school boards the authority to recognize any organized employee association or labor union to exclusively represent school employees, to certify/decertify freely chosen exclusive representatives, and to collectively bargain and enter into collective bargaining agreements with an exclusive representative; and

**WHEREAS**, no resolution to authorize collective bargaining shall include provisions that restrict the Alexandria City School Board's ("Board") authority to establish its budget or ~~influence the appropriation appropriate of~~ funds; and

**WHEREAS**, the Board believes a cooperative relationship with its employees protects the public interest, advances the mission of the Board, assures orderly school operations, improves the work environment for employees, and enhances the quality of education for students; and

**WHEREAS**, collective bargaining gives the Board the opportunity to provide the best services and education to the citizens of Alexandria through shared objectives, rights, and responsibilities; and

**WHEREAS**, collective bargaining is the appropriate means to establish and foster cooperative relations between the Board and its employees; and

**WHEREAS**, the purpose of this Resolution is to establish rights, responsibilities, and procedures for a system of Collective Bargaining in good faith by Employees and the Board.

**NOW, THEREFORE, BE IT RESOLVED** that the Board hereby recognizes the right of Employees to freely organize, form, join, assist, or participate in Employee Associations; to Collectively Bargain; and to engage in other concerted activities for mutual aid and protection under the terms of this Resolution; and

**BE IT FURTHER RESOLVED** that the Board hereby recognizes the right of Employees to freely select, should they choose to do so, Exclusive Representative(s) for the purposes of Collective Bargaining and entering into written agreements; and

**BE IT FURTHER RESOLVED** that the framework for assuring the effective and orderly process of Collective Bargaining in good faith shall include the following:

### **SECTION 1. DEFINITIONS**

The terms in this Resolution have the meanings defined below unless stated otherwise.

- A. "Administrative Employee" means principals, assistant principals, and supervisors who are required by their job description to have an endorsement issued by the Virginia Department of Education in administration and supervision preK-12, including 11-month and 12-month Administrative Employees.
- B. "Bargaining Unit" means a group of Employees with common employment duties, license

requirements, and/or interests who desire an Exclusive Representative for the purpose of Collective Bargaining and who demonstrate sufficient interest to trigger an election for an Exclusive Representative under the terms of this Resolution. However, nothing in this Section shall be interpreted to imply that more than one (1) Bargaining Unit must seek certification at the same time. Initially, tThere shall ~~ultimately~~ be two (2) Bargaining Units of Employees, as follows:

1. Licensed Personnel – means any non-administrative Employee, as defined herein, whose school employment requires a license from the Virginia Board of Education or Virginia Department of Health Professions. This includes, but is not limited to, all teachers, school counselors, specialists, librarians, school psychologists, social workers, speech pathologists, department chairs, and 10-month, 11-month, and 12-month Licensed Personnel.
2. Education Support Professionals – means all Employees, as defined herein, except Licensed Personnel, including 10-month, 11-month, and 12-month Education Support Professionals.

After a period of three (3) years, Administrative Employees, as defined herein, will constitute a third Bargaining Unit of Employees.

- C. “Benefits” means leave (paid and unpaid leave, vacation, and holidays), disability insurance, health insurance, and life insurance (including contributions and levels of coverage), excluding Benefits that are provided or administered solely by the Commonwealth of Virginia through the Virginia Retirement System, or any other Benefits established by and administered in accordance with the Code of Virginia over which the Employer does not have sole control.
- D. “Business Day” means a day that the Employer is open.
- E. “Collective Bargaining” or “Bargain Collectively” means to perform the mutual obligation by representatives of the Employer and an Exclusive Representative to meet at reasonable times and negotiate in good faith with respect to wages, Benefits, and Terms and Conditions of Employment, as defined herein, or to resolve questions arising under a Collective Bargaining Agreement. This definition does not include negotiation of subjects that are prohibited under this Resolution or by federal, state, or local law or regulation. In the performance of this obligation, neither party shall be compelled to agree to a proposal or be required to make a concession to the other.
- F. “Collective Bargaining Agreement” means a contract between the Employer and an Exclusive Representative of Bargaining Unit Employees authorized by this Resolution and resulting from Collective Bargaining, as defined herein. Any agreement reached by Collective Bargaining shall be subject to approval, budgeting, and annual appropriation of funds to the Employer ~~by the Alexandria City Council~~.
- G. “Confidential Employee” means an employee whose job duties require access to confidential, budgetary, or fiscal information, personnel data, management emails, or strategy relevant to subjects of Collective Bargaining, as defined herein, or an employee in any department who assists in a confidential capacity or a person who formulates, determines, or effectuates school policies in the fields of labor or employee relations. Confidential Employees include, but are not limited to, employees who work in or for:
  1. The Office of the Board and any Clerk/ Executive Assistant/ Specialist assigned thereto;

2. The Office of the Superintendent and any Clerk/ Executive Assistant/ Specialist assigned thereto;
  3. The Superintendent's Cabinet and any Clerk/ Executive Assistant/ Specialist assigned thereto;
  4. The Department of Human Resources;
  5. The Department of Financial Services; and
  6. The Office of Division Counsel and any direct reports assigned thereto.
- H. "Employee" means an employee of the Employer who is not an Administrative Employee, Confidential Employee, Temporary Employee, Supervisory Employee, Intern, or a member of the Board, unless such member is an employee who would otherwise be entitled to engage in Collective Bargaining under the terms of this Resolution.
- I. "Employee Association" means any union or organization of public employees that exists for the purpose, in whole or in part, of dealing with public employers concerning Collective Bargaining, grievances, labor disputes, wages, Benefits, and Terms and Conditions of Employment, as defined herein.
- J. "Employer" or "Board" means the Alexandria City School Board or Alexandria City Public Schools.
- K. "Exclusive Representative" means an Employee Association certified by the Employer pursuant to this Resolution to represent a Bargaining Unit in the Collective Bargaining process.
- L. "Impasse" means the failure of the Employer and an Exclusive Representative to reach agreement in the course of negotiations or to resolve questions arising under a Collective Bargaining Agreement.
- M. "Intern" means individuals who are completing course work or are working in a professional field and who are working at the Employer to gain supervised practical experience or to support the Employer's activities, with or without compensation, on a less than permanent basis.
- N. "Lockout" means any action taken by the Employer to interrupt or prevent the continuity of work usually performed by Bargaining Unit Employees for the purpose of and with the intent to either coerce Employees into relinquishing rights guaranteed by this Resolution or of bringing economic pressure on Employees for the purpose of securing the agreement of their Exclusive Representative to certain Collective Bargaining terms.
- O. "Mediation" means assistance by a Neutral to reconcile an Impasse between the Employer and an Exclusive Representative through nonbinding interpretation, suggestion, recommendation, and/or advice.
- P. "Neutral" means an experienced labor relations professional mutually selected by the parties in accordance with the terms of this Resolution.
- Q. "Strike" means an Employee who, in concert with two (2) or more other employees of the Employer, for the purpose of obstructing, impeding, or suspending any activity or operation of their employing agency or any other governmental agency, willfully refuses to perform the duties of their employment.

- R. "Supervisory Employee" means employees that have authority in the interest of the Employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees; or responsibility to direct them; or to adjust their grievances; or effectively to recommend such action, if the exercise of this authority is not merely of a routine or clerical nature, but requires the exercise of independent judgment.
- S. "Terms and Conditions of Employment" means, during the term of the first Collective Bargaining Agreement negotiated between the Employer and an Exclusive Representative, only the topics, up to a maximum of ~~six~~ four (64), excluding those subjects and rights reserved to the Employer in this Resolution, agreed to by the Exclusive Representative and the Employer before the commencement of Collective Bargaining negotiations, ~~excluding those subjects and rights reserved to the Employer in this Resolution. Notwithstanding the foregoing, the Employer and an Exclusive Representative may negotiate additional topics during the term of the first Collective Bargaining Agreement if agreed upon by the Employer and the Exclusive Representative before the commencement of Collective Bargaining negotiations.~~ In each successor Collective Bargaining Agreement, the definition of "Terms and Conditions of Employment" will not be limited to a predetermined number of topics, aside from the exclusion of those subjects and rights reserved to the Employer in this Resolution~~the Exclusive Representative and the Employer may each make proposals to Collectively Bargain up to two (2) additional Terms and Conditions of Employment topics, agreed to by the Exclusive Representative and the Employer before the commencement of Collective Bargaining negotiations, excluding those subjects and rights reserved to the Employer under this Resolution.~~
- T. "Temporary Employee" means a non-contracted, hourly employee of the Employer who is engaged to provide services in time-limited positions (e.g., casual labor).

## **SECTION 2. RIGHTS AND RESPONSIBILITIES**

### A. Employees shall have the right to:

1. Organize, form, join, or assist and pay dues or contributions to any Employee Association.
- ~~23.~~ 23. Collectively Bargain through an Exclusive Representative of their own choosing.
- ~~34.~~ 34. Engage in other concerted activities for the purposes of Collective Bargaining or other mutual aid or protection, insofar as any such activity is not prohibited by this Resolution, Board policy, or any federal, state, or local law or regulation.
- ~~5.~~ ~~Be represented fairly by their Exclusive Representative in the handling of employee grievances and the conduct of Collective Bargaining.~~
- ~~46.~~ 46. Refrain from any of the above; however, refraining from any or all such activities does not include the right to be excluded from coverage by the terms and conditions of a Collective Bargaining Agreement applicable to a Bargaining Unit.
- ~~57.~~ 57. Nothing in this Section shall prohibit an employee from presenting, discussing, or resolving any personnel matter directly with the Board and without the intervention of an Exclusive Representative, provided that any adjustment of the matter between an employee and the Board without the participation of the Exclusive Representative shall not be inconsistent with the terms of any applicable Collective Bargaining Agreement.

### B. The Employer:

No provision of this Resolution shall be deemed in any way to limit or diminish the authority of the Board, through the Superintendent, to manage, supervise, and direct the operations and activities of the Employer to the fullest extent required, authorized, and permitted by law. Thus, unless the Employer agrees to engage in Collective Bargaining regarding the following matters, the Employer retains the exclusive rights to, which shall be considered prohibited subjects of Collective Bargaining, including, but not limited to, the right to:

1. Direct and determine Employee's work, including the nature and scope of work to be performed, the number of Employees performing such work, and the manner in which services are to be provided.
2. Hire, promote, transfer, assign, retain, classify, and schedule Employees, including the right to establish, maintain, revise, and eliminate the qualifications for all such actions listed herein and for job descriptions, background checks, mandatory drug tests, physical ability and/or agility tests, and fitness for duty evaluations.
3. Increase and decrease staffing levels, including the right to relieve Employees from duties by layoff or other reductions-in-force due to lack of work, enrollment, budgetary considerations, changed working conditions/requirements, or for other reasons in the Board's reasonable business judgment and not prohibited by law.
4. Suspend, demote, discharge, or take other disciplinary action against Employees without just cause, and as negotiated between the parties in the collective bargaining agreement, unless otherwise permitted or required by contrary to law, including the right to establish criteria for, and make the ultimate decision regarding the application of, all such actions listed herein, and for standards of behavior or performance and performance evaluations, subject to any right an Employee may have to grieve such action pursuant to the Code of Virginia or regulations issued by the Virginia Board of Education.
5. Establish, maintain, modify, and eliminate Board rules, regulations, policies, and procedures, including health and safety rules, provided, however, no Board rule, regulation, policy, or procedure shall override the terms of any Collective Bargaining Agreement unless otherwise required by law.
6. Maintain the efficiency and integrity of the operations entrusted to the Board, including, but not limited to, the determination of curriculum, types, methods, or standards of service, organizational structure, and types, locations, and use of technology, Board-owned equipment, or facilities.
7. Contract and/or subcontract for, expand, reduce, sell, transfer, convey, eliminate, or change in any way the operations of, or services provided by, the Employer.
8. Determine and establish, in its sole discretion, its budgets and appropriations.
9. Undertake any actions reasonable and necessary, in the Board's judgment, to carry out the mission of the Employer during operational or emergency situations declared by the Board, the Superintendent, or any state, local, or federal official, including, but not limited to, a terrorist attack, active shooter, pandemic, or natural disaster. However, if a Collective Bargaining Agreement includes procedures for how ACPS and its employees will respond to a specific type of emergency, the terms of such agreement will govern the response to that specific emergency. Otherwise, ACPS will meet with the Exclusive Representative(s) at the earliest practical time following actions taken in response to an emergency to discuss the effects of such emergency actions on

Bargaining Unit Employees as they pertain to matters within the scope of Collective Bargaining and to bargain in good faith over any supplemental Collective Bargaining Agreements that are proposed to address the effects of such emergency actions.

10. Nothing in this Resolution or any Collective Bargaining Agreement shall be deemed to:
  - a. Restrict the Board's authority to establish its budget or appropriate funds in accordance with Virginia Code § 40.1-57.2(B). All financial commitments on behalf of the Board in any Collective Bargaining Agreement shall be subject to, and conditioned upon, ~~the Board's exercise of its unfettered discretion to determine the budget and to fund such commitments. If a Collective Bargaining Agreement is approved that extends for more than one fiscal year, each fiscal year's financial commitments shall be subject to, and contingent upon~~ the Board's receipt of appropriations ~~from the Alexandria City Council~~ which, in the Board's sole judgment, it determines are sufficient to fund its commitments for that fiscal year.
  - b. Require the Board to engage in Collective Bargaining with an Exclusive Representative concerning any benefits provided or administered solely by the Commonwealth of Virginia through the Virginia Retirement System or any other benefits established and administered in accordance with the Code of Virginia over which the Board does not have sole control.

### **SECTION 3. CERTIFICATION AND DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE**

- A. Certification By Election. The Board shall recognize an Employee Association that has been certified as the Exclusive Representative for a Bargaining Unit in accordance with the procedures outlined in this Section.
  1. An Employee Association seeking certification as the Exclusive Representative for a Bargaining Unit(s) shall file a request with the Clerk of the Board and deliver a copy to the Superintendent (the "Initial Request"). The Initial Request shall include: (1) the Employee Association's name and address; (2) a description of the Bargaining Unit(s) it seeks to represent; (3) a statement certifying that thirty percent (30%) of the current Bargaining Unit(s) Employees wish to be represented by the Employee Association as evidenced by any of the following: membership cards, dues payment records, petition(s) and/or authorization forms signed by Employees (electronic signatures, as defined in Virginia Code § 59.1-480(8), shall be acceptable for this purpose); and (4) the proposed date, time, place, and method for a secret ballot election. The foregoing items will only be considered if signed within the ~~twelve-twenty-four (24/2)~~ month period preceding the date the Initial Request is filed, ~~for the first Collective Bargaining period, or if signed within the twelve (12) month period preceding the date the Initial Request is filed for any successor Collective Bargaining periods.~~
  2. Within fifteen (15) Business Days of the Initial Request, the Superintendent (or their designee) and the Employee Association seeking certification shall meet to select a Neutral to oversee the election in accordance with this Resolution. If such parties are unable to mutually agree upon the appointment of a Neutral, the parties shall obtain a list of names from the Federal Mediation and Conciliation Service or a similar impartial service provider. If the parties are unable to agree upon a Neutral from that list, each party, in order determined by a coin flip, shall alternately strike names from the list until one name remains, who shall be the Neutral. The Neutral's fees shall be shared

equally by the Board and participating Employee Association(s).

3. The Board may direct the Neutral to verify whether thirty percent (30%) of the Bargaining Unit Employees wish to be represented by the Employee Association. The Neutral shall provide only the percentage of the Bargaining Unit Employees who support the Employee Association's request for certification.
4. Within fifteen (15) Business Days of the Neutral's verification of the adequacy of the showing of interest, or, if no such request is made, within fifteen (15) Business Days of the Neutral's appointment, the Superintendent (or their designee) shall: (i) notify all the Bargaining Unit(s) Employees by electronic mail of the date, time, place, and method for the election; (ii) post a notice of the same in a common area at each worksite of the Bargaining Unit(s) Employees; and (iii) provide public notice of the election in the agenda for the Board meeting immediately preceding the election.
5. All Notices provided pursuant to Section 3(A)(4) shall include a statement that other Employee Associations may intervene to be included on the election ballot by filing a request with the Clerk of the Board and the Neutral within seven (7) days of such Notices (an "Intervenor Request"). The Intervenor Request shall include: (1) the intervenor's name and address; (2) a description of the Bargaining Unit(s) it seeks to represent; (3) a statement certifying that thirty percent (30%) of the Bargaining Unit(s) Employees wish to be represented by the intervenor; and (4) that it wishes to be included on the secret ballot. The Board or the Employee Association(s) that filed the Initial Request(s) may invoke the process in Section 3(A)(3) to verify whether thirty percent (30%) of the Bargaining Unit(s) Employees wish to be represented by the intervenor. If an Employee Association successfully intervenes, new Notices shall be issued pursuant to Section 3(A)(4).
6. The Board may contract with a vendor or neutral third party to conduct the election(s). However, the Neutral shall preside over the election and, in consultation with the Superintendent and the participating Employee Association(s), establish election procedures, which, unless otherwise agreed to by such parties, shall be an electronic secret ballot election. The election shall begin within forty-five (45) days after the Initial Request is filed, unless otherwise agreed to by the Employer, and the Board and the participating Employee Associations (s) shall equally split the costs of the election. The Neutral will establish the cutoff date for Employees to be eligible to vote in the election and resolve any disputes, disagreements, or challenges regarding election procedures or other matters arising from the election(s). As part of these procedures, the Exclusive Representative and the Employer must agree on the list of Bargaining Unit Employees eligible to vote, and such list shall be provided to the Union and Neutral before the election. The Neutral shall have the authority to resolve any disputes, disagreements, or challenges regarding such list.
7. The ballot for the election(s) shall read: "Do you wish to be represented for purposes of collective bargaining by [Name of Employee Association]?" followed by "yes" or "no" for each participating Employee Association (with an accompanying instruction to vote "yes" for no more than one (1)). In any election in which there is more than one (1) Employee Association on the ballot, there shall also be an option for an Employee to select: "I do not wish to be represented by any Employee Association on this ballot."
8. The Board and each participating Employee Association may have a reasonable number of election observers to witness an in-person election and/or the opening, processing, and/or counting of mail or electronic ballots. Observers may challenge the

eligibility of any person seeking to cast a vote, and challenged individuals may cast a ballot that is immediately impounded for future verification, if necessary. Once the election ends and the unchallenged ballots are tallied, the challenged ballots will be destroyed if they are not sufficient to impact the election. If the challenged ballots could reasonably impact the election outcome, the Neutral will determine whether the challenged individual was eligible to vote and, if so, will open the ballot.

9. At an agreed-upon time no later than one (1) Business Day after the polls are closed or the date for receiving mail-in or electronic ballots has passed, the Neutral will count and issue a tally of ballots revealing the number of ballots cast for each choice. The Neutral shall also serve upon the Board and the participating Employee Association(s) a report certifying the results of the election. If none of the choices on the ballot receives the majority vote of Employees voting in the election, a run-off election among the two (2) choices receiving the greatest number of votes will be held within thirty (30) days. Notice of the run-off election shall be provided pursuant to Section 3(A)(4). No Exclusive Representative may be certified unless it receives the majority of the valid votes cast in the election or run-off election(s) and satisfies the requirements of Sections 3(A)(1~~32~~), ~~(14)~~.

10. The Neutral's certification of the election results is final unless, within fourteen (14) days after the service of the report and certification, any party serves on all other parties and files with the Neutral objections to the election. Objections must be verified and must contain a concise statement of facts constituting the grounds for the objections. The Neutral shall investigate the objections and, if substantial factual issues exist, hold a hearing. Otherwise, the Neutral may determine the matter without a hearing. If the Neutral finds that the election was not held in substantial conformity with this Resolution or determines that the outcome of the election was affected by conduct that is the subject of the objection(s), the Neutral shall require corrective action and order a new election. Otherwise, the Neutral must confirm the certification initially issued. In any event, the Neutral must make a determination as to whether to certify the election within thirty (30) days of the filing of objections.

~~11.~~ If an Employee Association receives a majority of the valid votes cast in the election and the requirements of ~~Paragraph~~ Sections 3(A)(1~~32~~), ~~(14)~~ have been satisfied, it shall be certified by the Neutral and recognized by the Board as the Exclusive Representative of all the applicable Bargaining Unit Employees for purposes of Collective Bargaining. The Superintendent shall give reasonable notice to all Employee Associations listed on the ballot and the Bargaining Unit(s) Employees identifying the certified Exclusive Representative.

~~12.11. The results of an election may not be certified by the Neutral unless at least thirty percent (30%) of the applicable Bargaining Unit(s) Employees participate in the election. If less than thirty percent (30%) of such Employees participate, the Neutral may, upon a showing of good cause, order a rerun election to be held within thirty (30) days of the conclusion of the election. However, there shall be no more than one (1) rerun election, meaning that if less than thirty percent (30%) of such Employees participate in the rerun election, the Exclusive Representative will not be certified.~~

~~13.12. Nothing in this Resolution shall require or permit an election for any Bargaining Unit within twelve (12) months of the certification of the results of a previous election held for such Bargaining Unit pursuant to this Resolution, notwithstanding the outcome of that election, except that this provision is inapplicable to any rerun election that might be ordered by the Neutral under Section 3(A)(12).~~



~~14.13.~~ Within fifteen (15) days of submitting a certification request, the Employee Association shall file with the Clerk of the Board the name and current contact information for the agent authorized to receive notice of legal proceedings under this Resolution and a copy of the Employee Association's current constitution and bylaws. All changes and amendments to the Employee Association's constitution and bylaws shall be filed with the Clerk of the Board no later than fifteen (15) days after the effective date of such amendment. If an Employee Association fails to comply with this provision, it shall file its current constitution and bylaws within fifteen (15) days of a notice of noncompliance from the Clerk of the Board. ~~If an Employee Association fails to file its current constitution and bylaws within fifteen (15) days after the date of the notice of noncompliance, the Exclusive Representative will be subject to decertification, unless good cause is shown, as determined by the Board.~~

~~15.14.~~ The timeframes set forth in Sections 3(A)(1)-(134) may be extended by mutual agreement of the parties or by order of the Neutral.

B. Decertification of an Exclusive Representative. Recognition of an Employee Association as the Exclusive Representative for a Bargaining Unit permitted by this Resolution shall continue until a majority of the Employees participating in a decertification election vote to no longer be represented by the Exclusive Representative, and the decertification election is certified, as outlined below.

1. For a period of twelve (12) months following certification of an Exclusive Representative, no decertification petitions may be filed. In the case of a currently existing Collective Bargaining Agreement, no decertification requests will be considered, unless the request is filed not more than two hundred (200) days and not less than one hundred forty (140) days before the expiration of the Agreement.
2. An Employee or Employee Association seeking decertification shall file a request with the Clerk of the Board and deliver a copy to the Exclusive Representative as follows:
  - a. If filed by an Employee, the request shall include: (1) the Employee's name, job title, and work location; (2) the Bargaining Unit(s) that no longer wish to be represented by the Exclusive Representative; (3) the proposed date, time, place, and method for an election; and (4) a statement certifying that at least thirty percent (30%) of the Bargaining Unit(s) Employees no longer wish to be represented by the Exclusive Representative as evidenced by a petition signed by Employees or other evidence of an Employee's desire to not be represented by the Exclusive Representative. The foregoing items will only be considered if signed within the twelve (12) month period preceding the date the request is filed.
  - b. If filed by an Employee Association, the request shall include: (1) the Employee Association's name and address; (2) the Bargaining Unit(s) that it seeks to represent; (3) the proposed date, time, place, and method for an election; (4) a statement certifying that at least thirty percent (30%) of the Employees in the Bargaining Unit(s) wish to be represented by the Employee Association as evidenced by a petition signed by Employees or other evidence outlined in Section 3(A)(1) above; and (5) a statement certifying that at least thirty percent (30%) of the Employees in the Bargaining Unit(s) no longer wish to be represented by the Exclusive Representative as evidenced by a petition signed by Employees or other evidence outlined in Section 3(A)(1) above. The foregoing items will only be considered if signed within the twelve (12) month period preceding the date the request is filed.

3. The decertification process shall follow the same procedures and election requirements as set forth in Sections 3(A)(3)-(145), including that the Board or the Exclusive Representative may invoke the process in Section 3(A)(3) to verify whether thirty percent (30%) of the Bargaining Unit Employees support decertification of an existing Exclusive Representative.

#### **SECTION 4. RIGHTS OF EMPLOYEE ASSOCIATIONS AND EXCLUSIVE REPRESENTATIVES**

- A. **Bargain Collectively:** The Employee Association certified by the Employer as the Exclusive Representative for a Bargaining Unit shall have the right to speak on behalf of, represent, bargain, and negotiate agreements covering all Bargaining Unit Employees in that unit and shall be responsible for representing the interests of all such Employees for the purpose of Collective Bargaining without discrimination and without regard to membership in the Employee Association. The Employer shall not bargain with any other representative or Employee Association for a Bargaining Unit in which an Exclusive Representative has been certified.
- B. **Intervene:** An Exclusive Representative shall have the right to intervene and be afforded an effective opportunity to be present, offer its view, and fully participate at any meetings or in any hearings concerning any challenge, dispute, or legal action relating to the terms, applicability, validity, interpretation, or enforceability of any applicable Collective Bargaining Agreement. The Employer may, but is not required to, notify the Exclusive Representative of any such challenges filed.
- C. **Dues Deduction:** Any agreement between the Employer and an Exclusive Representative that an employee's union dues may be deducted from the employee's pay shall not be valid and enforceable unless an employee signs and dates a written authorization permitting such deductions to be made from payroll. The Exclusive Representative shall provide a copy of all Employees' consent to payroll deductions to the Employer. All such authorizations shall be revocable by the employee by providing the Exclusive Representative and the Employer with written notice thirty (30) days in advance of the effective date of the revocation. However, nothing in this Section shall: (i) compel an employee to become or remain a member of the Exclusive Representative's Employee Association and/or pay union dues or membership fees, or (ii) prohibit an Employee Association from collecting dues directly from Employees.
- D. **Employee Contact Information:** Twice a year, the Employer shall provide the Exclusive Representative(s) with the following information for all Bargaining Unit(s) Employees: name, job title, worksite location, hire date, and work email address, unless otherwise agreed to by the Employer and the Exclusive Representative.
- E. **Access:** The Employer shall provide the Exclusive Representative(s) reasonable access to the Employees that they represent. Such access shall include:
  1. The right to ~~meet with hold groups of meetings with~~ members of the Bargaining Unit on Alexandria City Public Schools property and buildings, subject to the advance written approval of the appropriate Employer representative, which shall not be unreasonably withheld, when Bargaining Unit Employees are off-duty or otherwise in a non-duty status (e.g. before and after duty time), provided that: A written request for the use of facility premises is submitted to \_\_\_ at least \_\_\_ Business Days in advance of the meeting, in accordance with the requirements for Group \_\_\_ under the Employer's Community Use of School Facilities Regulation (KG-R) and; the request is approved; the meeting is not held during an employee's working time; and I the

Exclusive Bargaining Representative ~~will be obligated~~agrees to pay any customary charges that may be assessed for space use, custodial services, and utilities under Board Regulation KG-R~~under the above-referenced regulation for Group \_\_\_~~.

2. The right to reasonable access to individual Employees that they represent, provided that such access does not interfere with the operation of the school/facility or the Employee's performance of job duties.

32. The right to address newly hired Employees on paid time for a maximum of thirty (30) minutes during an employee orientation arranged by the Employer for the Bargaining Unit Employees, or at individual or group meetings of new Bargaining Unit Employees if no orientation is conducted. The structure and manner of such access to new Employee orientations shall be determined through mutual agreement with the Employer.

43. The right to use the Employer's electronic mail system to communicate with members of the Bargaining Unit(s), subject to the terms of Employer policies or regulations pertaining to the use of computer or network systems and acceptable use. Records in the Employer email system may be subject to the Virginia Freedom of Information Act and, as such, communications on such systems are not considered private.

## **SECTION 5. COLLECTIVE BARGAINING DUTIES, IMPASSE, AND RELATED PROCEDURES**

A. Bargaining Unit Information. Not later than thirty (30) Business Days following a written request from an Exclusive Representative, the Employer shall provide the Exclusive Representative with information reasonably related to the administration of a Collective Bargaining Agreement or matters subject to negotiation under this Resolution.

B. Commencement of Bargaining. A written request for Collective Bargaining must be submitted by the Exclusive Representative to the Clerk of the Board no later than March 1st, and negotiations must begin by April 15th and conclude by December 1st of any year where a Collective Bargaining Agreement is sought to be effective at the beginning of the next fiscal year, to accommodate the Employer's budget preparation schedule. ~~Failure of~~if the parties fail to reach an agreement by October 1st, ~~shalleither party may constitute declare~~ an Impasse and ~~automatically~~ trigger Impasse resolution procedures under this Resolution.

C. Good Faith Bargaining. Bargaining representatives shall conduct themselves in good faith at every stage of the Collective Bargaining, Mediation, and Impasse processes. However, nothing in this Resolution requires either party to make any concessions or agree to the other party's proposals in Collective Bargaining.

1. Unless otherwise agreed to by the Employer and the Exclusive Representative, ~~t~~The Exclusive Representative and the Employer shall each designate at least one (1), but not more than five (5), individuals at a bargaining session to represent them in Collective Bargaining negotiations, and a-All Collective Bargaining negotiations shall remain confidential and ~~shall~~ take place only between persons who are designated members of the respective Collective Bargaining teams. Matters discussed in Collective Bargaining negotiations shall not be disclosed except as required by law or by agreement of the Parties.

2. Collective Bargaining shall be conducted in accordance with written rules established

and signed by the parties' authorized representatives at the commencement of the Collective Bargaining process. ~~All negotiations will be conducted in a confidential, professional, and courteous manner.~~

3. The parties will schedule Collective Bargaining negotiations at times and places that will not interfere with the Employer's operations or the performance of the Employees' job duties. If Collective Bargaining negotiations occur during an Employee's scheduled working hours, adequate coverage must be secured before an Employee is released from duty. Employees who serve as Bargaining representatives will be compensated only if the negotiations take place during hours that the Employee is scheduled to work. Unless otherwise prohibited by law, an Employee who serves as a Bargaining representative will not be compensated for hours spent Collective Bargaining when those hours do not overlap with hours that the Employee is regularly scheduled to work.
  4. The parties will discuss and agree upon the Terms and Conditions of Employment topics to be negotiated in accordance with Section 1 of this Resolution within the first nine (9) Business Days of the Collective Bargaining period, unless otherwise agreed to by the Employer and the Exclusive Representative.
  5. A Collective Bargaining Agreement may include a grievance procedure for the interpretation of contract terms and the resolution of disputes arising under the Agreement. If a Collective Bargaining Agreement includes such a procedure, it shall be the exclusive method for the resolution of disputes arising out of an alleged violation or interpretation of a provision(s) of the Agreement, unless such matters are grievable pursuant to the Code of Virginia or regulations issued by the Virginia Board of Education. If such matters are grievable pursuant to the Code of Virginia or regulations issued by the Virginia Board of Education, an Employee who elects to file a grievance under the statute or state regulations may not file a grievance under a Collective Bargaining Agreement.
- D. Reopener. A Collective Bargaining Agreement is subject to sufficient appropriation and funding by the Alexandria City Council to the Employer. If ~~the Alexandria City Council fails to appropriate, or if~~ the Board fails to receive, funds which in the Board's sole discretion are sufficient to implement the Agreement, either party may reopen negotiations. Such negotiations must be completed no later than ~~five-thirty (530) calendar Business Days~~ days after the Alexandria City Council adopts its budget. If the parties are unable to reach an agreement on new terms after this thirty (30) calendar day ~~five (5) day~~ period, the Board may take actions it deems necessary to modify the terms of the Collective Bargaining Agreement that require funding from the Alexandria City Council.
- E. Collective Bargaining Mediation. To avoid Impasse, the parties may mutually agree to engage a Neutral to provide Mediation services during the Collective Bargaining period with a preference for the Federal Mediation Conciliation Service ("FMCS") or if unavailable, a similar impartial service provider. This Mediation process shall follow the procedures set forth in Sections 5(F)(1)-~~(449)~~ below.
- F. Impasse Mediation. If no agreement is reached by October 1st of the year preceding the commencement of the upcoming fiscal year, the Employer or Exclusive Representative can declare an Impasse and resolution may be sought by submission of those unresolved issues for Mediation. In addition, ~~the failure of if~~ the parties fail to reach agreement by October 1st, ~~either party shall may constitute declare~~ an Impasse and ~~automatically~~ trigger Mediation under this Resolution pursuant to Section 5(B), unless otherwise mutually agreed to and in writing.

An Impasse will be resolved as follows:

1. The parties will mutually select a Neutral to conduct the Mediation process with a preference for the FMCS or if unavailable, a similar impartial service provider. If the parties are unable to mutually agree upon the appointment of a Neutral, the parties shall obtain a list of names from the FMCS or a similar impartial service provider. If the parties are unable to agree upon a Neutral from that list, each party, in order determined by a coin flip, shall alternately strike names from the list until one name remains, who shall be the Neutral.
2. A party seeking Mediation shall provide written notice to the other parties and the impartial service provider at least fifteen (15) days before the anticipated first Mediation meeting.
3. The parties shall engage in Mediation for up to thirty (30) days unless the parties mutually agree in writing to the termination or extension of the Mediation or reach an agreement. The parties shall set reasonable deadlines for all steps of the Mediation process and strive to ensure the conclusion of Mediation within the budget preparation schedule.
4. The costs of the Mediation shall be shared equally between the parties. However, costs incurred by a party to prepare, appear, or secure representation, expert witnesses, or evidence of any kind shall be borne exclusively by that party.
5. The Mediation process and any comments, statements, or suggestions from the Neutral or the parties and any documents evidencing the same made or created during the Mediation process shall not be disclosed except as required by law. Communications between an Exclusive Representative and the Employees it represents regarding the Mediation process shall not constitute public disclosure under this Section.
- ~~6.~~—The Mediation process is advisory only, and the Neutral shall have no authority to bind either party.
- ~~7.6.~~ ~~\_\_\_ If the parties mutually agree to some matters through Collective Bargaining and/or Mediation, those matters may be implemented, subject to Board approval.~~
- ~~8.7.~~ \_\_\_ At the request of either party, Impasses not resolved through negotiation or Mediation shall be submitted to a non-binding fact-finding hearing conducted by a Neutral. The Neutral shall be selected in accordance with the procedures set forth in Section 5(F)(1) above, and the costs of the Neutral shall be shared equally between the parties.
  - a. At a fact-finding hearing pursuant to this Section, both parties shall be entitled to a representative, who may be an attorney. The representative may present a summary of the case, witnesses, cross-examine witnesses, question, and introduce evidence to support their positions without violating Code of Virginia Section 54.1-3904. Costs incurred by a party to prepare, appear, or secure representation, expert witnesses, or evidence of any kind shall be borne exclusively by that party.
  - b. A written decision shall be issued by the Neutral to both the Exclusive Representative and the Board within thirty (30) days after the close of a hearing, unless both parties agree to extend the deadline. Any decision of a Neutral issued

pursuant to this Section is not binding on the Board.

c. Either party may file with the Board a response to the Neutral's recommendation within ten (10) Business Days and request the Board to review the recommendation of the Neutral.

~~d.—Any decision issued by the Neutral pursuant to Section 5(F) of this Resolution is not binding on the Board. The Board may adopt the recommendation of the Neutral if it is supported by substantial evidence in the record as a whole. If the Board, after review of the Neutral's recommendation and the record, finds that the recommendation is not supported by substantial evidence in the record as a whole, the Board shall issue a written decision rejecting the Neutral's recommendation in whole or in part, and explaining why it found the decision is not supported by substantial evidence in the record as a whole, within (30) Business Days after the close of the hearing. The Board may adopt or reject the recommendation of the Neutral, in whole or part, within (30) Business Days after the close of the hearing.~~

~~d.~~

e. The Board's decision will be final and binding on all parties to the proceedings.

~~9.8.~~ The parties will schedule Mediation and/or Impasse proceedings at times and places that will not interfere with the Employer's operations or the performance of the Employees' job duties. Employees who serve as Bargaining representatives or participants during any Mediation or Impasse proceedings will be compensated only if such proceedings take place during hours that the Employee is scheduled to work. Unless otherwise prohibited by law, an Employee who serves as a participant or Bargaining representative will not be compensated for hours spent in such proceedings when those hours do not overlap with hours that the Employee is regularly scheduled to work.

~~10. If Impasse or Mediation continues beyond the expiration date of an existing Collective Bargaining Agreement, the terms and conditions of the expired Collective Bargaining Agreement shall remain in effect until the earlier of: (i) the parties reaching a new agreement; or (ii) one year from the date the Collective Bargaining Agreement was scheduled to expire. Notwithstanding the foregoing, the Board may, in its sole discretion, choose to continue any or all the provisions of an expired Collective Bargaining Agreement.~~

~~11.9.~~ Nothing in this Section shall prohibit or impede the Employer and Exclusive Representative from continuing to bargain in good faith or from voluntarily reaching an agreement during Impasse or Mediation.

## **SECTION 6. PROHIBITED CONDUCT AND RESOLUTION PROCEDURES**

A. The Employer. It shall be a prohibited practice for the Employer or its representative or agents to engage in the following conduct:

1. Interfere with, restrain, or coerce Employees in the exercise of rights granted by this Resolution.
2. Dominate or interfere in the administration of any Employee Association.
3. Encourage or discourage membership in any Employee Association, committee, or

labor organization including by discrimination in hiring, tenure, or other terms or conditions of employment, provided that the use of the Employer's property or communications systems, as may be permitted by this Resolution or a Collective Bargaining Agreement, will not be deemed encouragement prohibited by this Section.

4. Discharge, retaliate, or discriminate against any Employee because they have formed, joined, supported, assisted, or chosen to be represented by any Employee Association.
5. Discharge, retaliate, or discriminate against any Employee because they have participated in Collective Bargaining, testified in a hearing, or filed a statement, petition, complaint, or grievance under this Resolution or an applicable Collective Bargaining Agreement.
6. Fail or refuse to negotiate in good faith with an Exclusive Representative.
7. Fail or refuse to participate in good faith in any Impasse or dispute resolution procedures set forth in this Resolution.

B. Employee Associations. It shall be a prohibited practice for an Employee Association (including an Exclusive Representative), or its representative or agents, to engage in the following conduct:

1. Interfere with, restrain, or coerce an Employee with respect to rights granted in this Resolution or with respect to certifying or decertifying an Exclusive Representative.
2. ~~Deny membership in an Employee Association or~~ Fail to fairly represent an Employee because of the Employee's race, color, religion, sex, national origin, age, disability, political affiliation, sexual orientation, gender identity, genetic information, status as a service-disabled veteran, or any other basis prohibited by federal, state, or local law, ordinance, code, or regulation.
3. Fail or refuse to negotiate in good faith with the Employer.
4. Fail to fairly represent an Employee in a Bargaining Unit for which the Employee Association is the Exclusive Representative concerning matters within the scope of Collective Bargaining and without regard to membership in the Employee Association or dues-paying status.
5. Fail or refuse to participate in good faith in any Impasse or dispute resolution procedures set forth in this Resolution.
6. Retaliate against any Employee for exercising their rights set forth in this Resolution, including filing charges against the Employee Association or refusing to participate in Employee Association activities.
7. Violate Code of Virginia Section 40.1-55 and/or the provisions of Section 7 of this Resolution.

~~7.8.~~ Notwithstanding any provision in the Resolution, nothing contained herein shall obligate an Exclusive Representative to pursue arbitration or other dispute resolution procedures for disputes or grievances on behalf of non-member Bargaining Unit Employees if the Exclusive Representative determines such disputes or grievances lack merit.

C. Procedures.

1. If a claim is made that a prohibited practice has been committed by either the Employer or an Employee Association, the complaining party shall serve the other party with a verified complaint setting forth a detailed written statement of the alleged prohibited practice no later than (30) days of the event of the alleged prohibited practice. The respondent shall have ten (10) Business Days after service of the complaint to serve a written answer to the complaint upon the complaining party. The complaint and answer shall be served by email and regular mail.
2. The parties shall submit the prohibited practice to a mutually selected Neutral. If the parties are unable to mutually agree upon the appointment of a Neutral, the parties shall obtain a list of names from the FMCS or a similar impartial service provider. If the parties are unable to agree upon a Neutral from that list, each party, in order determined by a coin flip, shall alternately strike names from the list until one name remains, who shall be the Neutral. The costs associated with the Neutral shall be shared equally by the parties.
3. The Neutral shall have the following authority with respect to the investigation and adjudication of prohibited practice charges and determination of remedies for prohibited practices:
  - a. After reviewing the complaint and any answer thereto, the Neutral may issue an order dismissing the complaint or schedule an evidentiary hearing at a designated time and place within the City of Alexandria; and
  - b. If a hearing is ordered, the Neutral may issue subpoenas, administer oaths, and take testimony and other evidence.
4. If a hearing is ordered pursuant to Section 6(C)(3), both parties shall be entitled to a representative who may be an attorney. A representative may present a summary of the case and witnesses, cross-examine witnesses, question, and introduce evidence to support their positions without violating Virginia Code Section 54.1-3904. Costs incurred by a party to prepare, appear, or secure representation, expert witnesses, or evidence of any kind shall be borne exclusively by that party.
5. The Neutral shall issue written findings and conclusions. If the Neutral finds that a party has violated one or more of the provisions of this Section, they may issue an order directing the party to cease and desist engaging in the violation and may order such other reasonable affirmative relief as is necessary to remedy the violation. If the party filing a prohibited practice charge is an Employee alleging a violation of Section 6(B)(4), "affirmative relief" shall include the recovery from the non-prevailing party of reasonable attorney's fees and costs incurred by the Employee, including reimbursement of the Employee's share of the cost of the Neutral's fee.
6. If an Employee Association is found to have violated Section 6(B)(7), the complaining party shall be entitled to recover reasonable attorney's fees and costs incurred by the Board, including reimbursement of the Board's share of the cost of Neutral's fee.

## **SECTION 7. STRIKES AND LOCKOUTS**

Pursuant to Virginia Code Section 40.1-55, any employee of the Employer who, in concert with two (2) or more other such employees, Strikes or willfully refuses to perform the duties of their employment to influence wages, Benefits, or other Terms and Conditions of Employment, shall be deemed by that action to have terminated their employment and shall be ineligible for



employment by the Employer in any position or capacity during the next twelve (12) months. If any Employees represented by an Exclusive Representative engage in a Strike in violation of this Section, the Exclusive Representative shall publicly disavow (through a press release, social media posts, or similar means) its support for or participation in the Strike within twenty-four (24) hours of learning of the Strike. The Employer shall not engage in a Lockout.

### **SECTION 8. APPROVAL OF TENTATIVE AGREEMENT**

- A. The Board's Bargaining representatives and the Exclusive Representative must reduce an agreement to writing when it is reached.
- B. A Collective Bargaining Agreement is enforceable and effective when it is ratified by:
  - 1. The Board; and
  - 2. Members of the Bargaining Unit in a ratification vote conducted pursuant to the bylaws of the Exclusive Representative.
- C. A modification to an existing Collective Bargaining Agreement is enforceable and effective when it is ratified by:
  - 1. The Board; and
  - 2. Members of the Bargaining Unit in a ratification vote conducted pursuant to the bylaws of the Exclusive Representative.
- D. Any Collective Bargaining Agreement reached between the Employer and an Exclusive Representative shall be contingent upon the appropriation of sufficient funds to the Employer ~~by the Alexandria City Council~~ in the next ensuing budget cycle.

### **SECTION 9. COMPUTATION OF TIME**

- A. In general. In computing a period of time described in this Resolution, the designated period of time begins to run the next Business Day after the event or action occurs.
- B. Last day. The last day of the period of time computed under subsection A of this Section shall be included unless it falls on a non-Business Day, as defined in Section 1 of this Resolution, in which case the period runs until the end of the next Business Day. Any deadline will be by 5 p.m. on the last day.
- C. Extensions. Any time limits or deadlines set forth in this Resolution may be extended by written agreement of the Employer, Employee Association, Exclusive Representative, and/or any other appropriate parties.

### **SECTION 10. NOTICES**

Any notice required under the provisions of this Resolution shall be in writing and sufficient if transmitted by hand delivery or mailed by certified mail, return receipt requested, addressed to the last-known address of the parties, unless otherwise provided in this Resolution. Refusal of certified mail by any party shall be considered service. Prescribed time periods shall commence from the date of the receipt of the notice.

### **SECTION 11. SEVERABILITY**

If any provision or any part of any provision of this Resolution shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Resolution, and this Resolution shall be construed as if such invalid, illegal, or unenforceable provision or part thereof had never been contained herein, but only to the extent of its invalidity, illegality, or unenforceability.

**SECTION 12 CONFLICTS; GOVERNING LAW**

- A. In the event of a conflict between this Resolution and any state, local, or federal law or regulation, state, local, or federal law or regulation shall prevail.
- B. The policies and procedures, regulations, administrative directives, and workplace practices of the Employer shall govern employee relations unless there is a direct conflict with a Collective Bargaining Agreement approved by the Board or with this Resolution. Where a direct conflict exists, the Collective Bargaining Agreement or this Resolution shall govern.
- C. Any Collective Bargaining Agreement approved by the Board pursuant to this Resolution shall be governed and interpreted in accordance with the Constitution and laws of the Commonwealth of Virginia and this Resolution.
- D. In the event of a conflict between a Collective Bargaining Agreement and this Resolution, this Resolution, as may be amended, shall govern.