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Contract Database Metadata Elements

Title: **Orleans/Niagara BOCES and Orleans/Niagara BOCES Technical, Maintenance, and Custodial Services Unit, CSEA Local 1000, AFSCME, AFL-CIO, Orleans County Local 837 (2011)**

Employer Name: **Orleans/Niagara BOCES**

Union: **Orleans/Niagara BOCES Technical, Maintenance, and Custodial Services Unit, CSEA, AFSCME, AFL-CIO**

Local: **Orleans County Local 837, 1000**

Effective Date: **07/01/2011**

Expiration Date: **06/30/2015**

PERB ID Number: **6632**

Unit Size:

Number of Pages: **44**

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BC/6632

COLLECTIVE NEGOTIATIONS AGREEMENT

BETWEEN

**THE DISTRICT SUPERINTENDENT/CHIEF
EXECUTIVE OFFICER OF THE ORLEANS/NIAGARA
BOARD OF COOPERATIVE EDUCATIONAL SERVICES**

AND

**THE ORLEANS/NIAGARA BOCES TECHNICAL,
MAINTENANCE AND CUSTODIAL SERVICES
UNIT, LOCAL #837, CIVIL SERVICE
EMPLOYEES ASSOCIATION, INC.**

COVERING

TECHNICAL AND CUSTODIAL STAFF

NOTICE

**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.**

Begins: July 1, 2011

Ends: June 30, 2015

Revised: 12/2/13

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PREAMBLE

Whereas the New York State Public Employment Relations Board in its Case No. C-2017 has certified the Civil Service Employees Association, Inc. as the sole and exclusive representative for the purpose of collective negotiations and the administration of grievances of the employees of the Orleans/Niagara Board of Cooperative Educational Services in the following employer-employee negotiating unit:

Included:

Audio-Visual Technician, Electrician, Electrician's Helper, Printing Machine Operator, Head Custodian, Building Maintenance Worker, Custodian, Custodial Worker, Cleaner, Motor Vehicle Operator, Auto Mechanic.

Excluded:

Secretary to District Superintendent/Internal Auditor, Secretary to the Assistant Superintendents/Board Clerk, Senior Account Clerk/District Treasurer, Resource Materials Manager, Superintendent of Buildings and Grounds (a/k/a Superintendent of Maintenance/Transportation Operations), and all other employees.

The parties now agree to the following:

ARTICLE 1. CONCERNING THIS AGREEMENT

Section 1.1 Definitions

- 1.1.1 "BOCES" means the Orleans/Niagara Board of Cooperative Educational Services and is intended to refer to it as the employing entity. It applies to all persons (e.g., the District Superintendent/Chief Executive Officer, Administrators, Supervisors) and bodies (e.g., the Orleans/Niagara Board of Cooperative Educational Services itself) properly authorized to act on behalf of the BOCES.
- 1.1.2 "Board" means the Board of Cooperative Educational Services itself and applies only when it is intended that the Board itself shall act or refrain from action.
- 1.1.3 "District Superintendent" means the person appointed by the Board/Commissioner of Education to serve on a regular or acting basis as the District Superintendent/Chief Executive Officer.
- 1.1.4 "Association" means the Civil Service Employees Association, including its Local No. 837 and its Orleans/Niagara BOCES Technical, Maintenance, and Custodial Services Unit.
- 1.1.5 "Employee" means a person incumbent in a position included in the unit described in the Preamble to this Agreement, but does not mean such a person who is a temporary employee (as defined in paragraph 1.1.16 of this Agreement) or who is regularly scheduled to work less than ten (10) hours per week for the BOCES.

- 1.1.6 "Party" means the BOCES or the Association.
- 1.1.7 "Parties" means the BOCES and the Association.
- 1.1.8 "Agreement" means this Agreement, all appendices referred to in this Agreement and all amendments to this Agreement.
- 1.1.9 "Amendment" means a written change in a term and condition of employment contained in this Agreement which is made during the term of this Agreement by mutual consent of the parties. An amendment to such a term and condition of employment shall only become effective upon the ratification of the amendment by the membership of the Association and the membership of the Board and its execution by the proper officials of the Association and BOCES.
- 1.1.10 "Fiscal year" means the period which begins 12:01 a.m. on July 1st of each year and ends at midnight on the next following June 30th.
- 1.1.11 "Regular full-time employee" means an employee who is regularly scheduled to work twelve (12) months of the school year at least forty (40) hours per week. The only exception shall be the positions of audio-visual technician and print machine operator. Regular full-time employees for audio-visual technician and print machine operator is one who is regularly scheduled to work twelve (12) months of the school year and at least thirty-seven and one-half (37 ½) hours per week (see Section 6.14 for exception).
- (All Agreement references to work week should be forty (40) hours.)
- 1.1.12 "Regular part-time employee" means an employee who is regularly scheduled to work at least 10 months of the school year and at least 10 hours per week but less than the hours per week required of a regular full-time employee.
- 1.1.13 "Execution Date" means the date identified as such under the heading "SUBSCRIPTION" of this Agreement which shall be the date on which the parties both sign this Agreement or, if the parties sign on different dates, then the latest date on which a party signs.
- 1.1.14 "Active payroll" refers to the time when the employee is being paid for working or is on paid leave time pursuant to this Agreement as opposed to the time when the employee is on unpaid status such as absent without pay, on unpaid leave or on layoff.
- 1.1.15 "Unit" and "Negotiating unit" each mean the employer-employee negotiating unit as set forth in the Preamble to this Agreement.
- 1.1.16 "Temporary employee" means both: (i) an employee hired to replace an incumbent employee who is on leave of absence, is on vacation, or is otherwise unavailable for the performance of his duties; and (ii) an employee hired to fill a position which itself will exist only on a temporary basis by reason of the source of its funding or other reasons.

1.1.17 "Supervisor" means the employee's immediate supervisor. On the Execution Date of this Agreement, the District Superintendent shall give written notice to each employee in the negotiating unit of the name of the person who has the responsibility of immediate supervision of the employee's position. If a change in the immediate supervisor occurs, the District Superintendent shall give written notice, not later than the third working day after the change is instituted, to each affected employee stating the name of the person who will assume the responsibility of immediate supervision of the employee's position.

1.1.18 For purposes of calculating any period of working days specified in the Agreement, "working day" means any day except a Saturday, a Sunday, or a paid holiday specified in this Agreement.

Section 1.2 Duration

1.2.1 The term of this Agreement begins at 12:01 a.m., July 1, 2011 and ends at midnight on June 30, 2015.

1.2.2 Each provision of this Agreement goes into effect when the term of this Agreement begins and goes out of effect when the term of this Agreement ends unless the provision in question expressly states a different beginning or ending date in which case such different date shall apply. Any employee who separates or has separated from employment prior to the date on which this agreement is ratified by both parties shall not receive any retroactive adjustments either in salary or fringe benefits.

Section 1.3 Amendment and Waivers

1.3.1 During the term of this Agreement, the parties agree that they shall not delete, waive or change any provision of this Agreement without first proposing a written amendment; negotiating the deletion, waiver or change with the other party if the other party agrees that negotiations should occur; ratifying the negotiated modification; and executing a written amendment which shall be included in and made a part of the Agreement. It is the intent and agreement of the parties that neither party shall have the right to insist upon negotiating any matter whether or not referred to in this Agreement. Nothing in this paragraph shall be construed to preclude negotiations for a successor to this Agreement.

Section 1.4 Interpretation and Legal Effect

1.4.1 Except when the Agreement says otherwise, the following rules apply in interpreting this Agreement:

- a. A word used in the masculine gender applies also in the feminine.
- b. A word used in the singular number applies also to the plural.
- c. This Agreement speaks as of the time it is being applied.
- d. Each provision in this Agreement is severable from every other provision.
- e. Language in this Agreement is to be construed as strictly against one party as against any other. It is immaterial which party suggested it.

- f. Each lettered appendix referred to in this Agreement (for example, "APPENDIX A") is a part of this Agreement and is incorporated in this Agreement by reference.
 - g. Giving notice to BOCES means giving notice in writing to the District Superintendent by delivering it to him in person (in which case he shall sign a receipt therefor) or by sending it to him by registered or certified mail or telegram addressed to him at Orleans/Niagara BOCES, 4232 Shelby Basin Road, Medina, NY 14103.
 - h. Giving notice to the Association means giving notice in writing to the President of the Orleans/Niagara BOCES Technical, Maintenance and Custodial Services Unit, Local #837, CSEA by delivering it to him in person (in which case he shall sign a receipt therefor) or by sending it to him by registered or certified mail or telegram addressed to him at his home address as shown on the books of BOCES.
- 1.4.2 All the agreements which the parties have reached during negotiations are recorded in this Agreement or in Memoranda of Understanding which bear the same date as the Execution Date of this Agreement. From and after the Execution Date of this Agreement, no other document shall constitute a binding commitment between the parties unless it is (i) dated on or after such Execution Date and (ii) signed by a duly authorized representative of each party.
- 1.4.3 No provision of this Agreement shall be interpreted so as to be in conflict with any provision of law. If this Agreement requires a party or a person to do anything that is prohibited by law, the obligation is invalid, but all other obligations imposed by this Agreement remain valid.
- 1.4.4 If a court of competent jurisdiction determines that a provision of this Agreement is invalid, such determination shall not affect the validity of any other provision of this Agreement. If such a determination has been made and no appeal lies therefrom or if the time to appeal has passed and no appeal has been taken, the parties, as soon as is reasonably practicable, shall enter into collective negotiations which shall be limited to replacing the invalid provision with a provision that meets the standards of the Public Employees Fair Employment Act in reference to mandatory subjects of negotiations.
- 1.4.5 Neither party is obliged to continue any past practice or policy except to the extent, if any, set forth expressly in a particular provision of this Agreement.
- 1.4.6 Any provision of this Agreement which cites a law, rule, or regulation is intended to be and shall be interpreted as being only a descriptive summary of such law, rule or regulation. With respect to the subject matter of any such provision of this Agreement, it is the intention of the parties that the provisions of the cited law, rule or regulation shall control, unless this Agreement states otherwise.

ARTICLE 2. ASSOCIATION-BOCES RELATIONS

Section 2.1 Managerial and Association Rights

2.1.1 BOCES reserves and retains solely and exclusively all of its inherent rights to manage BOCES as such rights existed prior to the Execution Date of this Agreement, except to the extent that they are modified by express provisions of this Agreement or are contrary to law. The sole and exclusive rights of BOCES include but are not limited to: its right to establish, continue, change, or abolish any or all of BOCES' policies, practices, rules, regulations and procedures as they relate to the operation of its schools and programs; to determine the number, location, hours and types of its operations; to establish or discontinue programs or operations; to determine to what extent the required work shall be performed by employees covered by this Agreement; to determine the number, classification and duties of employees; to determine the necessity for filling a vacancy; to determine the methods, processes, equipment and materials to be used in BOCES' operations; to judge the efficiency and competency of employees; to establish and maintain a job evaluation program; to establish and change work assignments; to select, hire, direct, transfer and promote employees; to layoff employees because of the lack of work or for budgetary reasons; to establish, change, and enforce rules for the conduct of employees; and to discipline and discharge employees. It is specifically understood and agreed that BOCES will not exercise any other rights set forth or referred to in this paragraph 2.1.1 in a manner contrary to law or to an express provision of this Agreement.

The BOCES has a right, having reasonable suspicion, to require that any member of the bargaining unit submit to drug and/or alcohol testing, in accordance with Appendix C of this agreement.

2.1.2 Anything which this Agreement requires or permits the District Superintendent to do may be done by a person designated by the District Superintendent to act on his behalf. Anything which this Agreement requires or permits the administrator in charge of the business office to do, may be done by a person designated by the District Superintendent to act on behalf of the administrator in charge of the business office. Whenever such a designation is made, the affected employees will be informed thereof.

2.1.3 BOCES recognizes the rights of the CSEA as the sole and exclusive representative of employees included in the negotiating unit for the purpose of collective negotiations and the administration of grievances as well as all other rights are inherent to such representative, including but not limited to: the administration of the terms and conditions of employment contained in this Agreement; the representation of employees in all matters affecting their terms and conditions of employment; the pursuit of any such matter it deems has merit to any court, administrative body, agency or board, of competent jurisdiction; the management of its own affairs without interference from BOCES, its agents or representatives; and the right to establish its own goals and objectives.

2.1.4 BOCES shall make available in each complex where employees in the negotiating unit work a bulletin board or a portion of a bulletin board for the exclusive use of the Association in an area in which such employees congregate. On such boards the Association may post announcements of Association meetings and other business or social events, but nothing advocating the election of any person to public office or the adoption of any legislation may be posted thereon.

- 2.1.5 The Association does not assert the right to strike against any government, to assist in any such strike, or to impose an obligation to conduct, assist, or participate in such a strike.

Section 2.2 Negotiations of a Successor Agreement

- 2.2.1 The parties agree to begin negotiations for a successor to this Agreement in the last fiscal year of this Agreement following written notice by one party to the other party that it wishes to begin negotiations. Such notice may not be given earlier than February 1st of the last fiscal year of this Agreement. Negotiations will begin approximately fifteen (15) days after the notice is received by the other party. Failure to provide written notice in the last fiscal year of this Agreement shall not constitute a bar to negotiating a successor Agreement. The parties may by mutual consent extend any time limit set forth in this paragraph, provided that any such extension must be evidenced by a written memorandum signed by both parties.
- 2.2.2 At the first and each subsequent negotiations meeting, the parties shall set the date for the next collective negotiations meeting, if any, but such date may be changed thereafter by mutual consent of the principal spokesmen for the parties.
- 2.2.3 Each party shall inform the other in writing of the name, address and telephone number (s) of its principal spokesman for collective negotiations and the name of each member of its negotiating team. All correspondence with respect to the negotiations shall be conducted between the principal spokesmen.
- 2.2.4 Each provision of a new or modified agreement which has been tentatively agreed to by the negotiation teams of both parties, as evidence of such tentative agreement, shall be reduced to writing, dated with the date upon which such tentative agreement was reached, and initialed by the principal spokesman of each party. No such tentative agreement shall become binding on the parties until it has been ratified by the membership of the Association and the membership of the Board and has been executed by the proper officials of the Association and BOCES.
- 2.2.5 Negotiations shall take place in the BOCES Orleans Center unless the parties agree on a different location.

Section 2.3 Dues Deductions

- 2.3.1 Association membership dues and insurance premiums shall be deducted from the wages of each employee who has voluntarily signed a form authorizing such deduction provided that the form has been delivered to the office of the administrator in charge of the business office not later than the first day of the payroll period prior to the first payroll period in which the deduction for the employee is to be made. Deductions for an individual employee shall continue to be made until and including the payroll period during which the administrator in charge of business the office has received from the employee a written statement signed by him revoking his deduction authorization.
- 2.3.2 The Association shall deliver to the office of the administrator in charge of the business office a written notice, signed by the Association, of the amount of dues and the amount for each CSEA insurance premium to be deducted per payroll period for any or all of the following types of insurance: term life, accident and sickness, and supplemental life. The administrator in charge of the business office shall transmit in one check total amount of

dues deducted and in one further check the total amount of CSEA insurance premiums deducted and a list of the employees for whom the deductions were made to the Association within thirty (30) calendar days after each payday on which deductions are made. The Association shall provide BOCES with the name of a designated agency, if any, on the check containing the insurance premium deductions. Said deductions shall be sent to CSEA, 143 Washington Avenue, Albany, New York 12210.

- 2.3.3 BOCES agrees to provide two (2) spaces on the payroll stub for the deduction of dues and CSEA insurance premiums. One space shall be used to denote the total amount of dues deducted and the other space shall be used to denote the total amount of CSEA insurance premiums deducted.
- 2.3.4 The Association shall hold BOCES harmless against any and all suits, claims, demands and liabilities arising out of an action of BOCES in connection with this Section 2.3.

ARTICLE 3. GRIEVANCE PROCEDURE

Section 3.1 Basic Principles and General Provisions

- 3.1.1 A "grievance" can be submitted with respect to any act of BOCES which violates or misapplies a provision of this Agreement.

- 3.1.2 A Grievant is:
- a. an employee;
 - b. a group of employees who have the same immediate supervisor; or
 - c. the Association,

who submits a grievance. An employee or such a group of employees must submit a grievance at Step 1. The Association may submit a grievance when (i) the employees who are aggrieved by the act of BOCES in question have more than one supervisor, or (ii) when a right granted by this Agreement to the Association as such (as distinct from a right of an employee or group of employees) has been violated by an act of BOCES. The Association must submit a grievance at Step 2.

- 3.1.3 An employee shall continue to perform his duties even though he may feel himself aggrieved, except when it is determined jointly by representatives of the CSEA and BOCES that the continuance of those duties would affect the employee's health or safety adversely.

- 3.1.4 It is essential that the time limits set forth in this Article 3 be followed by the parties and the employees. However, the parties may by mutual consent extend any such time limit provided that such extension must be evidenced by a written memorandum dated and signed by an authorized representative of each party. Consent to an extension shall not be withheld unreasonably by either party. If the grievance exceeds a time limit without having obtained an extension, the grievance is deemed barred and need not be further considered by BOCES. If BOCES does not give an answer on or before the last day of a time limit, the grievance may be appealed as though the answer had been given on such last day.

- 3.1.5 The purpose of the grievance procedure set forth in this Article 3 is to provide an exclusive method for resolving a difference which arises out of the misapplication or violation of a

provision of this Agreement. Therefore, an employee shall have the choice of either submitting a grievance in accordance with the procedure provided herein or commencing a proceeding before a judicial, administrative or legislative body or person for resolution of the difference. Notwithstanding the foregoing, an employee shall not be precluded from appealing a decision of an arbitrator or administrative, judicial or legislative body or person to a higher authority for review and determination to the extent permitted by law. If BOCES contests the right of a grievant to arbitrate a grievance for any reason other than that the grievance is untimely, the employee may revert to another proceeding for resolution of the subject of the grievance.

- 3.1.6 During normal school hours, and in connection with grievance meetings outside normal school hours, all persons involved with a grievance shall have access to all written statements and records pertaining to that grievance.
- 3.1.7 An employee who is a CSEA representative or who is a grievant shall suffer no loss of pay when he is attending grievance meetings or hearings during the employee's regularly scheduled work hours.
- 3.1.8 It is the intent of this Grievance Procedure to provide for the orderly settlement of grievances. The resolution of a grievance at the earliest possible step is encouraged.
- 3.1.9 A grievance shall have the right to be represented at each step of the Grievance Procedure by a CSEA representative who may be either an employee or a non-employee.

Section 3.2 Procedure

- 3.2.1 Step 1. A grievance must be submitted on the form shown in Appendix A of this Agreement by the grievant to his supervisor and the Association representative not later than the tenth working day after the day on which occurred the act of BOCES which is the subject of the grievance. If the act of BOCES is considered to be a "continuing act", any remedy granted pursuant to this grievance procedure shall not apply to any period of time prior to the twentieth consecutive working day preceding the submission of the grievance. Notwithstanding the foregoing, the ten working day time limit referred to in the first sentence of this paragraph shall be extended by the number of working days during which the grievant is then on a paid or unpaid leave of absence, but such extension shall not be for more than thirty working days. Compliance with the foregoing time limitations shall be a condition precedent to submission of a grievance to arbitration. The supervisor has five working days after the day on which the grievance was submitted to answer the grievance in writing.

During that five working day period, the supervisor, the grievant, and the Association representative shall meet to discuss the grievance if either so requests. Others who have knowledge of the matter shall meet with the supervisor if he so requests. If the grievant is not satisfied with the answer, he has five working days after the day on which his supervisor gave him the answer to appeal the grievance, in writing, to the District Superintendent. If the grievant does not appeal the grievance in writing before the appeal time expires, the grievance is deemed satisfied by the supervisor's answer.

- 3.2.2 Step 2. Not later than the fifth working day after the day on which a grievance appeal is received by the District Superintendent, the parties must agree on a date for a Step 2 meeting among the grievant, a representative of the Association, the District

Superintendent, and others who have knowledge of the matter. The District Superintendent must answer the grievance in writing and deliver a copy of the answer to the grievant and to the Association representative not later than the tenth working day after the day on which the Step 2 meeting was held. If the grievant does not appeal the grievance in writing before the appeal time expires, the grievance is deemed satisfied by the District Superintendent's answer.

Section 3.3 Arbitration

- 3.3.1 If the grievance is not satisfied with the District Superintendent's answer, the Association has fifteen (15) working days after the day on which it received the answer to appeal the grievance in writing to arbitration. The Association shall send to the District Superintendent a copy of its written appeal to arbitration.
- 3.3.2 Unless the parties mutually agree otherwise, each grievance must be appealed to arbitration in a separate arbitration proceeding. The written appeal to arbitration must be to the American Arbitration Association ("AAA") and must specifically identify the grievance to be arbitrated. The Association must request the AAA to send to the Association and to the District Superintendent a list of twenty names of arbitrators available to hear the grievance. Within ten (10) working days of the date on which each party receives the list, each shall return its copy to the AAA with all names which are unacceptable to the party crossed off and the remaining names, if any, numbered in order of the party's preference. The AAA shall then name to be arbitrator the person shown on the two lists as having the highest common acceptability to the parties. If the AAA determines that the parties have not mutually accepted an arbitrator from the list, the AAA shall send to each party a second list of twenty names and the foregoing process will be repeated. If the AAA determines that the parties have not mutually accepted an arbitrator from the second list, the AAA shall name an arbitrator to serve, but he shall not be a person who was on either of the lists.
- 3.3.3 The arbitration proceeding shall be governed by the Voluntary Labor Arbitration Rules of the AAA to the extent that such Rules do not conflict with this Agreement.
- 3.3.4 The arbitrator shall grant or deny the grievance presented to him by determining whether this Agreement has been violated as alleged. The arbitrator may determine an appropriate award where he finds a violation of this Agreement. In doing so, he must consider the remedy sought by the grievance. In making his determination, the arbitrator shall interpret and apply the provisions of this Agreement, but he shall not add thereto or subtract therefrom. The determinations of the arbitrator shall be final and binding.
- 3.3.5 The fees and expenses of the arbitrator shall be shared equally by the parties. If either party desires a verbatim transcript of the proceedings, it shall cause the same to be made, shall furnish a copy thereof to the arbitrator and to the other party, and shall pay for the same. If both parties desire such a transcript, they shall share the cost of the arbitrator's copy and shall each pay for its own copy. All other costs occasioned by the arbitration shall be borne by the party which incurs them.

ARTICLE 4. PERSONNEL MATTERS

Section 4.1 Filling Job Openings

- 4.1.1 Except where a provision of this Section 4.1 says otherwise, all provisions of this Section 4.1 apply only to non-competitive and labor class positions. The filling of openings in other positions is governed by the Civil Service Law and rules and regulations adopted in conformity with that law.
- 4.1.2 Announcement of each job opening (except a temporary opening of less than six months' duration) which results from either a vacancy in an existing position or the creation of a new position and which, in either case, is a position in the negotiating unit, will be posted by BOCES in each of its Centers. The announcement will contain the title of the position, the minimum qualifications required to fill the position, the number and work location of each opening, and the salary or wage rate for the position. The announcement will be posted for not less than ten (10) working days before the position is filled. Such announcements will be posted for job openings, provisional and permanent, in the competitive class as well as in the non-competitive and labor classes. BOCES shall also post in each Center civil service examination announcements for competitive class positions.
- 4.1.3 An employee who desires to fill a posted job opening will file a written notice with the office of the District Superintendent not later than the last day of the posting period.
- 4.1.4 If BOCES decides to fill a job vacancy or opening in a non-competitive or labor class position, it will base its decision on the relative physical capacities, attendance, skill, ability, documented work performance evaluations, (documented shall mean that he/she has seen the document). If an employee is to sign the document it shall be so noted by the supervisor and experience of those applicants who are qualified to perform the duties of the vacant or open position. However, if two or more applicants have relatively equal physical capabilities, skill, ability and experience, then, BOCES will appoint the most senior applicant. Seniority shall be determined according to the definition set forth in paragraph 4.3.4 of this Agreement.
- 4.1.5 Any employee who accepts a temporary position which was posted pursuant to paragraph 4.1.2 of this Agreement shall be allowed to return to the classification in which he was employed prior to being appointed to the temporary position when the employee who encumbers the temporary position returns to work or when the temporary position terminates or is abolished. Acceptance of a temporary position does not alter the employee's entitlement to benefits or wage increases pursuant to this Agreement.

Section 4.2 Discipline and Dismissal

- 4.2.1 This Section 4.2 applies only to employees in the non-competitive and labor classes who are not entitled to the protection of Section 75 of the Civil Service Law and who have completed one or more years of continuous service with the BOCES, if hired prior to ratification of the agreement with the term commencing on July 1, 2011.

Employees hired in the bargaining unit after ratification of the agreement with term commencing on July 1, 2011 shall be subject to the terms and conditions of Section 4.2 after two consecutive years of service.

- 4.2.2 Except with respect to reprimands, BOCES shall follow the provisions of Section 75 of the New York State Civil Service Law when it seeks to discipline or dismiss an employee. An employee who is disciplined or dismissed shall have the right to appeal and enforcement of a decision in accordance with Section 76 and Section 77 respectively of the aforementioned law. If BOCES reprimands an employee, the employee shall have the right to submit a written, dated and signed rebuttal to the reprimand. The rebuttal shall be attached to the copy of the reprimand placed in the employee's personnel file.

Section 4.3 Layoffs and Recalls

- 4.3.1 This paragraph has application only to employees in the non-competitive and labor classes who have completed at least six (6) months of continuous service with BOCES.
- 4.3.2 If BOCES decides to reduce the number of employees in a classification to the extent that employees protected by this Section 4.3 would be affected, such employees will be laid off in reverse order of their seniority beginning with the least senior employee. An employee so laid off may displace: (i) any temporary or part-time employee in the same classification if he is willing to work the same hours at the same location as the temporary or part-time employee, or (ii) any junior employee in a classification in which the laid off employee previously worked for BOCES.
- 4.3.3 Prior to hiring new employees to fill a job opening in a classification from which employees protected by this classification from which employees protected by this Section 4.3 have been laid off, such employees who have been laid off from the classification in question for a period not exceeding twenty-four (24) consecutive calendar months shall be restored to the active payroll to fill the job opening in the inverse order of their seniority beginning with the most senior laid off employee. The Employer shall notify the employee(s) of his or her recall by registered or certified mail with return receipt requested at the employee's last known address. Such recall notification must be acknowledged by the employee(s) within two (2) working days of receipt. Upon being recalled to a position, the employee shall receive the rate of pay that he or she was receiving when the layoff occurred or if an increase has been provided, such employee shall receive the increase in pay in addition to the aforementioned rate of pay. In addition, the District shall return all leave credits accrued by the employee up to the date of layoffs as well as all other rights enjoyed by the employee prior to the layoff. The leave credits and rights shall be returned immediately upon re-employment.
- 4.3.4 As used in this Section 4.3, an employee's seniority is the length of continuous employment by BOCES. An unpaid leave of absence or a period of layoff which exceeds twenty-four (24) continuous months shall constitute an interruption of seniority and such an employee shall not again acquire seniority until he has been restored to the active payroll as a new employee. An unpaid leave of absence or a period of layoff of less than twenty-four (24) consecutive months shall not constitute an interruption of service, but the period of such unpaid leave of absence shall not be counted toward the seniority of the employee in question.
- 4.3.5 Hiring of temporary employees shall not result in the layoff, or in the curtailment of the regular schedule of straight-time hours, of any regular full-time employee or of any regular part-time employee.

Section 4.4 Miscellaneous

4.4.1 Not later than the thirtieth consecutive calendar day after the Execution Date, BOCES shall furnish to the CSEA a list of all employees in the negotiating unit. The list shall show for each employee: his name/his home address as shown on the records of BOCES, his work location, seniority date and his classification. Annually thereafter, not later than the thirtieth consecutive calendar day following the anniversary of the Execution Date, BOCES shall furnish an updated list to the Association showing the same information current as of such anniversary date. At the same time as each such list is furnished to the CSEA, BOCES shall post on all paragraph 2.1.4 bulletin boards a list showing each employee's name and seniority date. For non-competitive and labor class employees, the seniority date shall be determined according to the requirements of paragraph 4.3.4 of this Agreement. For competitive class employees who successfully complete their probationary period, it shall be the first day of probationary service. If the employee believes his posted seniority date is not correct, he must so notify the District Superintendent in writing not later than the close of business on the 30th consecutive calendar day following the date of posting as shown on the list. If the seniority date in question is not settled to the mutual satisfaction of BOCES and the CSEA within the next thirty (30) consecutive calendar days, it shall be resolved through the grievance procedure by filing a grievance within the time limit specified in paragraph 3.2.1 of this Agreement. The beginning date of the grievance filing time limit shall be the day following the 30th consecutive calendar day for resolution of the seniority date question. If a seniority date is not questioned through this procedure the first time it is so posted, it cannot be later contested in any form. A seniority date which is so questioned but not grieved shall likewise not be contestable in any other forum. A grievance settlement or arbitration award on a seniority date shall likewise not be contestable in any other forum. The posted list of seniority dates shall quote the portions of this paragraph relating to questioning and contesting seniority dates.

4.4.2 The personnel file maintained in the office of the District Superintendent on each employee shall be the only official personnel file maintained by the BOCES, but this shall not be interpreted to prohibit other administrators from maintaining personnel files. No material which comments adversely on an employee's conduct or performance shall be used against the employee unless a copy thereof has been filed in the official personnel file and another copy thereof has been given to the employee. The BOCES may require of an employee that he acknowledge his receipt of a copy of any document to go in the official personnel file by signing and dating the file copy of the same, but such signature shall not constitute agreement with the content of the document. An employee shall have the right to submit a written, dated and signed rebuttal to any document in his official personnel file. An employee (accompanied by a representative from the Association if the employee so desires) may review his personnel file during the normal office hours of the office of the District Superintendent provided that he first gives written notice to the office of the District Superintendent of his desire to review the file not later than the working day immediately preceding the working day on which he desires to review the file. Such review shall take place in the presence of a person designated by the District Superintendent. An employee shall be furnished without charge one copy of any item(s) in his file; thereafter, each copy of such an item which the employee requests shall be paid for by him at the standard rate for copies normally charged by BOCES.

- 4.4.3 With the permission of the immediate supervisor or supervisors involved, employees in the same classification may change shifts provided that the replacing employee is qualified for and capable of performing the required work. The replacing employee must assume the full hourly and daily schedule of the employee replaced for the shift or shifts in question. Such shift changes are made for the convenience of the employees involved and will not result in any change in the pay rates of the employees involved. Shift differentials, if any, will continue to accrue to the employee who would normally have worked the shift. Straight-time work performed by the replacing employee will not be counted toward overtime differentials, if any, which would otherwise accrue to him if he had performed the work on his own shift; however, if the replacing employee works longer hours than the normal hours for that shift, the excess hours will be counted toward the replacing employee's week worked for overtime differential purposes.

ARTICLE 5. COMPENSATION

Section 5.1 Basic Pay Rates

- 5.1.1 All employees are hourly rated.
- 5.1.2 Each employee shall be paid not less than the minimum rate nor more than the maximum rate, of the wage grade for his classification as set forth in Appendix B-1, provided that no new employee shall be hired at a rate higher than the lowest-rated employee in the same classification or advanced beyond that rate during his probationary period.

Effective July 1, 2013, the (base) salary of each employee covered by this Agreement in effect on June 30, 2013 shall be increased by 5.0% per FTE.

Effective July 1, 2014, the (base) salary of each employee covered by this Agreement in effect on June 30, 2014 shall be increased by 3.0% per FTE%.

Any employee who has separated or does separate from employment prior to the date on which this collective bargaining agreement, term commencing July 1, 2011, is ratified by both parties, shall not receive any retroactive adjustments either in salary or any fringe benefits.

- 5.1.3 When an employee is promoted to another classification, the employee shall be paid between 105% and 145% of the rate of pay that he or she received in his or her former classification if promoted by one or two wage grades and at least 105% for employees promoted by more than two wage grades, subject to the requirement that the salary ranges in Appendix B-1 must be adhered to. However, if two or more persons in the same job classification are simultaneously promoted to positions that are also in the same job classification, then those persons shall receive equivalent salary increases upon promotion.
- 5.1.4 When an employee permanently moves from a classification in a higher-rated Wage Grade to a classification in a lower-rated Wage Grade, the employee shall be paid ninety-five percent of his rate of pay in his former classification. For purposes of this paragraph 5.1.4, a Wage Grade is lower-rated if its maximum rate as set forth in Appendix B-1 is lower than the maximum rate for the Wage Grade to which it is being compared.

- 5.1.5 Effective July 1, 2000, when an employee has completed the number of years of full-time continuous service with BOCES shown below, he shall be given a longevity payment in the amount shown below (less required tax and FICA deductions) on the payday immediately following the annual anniversary of his first day of work during each year of continuous full-time service thereafter:

<u>Years of Full-time Continuous Service</u>	<u>Amount</u>
After 5th such year	\$100.00
After 10th such year	\$175.00
After 15th such year	\$250.00

Section 5.2 Differentials

- 5.2.1 When an employee is assigned by his supervisor to perform the duties of another classification for a period of ten or more consecutive workdays, the employee shall be paid at the greater of one hundred five (105%) percent of his own rate of pay or the minimum rate set forth in Appendix B-1 for the classification in which he is working for all hours worked in the classification retroactive to the first day.
- 5.2.2 Effective July 1, 1993, an additional twenty-eight (28¢) cents per hour will be paid to employees assigned to a shift if the majority of their assigned shift hours falls between 4:00 p.m. and midnight. Effective July 1, 1993, an additional thirty (30¢) cents per hour will be paid to employees assigned a shift if the majority of their assigned shift hours falls between midnight and 8:00 a.m. These shift differentials shall be paid to the employees entitled to them for all working hours, and all paid time off; provided, however, that when such employees are assigned to the day shift during the summer recess, the shift differential shall not be paid to them.

Section 5.3 Premium Pay

- 5.3.1 There shall be no pyramiding of premium pay. If two (2) or more premium rates provided in this Section 5.3 apply to the same period of time worked, the employee shall receive only the highest of them.
- 5.3.2 When an hourly rated employee works more than forty (40) hours in a work week, he shall be paid one and one-half (1½) times his hourly rate for all time worked beyond forty (40) hours in that work week. For purposes of this paragraph 5.3.2 a work week begins at 12:01 a.m. on Sunday and ends at midnight on the first succeeding Saturday. A paid holiday which falls on an employee's regularly scheduled workday shall be counted as time worked for purposes of this paragraph 5.3.2.
- 5.3.3 If an employee works on a paid holiday as provided by paragraph 7.1.1 of this Agreement, he shall be paid one and one-half (1½) times his hourly rate for such work in addition to his holiday pay.

Section 5.4 Pension and Insurance

- 5.4.1 The BOCES will provide to all eligible employees and pay for, to the extent required by law, the plan specified by Section 75-i of the New York State Retirement and Social Security Law.
- 5.4.2 BOCES will make available to full-time regular employees and part-time regular employees either single or family coverage, whichever the employee is eligible for. The BOCES shall have the right to select the health insurance carrier (plan administrators) and the health insurance plan, as long as the benefits provided are at least equivalent to those provided under the present coverage. The operation of the health insurance coverage shall be governed in all respects by the terms of the plans, rules and policies governing such coverage as issued by the Plan Administrator.

Until July 1, 2013, the BOCES' premium contribution (for a full-time employee) shall be capped at one hundred percent (100%) of the premium cost in effect for enrollment in the available managed care (point of service) plan or the traditional indemnity plan, whichever plan has a lesser premium cost; any individual electing to enroll in the plan with a higher premium cost shall pay the full difference between the applicable premium cost for that plan and 100% of the applicable premium cost in effect for enrollment in the plan with lesser premium cost; for each covered regular part-time employee who is regularly scheduled to work twenty (20) or more hours per week, the BOCES will make one-half of the premium contribution that the BOCES would make on behalf of a regular full-time employee; a part-time employee who works less than fifty percent (50%) of a regular full-time employee's schedule is not eligible to be covered in this health insurance program. Until September 1, 2013 for the managed care (point of service) plan, employee prescription co-payments shall not exceed \$5.00 per in-network prescription and/or \$10.00 per out-of-network prescription or, if the BOCES elects to move to a three tier prescription co-payment system for managed care plan enrollees, such prescription co-payments shall not exceed \$5.00 for each generic prescription, \$10.00 for each preferred brand name prescription and \$25.00 for each non-preferred brand name prescription, with provision for mail order (up to 90 days) at up to double the foregoing prescription co-payments; regarding the traditional indemnity plan, employee prescription co-payments shall not exceed \$10.00 for each generic prescription, \$20.00 for each preferred brand name prescription and \$40.00 for each non-preferred brand name prescription, with provision for mail order (up to 90 days) at up to double the foregoing prescription co-payments; regarding the traditional indemnity plan, the maximum annual coinsurance payments in the 80/20 coinsurance rider shall be increased to \$1,000.00 for single-person coverage and \$2,000.00 for two-person or family coverage.

Effective July 1, 2013, the BOCES' premium contribution (for a full-time employee) shall be capped at 97% of the premium cost in effect for enrollment in the available managed care (point of service) plan or the traditional indemnity plan, whichever plan has a lesser premium cost. Any individual electing to enroll in the plan with a higher premium cost shall pay the full difference between the applicable premium cost for that plan and the BOCES' premium contribution in effect for enrollment in the plan with lesser premium cost. For each covered regular part-time employee who is regularly scheduled to work at least fifty percent (50%) of a regular full-time employee's schedule, but less than seventy-five percent (75%) of such a schedule, the BOCES will make one-half of the premium contribution that the BOCES would make on behalf of a regular full-time employee, if the part-time employee applies for such coverage. The foregoing premium contribution

provisions for regular part-time employees shall, except as otherwise expressly stated in this agreement, apply to all such regular part-time employees in the bargaining unit, including but not limited to those employees who have been involuntarily reduced to regular part-time. A part-time employee who works less than fifty percent (50%) of a regular full-time employee's schedule is not eligible to be covered in this health insurance program. Effective September 1, 2013, the managed care (point of service) plan employee prescription co-payments shall not exceed \$7.00 for each generic prescription, \$15.00 for each preferred brand name prescription and \$35.00 for each non-preferred brand name prescription, with provision for mail order (up to 90 days) at up to up to double the foregoing prescription co-payments (or up to two and one-half times the foregoing prescription co-payments if the option to provide mail order (up to 90 days) at double the foregoing prescription co-payments becomes unavailable to the BOCES as a result of an action or decision of the plan, plan administrator or Health Consortium of which the BOCES is a member). The traditional indemnity plan employee prescription co-payments shall not exceed \$10.00 for each generic prescription, \$20.00 for each preferred brand name prescription and \$40.00 for each non-preferred brand name prescription, with provision for mail order (up to 90 days) at up to double the foregoing prescription co-payments (or up to two and one-half times the foregoing prescription co-payments if the option to provide mail order (up to 90 days) at double the foregoing prescription co-payments becomes unavailable to the BOCES as a result of an action or decision of the plan, plan administrator or Health Consortium of which the BOCES is a member). Employee premium contributions shall be effectuated by payroll deductions. BOCES premium contributions shall be made only while the employee is on active (paid) status.

The BOCES' sole responsibilities with respect to such coverage shall be to: (i) make the coverage available; (ii) provide necessary data on reasonable request; and (iii) pay its contribution to the monthly premiums as specified in this Section 5.4.2. Employee premium contributions shall be effectuated by payroll deductions. BOCES premium contributions shall be made only while the employee is on active (paid) status.

5.4.2a BOCES will make available to full-time regular employees and part-time employees either single, two-person or family coverage (whichever the employee is eligible for) as follows:

- 1) Effective May 1, 2008, each covered employee shall be responsible for prescription co-payments not to exceed \$10.00 for each generic prescription, \$20.00 for each preferred brand name prescription and \$40.00 for each non-preferred brand name prescription, with provision for mail order (up to 90 days) at up to double the foregoing prescription co-payments.
- 2) ~~Deductible - Single \$100, Family \$200.~~ Effective January 1, 2004, each employee shall be responsible for payment of an annual deductible of \$200 for single-person coverage and \$400 for family (or two-person) coverage.
- 3) Effective May 1, 2008, 80/20 Coinsurance Rider with a \$1,000 single coinsurance payment and a \$2,000 family coinsurance payment.
- 4) An employee earning below \$20,000 annually will be reimbursed for the (twenty percent (20%)) co-insurance payments (exclusive of deductibles, which shall not be reimbursed) made under the plan upon submission of

appropriate medical and financial documentation.

- 5.4.2b The BOCES will make available one or more managed care plans (which may include, as examples, a Health Maintenance Organization (HMO) plan, a Preferred Provider Organization (PPO) plan or a Point of Service (POS) plan), which eligible unit members may choose in lieu of traditional indemnity coverage provided for in Section 5.4.2a above.

Until July 1, 2013, the BOCES shall pay the full applicable premium on behalf of each unit member enrolled in a managed care plan under this Section 5.4.2b. However, the BOCES' contribution on behalf of an enrollee in a managed care plan shall not exceed the contribution that the BOCES would make on behalf of the unit member if he or she enrolled in the traditional indemnity plan. If the monthly premium for coverage under a managed care plan becomes greater than the monthly premium that the BOCES would remit on behalf of an enrollee in traditional coverage as provided for in Section 5.4.2a, then the unit member will be afforded the opportunity to enroll in the traditional indemnity plan or an alternative managed care plan if such an alternative plan is made available by the BOCES.

Effective July 1, 2013, the BOCES' premium contribution (for a full-time employee) shall be capped at 97% of the premium cost in effect for enrollment in the available managed care (point of service) plan or the traditional indemnity plan, whichever plan has a lesser premium cost. Any individual electing to enroll in the plan with a higher premium cost shall pay the full difference between the applicable premium cost for that plan and the BOCES' premium contribution in effect for enrollment in the plan with lesser premium cost. For each covered regular part-time employee who is regularly scheduled to work at least fifty percent (50%) of a regular full-time employee's schedule, but less than seventy-five percent (75%) of such a schedule, the BOCES will make one-half of the premium contribution that the BOCES would make on behalf of a regular full-time employee, if the part-time employee applies for such coverage. The foregoing premium contribution provisions for regular part-time employees shall, except as otherwise expressly stated in this agreement, apply to all such regular part-time employees in the bargaining unit, including but not limited to those employees who have been involuntarily reduced to regular part-time. A part-time employee who works less than fifty percent (50%) of a regular full-time employee's schedule is not eligible to be covered in this health insurance program.

The eligibility requirements for health coverage (and premium contributions made by BOCES) shall be those which are set forth in Section 5.4.2. Unit members meeting the eligibility requirements for health coverage shall select coverage under either the traditional indemnity plan provided for in 5.4.2a, or a managed care plan provided for in this section, during the month of June. The election must be received in the Labor Relations office during the month of June, and, except as expressly stated elsewhere in this agreement, shall be binding upon the unit member for the duration of the succeeding fiscal year. If a managed care plan is discontinued or substantially altered by the BOCES, then unit members enrolled in that plan shall be given an opportunity to enroll in either the traditional indemnity plan provided for in Section 5.4.2a or an alternative managed care plan. Notwithstanding the preceding sentence, the BOCES is not under any obligation to make more than one managed care plan available.

- 5.4.2c If a member of the bargaining unit is legally married to an individual employed by any member of the Health Consortium of which the BOCES is a member, then the BOCES will

pay for one health plan for the family only if the unit member's spouse declines health coverage provided by his or her employer.

Section 5.5 Other Compensation Matters

- 5.5.1 BOCES shall continue to make available in each building rain gear and coveralls for use by the employees in that building when necessary. This paragraph shall not be construed to require BOCES to provide rain gear or coveralls to each and every employee.
- 5.5.2 When an employee dies, resigns or is otherwise terminated for any reason, he shall be paid for all earned but unused vacation days at his then current hourly rate or, if he is salaried, daily rate. If the termination results from the employee's death, the payments shall be made to his estate. All such payments shall be made not later than the second regular payday following the employee's termination.
- 5.5.3 The mileage allowance for an employee using a personal vehicle for personal pre-authorized travel in the performance of his/her duties, shall receive the IRS rate per mile. In the event that the IRS changes its current fixed mileage allowance, the employer shall adopt the new rate as the mileage allowance for employees, after 30 days notification (of the rate revision) by the President in writing to the District Superintendent.

Section 5.6 Health Insurance Upon Retirement

- 5.6.1 The following plan is in lieu of any and all plans to "buy back" unused sick leave.
- 5.6.2 Effective July 1, 1991. If a unit member retires from the service of BOCES pursuant to the New York State Employees' Retirement System and was covered on the effective date of his retirement by a health insurance plan provided pursuant to this Agreement, he will be eligible for continued coverage under a health insurance plan calculated upon the following conversion formula based upon the number of full years of continuous full-time service to BOCES which he had completed as of the effective date of his retirement.

<u>Year's Service</u>	<u>Monthly Coverage</u>
15, but less than 20 years and at least 100 accumulated sick days	12 months
15, but less than 20 years and at least 140 accumulated sick days	18 months
20 or more years and at least 120 accumulated sick days	24 months
22 or more years and at least 140 accumulated sick days	36 months

Retirees with an effective date of retirement on or after July 1, 2007 who receive health coverage under this Section 5.6.2 shall be required to remit premium contributions in the same amounts as those which active unit members must remit, except that a preferred provider organization (PPO) plan shall be made available only to an eligible retiree who is ineligible (due to residency) for enrollment in the Point of Service (POS) plan.

- 5.6.3 Notwithstanding the provisions of paragraph 5.6.2 above, such continued coverage shall terminate if the retired unit member dies or becomes covered by an employer-paid health insurance plan.
- 5.6.4 Such continued coverage shall be on a single basis if that was the basis of the unit member's coverage with BOCES on the effective date of his retirement. Such continued coverage shall be on a family basis if that was the basis of the unit member's coverage with BOCES on the effective date of his retirement, but shall be converted to single coverage if and when, during the applicable number of months calculated during paragraph 5.6.2 above, any of the following occurs:
- a. the unit member's spouse dies, or
 - b. the unit member ceases to be married, or
 - c. the retired unit member's spouse becomes covered by an employer-paid health insurance plan with equal or better coverage.
- 5.6.5 Such continued coverage shall be under the health insurance plan provided by this Agreement or successors thereto as the same may be modified provided, however, that BOCES may substitute coverage under the appropriate "65" coverage when the retired unit member, the retired unit member's spouse, or both become eligible therefor. When a retired unit member who is eligible for coverage pursuant to this Section, becomes eligible for Medicare or Medicaid and is required to pay a supplementary premium therefor (either directly or through a deduction from social security payments), the BOCES will reimburse the retired unit member up to the full amount of such supplementary premium (provided, however, that the total amount paid by the District for the health insurance premium and the supplementary premium reimbursement to such a retired unit member does not exceed the amount paid by the District for the premium for a retired unit member who is not eligible for Medicare or Medicaid) once every three months on presentation to the Business Office of satisfactory written evidence of such payments or deductions for the previous three months.
- 5.6.6 As used in paragraph 5.6.2 above, the phrase "years continuous full-time service":
- a. begins on the date when the unit member last began work for BOCES pursuant to a probationary appointment except as spelled out in paragraph 5.6.6d below;
 - b. does not include any prior service to BOCES even though it may have been pursuant to a probationary appointment;
 - c. does not include any time when the unit member was on a Board of Education approved paid or unpaid leave of absence;
 - d. does not include any period of time when the unit member was working on a part-time basis.

Although the time periods referred to in subparagraphs (c) and (d) above do not count as "service" for purposes of paragraph 5.6.2 above, such periods do not interrupt "continuous service" for purposes of that paragraph.

- 5.6.7 A retired unit member will be eligible for the coverage provided herein only if he gives to the District Superintendent/Chief Executive Officer, not later than January 1st of the calendar year which includes the unit member's effective date of retirement, a written resignation because of retirement setting forth the effective date of such resignations because of retirement.

Section 5.7 Flexible Spending Account, Health Reimbursement Account and Health Insurance Buy-out

- 5.7.1 The BOCES will enact a Flexible Spending Account for each member of the bargaining unit. The Flexible Spending Account shall have no annual minimum, and the maximum amount which a unit member may set aside each Plan Year for reimbursement of medical expenses is two thousand dollars (\$2,000). The maximum amount which a unit member may set aside each Plan Year for reimbursement of dependent care expenses shall be the maximum prescribed by law. All employees that meet the eligibility requirements set forth in the Plan Highlights are eligible to participate in the flexible benefit plan.

Effective September 1, 2004, the BOCES shall establish a health reimbursement account in accordance with Section 105 of the Internal Revenue Code. The BOCES contribution shall be \$450 per plan year for each active regular full-time employee. Effective September 1, 2006, the BOCES contribution shall be \$475 per plan year for each active regular full-time employee. The BOCES contribution shall be pro-rated for employees hired after the beginning of a plan year, and for any employees entering unpaid leave for any part of a plan year. The BOCES contribution shall be pro-rated for ten-month and eleven-month employees as well as regular part-time employees. Unused funds in an employee's account may accrue to a maximum of \$2,000. Unused funds in excess of \$2,000 shall revert to the BOCES. The plan document shall be developed by the BOCES in accordance with the Internal Revenue Code. The health reimbursement account that is provided for in this paragraph is available only to members of the bargaining unit who enroll in group health coverage under Section 5.4 or who are enrolled as a spouse or dependent in other BOCES medical and prescription (i.e. point of service, preferred provider organization, or traditional indemnity) health insurance.

A plan participant, upon termination of employment for whatever reason, agrees to reimburse the employer for any claims paid which exceed their plan balance.

- 5.7.2 Employees who elect to decline to participate in the District sponsored health plan may do so by providing the Business Office with proof of other health coverage. Those who opt out of family coverage will receive one thousand one hundred dollars (\$1,100) for every year in which they do not participate; those opting out of single coverage will receive six hundred dollars (\$600). The foregoing stated amounts apply to regular full-time employees, and shall be pro-rated in accordance with the pro-ration methodology set forth in Section 5.4.2 for regular part-time employees with a FTE of at least fifty percent (50%). Employees will be eligible to re-join the plan on the first day of the month after having provided the District with evidence of changed circumstances due to divorce, death of spouse, spouse's loss of job; in cases of such re-entry, the amount paid to the employee for non-participation shall be pro-rated. Election of the option must be made by July 30th of the calendar year.

The health plan buy-out shall not be available to district employees who are married to other district employees.

Section 5.8 Performance Based Compensation

- 5.8.1 The Board of Education, upon recommendation of the District Superintendent, shall have the right to provide additional compensation to employees in the unit for services considered exemplary.

The Association President shall be notified of any exemplary service award given to a member of the unit, and of the criterion of criteria used in making the award. The BOCES shall not exercise its discretion, in making exemplary service awards, in a manner that is arbitrary or capricious.

Section 5.9 Tax-Sheltered Annuities

- 5.9.1 Pursuant to Section 403(b) of the Internal Revenue Code, tax-sheltered annuities shall be made available to unit members who execute the necessary salary modification (payroll deduction) forms and any other applicable forms as prescribed by the BOCES. Participation shall be governed by the terms of Board of Education Policy No. 5423, and in the event that the Policy is revised then the terms of participation will change accordingly.

The Association shall defend, indemnify and hold harmless the BOCES against any and all claims, suits or other forms of liability that shall or may arise by reason of action taken, or not taken, by the BOCES with respect to the operation of the program.

ARTICLE 6. WORK SCHEDULES

Section 6.1 Regular Hours

- 6.1.1 The normal work week of regular full-time employees shall consist of five consecutive workdays. Such an employee shall be notified at least fifteen (15) workdays prior to the effective date of any permanent change in his regular schedule of workdays.
- 6.1.2 The normal workday of a regular full-time employee shall consist of eight consecutive hours excluding lunch period. Such an employee shall be notified at least fifteen (15) workdays prior to the effective date of any permanent change in his regular schedule of hours.
- 6.1.3 For an employee working an eight-hour shift (excluding lunch), two paid rest breaks of fifteen (15) minutes (each) shall be scheduled per shift, at times to be determined by the BOCES. An employee shall not be permitted to leave the work site during such a paid rest break, without express permission from an authorized BOCES representative.
- 6.1.4 AV technicians-annually, at the discretion of the District Superintendent, the 37 ½ hours per week AV technical position may be varied to a maximum of 40 hours per week with a concurrent increase in the annual wage.
- 6.1.5 All employees in the unit shall be required to "punch-in" and "punch-out" to account for time worked on a time clock provided by the District and designated for that purpose.

Time Clock Procedure

1. The use of the time clock is for the purpose of accurate record keeping and time clock records will be used for payroll purposes.
2. The responsibility for keeping accurate hours of work is that of the individual employee.

Employees who knowingly falsify information by "punching in" or "punching out" for another employee will be subject to disciplinary action.

3. In the event a time clock is not functioning or not available to an employee because of assignment, the employee shall indicate the time of the beginning or end of their shift by affixing the time manually to their time cards.
4. All employees in the unit shall "punch in" no earlier than ten (10) minutes before the work shift begins, unless assigned to work by their immediate supervisor.
5. All employees in the unit shall "punch out" after having worked their regular shift, not later than ten (10) minutes after the work shift ends, unless assigned to work overtime by their immediate supervisor or if, in the judgment of the employee, matters of health or safety require the continued presence of the employee in their assigned building.
6. Time clocks shall be installed at each location where unit members are assigned, and the location of the time clocks within each building shall be determined by the Superintendent of Operations and Maintenance.
7. Time cards are subject to the approval and verification by initials of the superintendent of Operations and Maintenance and his/her designee before consideration for payment for hours worked can be processed.
8. The BOCES may require that an employee punch out (using a time clock) when commencing the thirty (30) minute unpaid lunch break, and to punch back in (using a time clock) prior to resuming work at the end of the thirty (30) minute unpaid lunch break. Such requirements shall be imposed only if the BOCES supervisor reasonably suspects that the employee has failed to adhere to his or her work schedule. Such requirements shall be reviewed every thirty (30) days after being imposed.

Section 6.2 Overtime Work

6.2.1 Overtime work (i.e., work beyond the regular schedule) for full-time employees who are qualified to do the work shall be managed by rosters in the following order:

- a. Effective August 1, 1990, two overtime rosters will be established per job classification and work location.

Roster #1
Orleans

Roster #2
East
West

- b. For the purpose of assignment on either roster, an employee shall be assigned to the roster by their job classification and according to where they work on a continuously assigned basis of 50% or more per week, as determined by the Superintendent of Operations and Maintenance.
- c. Overtime shall be offered through the roster system by district seniority — the most senior employee being offered the first overtime assignment and then to each subsequent employee whose name appears at the top of the list.

The Superintendent of Operations and Maintenance or his designee will determine which classification the overtime to be worked is assigned. An offer of overtime work shall consist of work and location of work. An employee who refuses the overtime assignment or is not home when overtime offering is made, overtime will then be offered to the next senior employee.

- d. An updated seniority overtime shall be posted in each work location once every six months.
- e. If an offer of overtime results in a return to location, the affected employee shall be paid a minimum of four hours of overtime.

Anyone who is called back to location for a security/fire call, shall receive a minimum of two hours of overtime pay. Time worked beyond two hours, up to four hours, will receive a minimum of four hours of overtime pay. Any time beyond four hours shall be paid at the overtime rate for the exact amount of time actually worked.

ARTICLE 7. ABSENCE FROM WORK

Section 7.1 Paid Absences

7.1.1 There shall be fourteen (14) paid holidays for employees covered by this Agreement. Each such day must be a day on which school is closed according to the calendar adopted by the Board. The particular days to be observed as paid holidays shall be agreed upon between the District Superintendent and the President of the Orleans/Niagara BOCES Technical, Maintenance and Custodial Services Unit. For each such paid holiday, an employee on the active payroll will be paid his hourly rate times the number of hours he would normally have worked had the day not been a paid holiday.

~~7.1.2~~ Each member of the bargaining unit shall be credited with one (1) day of vacation leave at the end of each month of service to the BOCES, plus one (1) additional day at the end of each additional year of service to the BOCES, up to a maximum of seventeen (17) days of vacation leave to be credited at the end of his or her sixth (6th) year of service. The maximum days that can be credited in a year of service are as follows:

1st year:	12 days
2nd year:	13 days
3rd year:	14 days
4th year:	15 days
5th year:	16 days
6th year:	17 days

Vacation days can be taken at any time requested by an employee and approved by his supervisor and the District Superintendent, provided that the request is made at least two (2) full work days preceding the first day of a vacation period of less than five (5) working days; at least ten (10) working days in advance of a vacation period of five (5) to nineteen (19) consecutive working days, and at least twenty (20) working days in advance of a vacation period of twenty (20) consecutive working days. The BOCES shall have discretion to approve a vacation leave request made upon less notice than prescribed in Section 7.1.2.

Accumulation of more than twenty (20) vacation days is not permitted. Effective July 1, 2004, the maximum accumulation shall be twenty-two (22) days. Days earned beyond that limit are forfeited. A salaried employee shall suffer no loss in pay on a day when he takes vacation. For each day on which an hourly rated employee takes vacation, he will be paid his hourly rate times the number of hours he would have worked had he not taken vacation. If a holiday provided pursuant to paragraph 7.1.1 of this Agreement falls when an employee is on vacation, he will be paid his holiday pay and that day will not be charged as a vacation day.

- 7.1.3 Regular full-time employees hired prior to ratification of the agreement with term commencing on July 1, 2011 shall be credited with fifteen (15) days of sick leave on July 1st of each year, and such employees who begin work at a later time in the fiscal year shall be credited with one day of sick leave for each full month remaining in the fiscal year.

Regular full-time employees hired after ratification of the agreement with term commencing on July 1, 2011 shall be credited with twelve (12) days of sick leave on July 1st of each year, to be pro-rated for part-time employees and/or employees having a work year of less than twelve months, and such employees who begin work at a later time in the fiscal year shall be credited with one day of sick leave for each full month remaining in the fiscal year.

The foregoing annual allotment of sick leave shall continue to be pro-rated for regular part-time employees. Sick leave may be accumulated to a maximum of 200 days. Sick leave may be taken in one (1) hour segments for doctor or dental appointments by utilization of the time clock to record hours worked. The use of sick leave in one (1) hour segments shall be limited to four (4), one (1) hour occurrences in any one fiscal year. Absence for any of the following reasons shall be deducted from accrued sick leave:

- (1) The employee's own illness;
- (2) Illness of the employee's husband, wife, father, mother, son, daughter, father-in-law, or mother-in-law provided that the use of sick leave for this purpose shall not exceed a total of ten (10) working days in any fiscal year.

For any employee whose work shift commences after 8:00 a.m., any absence (other than one that had previously been approved) shall be called in (in accordance with procedures prescribed by the BOCES) as soon as practicable and at least one hour and 45 minutes before the scheduled beginning of the work shift, unless emergency circumstances preclude the giving of such notice (in which case notice shall be provided (in accordance with procedures prescribed by the BOCES) as soon as practicable). All other employees shall be

required to call in any absence (in accordance with procedures prescribed by the BOCES) by no later than the scheduled beginning of his or her shift.

Payment for time claimed as sick leave for purposes of the employee's illness or the illness of a member of his family as defined in paragraph 7.1.3 shall be supported by a physician's statement whenever requested by the employee's supervisor for an illness of three or more consecutive days or if the employee is suspected of abusing sick leave. In addition, the District Superintendent may require the employee to undergo a physical examination by a physician selected by the District and at the District's expense before the employee is paid for sick leave claimed for his illness. An employee shall suffer no loss in pay when he is on sick leave. For each hour of sick leave used, an hourly rated employee will be paid at this hourly rate.

Doctor and dental appointments shall be scheduled, if possible, outside of normal working hours.

Each unit member may be granted a maximum of one day of paid leave per fiscal year for personal business that cannot be accomplished outside of the employee's regular work day. Such paid leave shall be deducted from the unit member's accrual of paid sick leave. Additionally, such leave shall be subject to prior approval by the District Superintendent or his or her designee. Such leave shall be requested on forms prescribed by the District Superintendent or his or her designee, and the District Superintendent or his or her designee may require an explanation of the general nature of the business giving rise to the leave request.

7.1.4 A regular full-time employee or regular part-time employee who is required to serve on a jury during the hours when he would normally be scheduled to work will be paid for such service at his regular rate of pay provided that he:

- (1) Reports promptly for regularly scheduled hours of work during when he is not required to be on jury duty;
- (2) Furnishes to BOCES satisfactory evidence from the court of the jury duty performed;
- (3) Cooperates with BOCES in obtaining an excuse from jury duty when BOCES so requests.

7.1.5 If a regular full-time employee or a regular part-time employee is absent from work because of an illness or injury which is compensable under the Workers' Compensation Law, he shall be allowed paid sick leave during such absence to the extent that he has accumulated sick leave available. When he receives a Workers' Compensation award for such illness or injury, the portion of the Award granted covering the time of his absence from work while he was on paid sick leave shall be surrendered to the BOCES. Upon receipt of that portion of the award, the employee's sick leave accumulation shall be recredited with sick leave days in proportion to the ratio between his pay and the amount of the award for the time in question.

7.1.6 A regular full-time employee or regular part-time employee who is subpoenaed to serve as a witness in a proceeding to which neither he nor the Association nor affiliates of the

Association is a party during the hours when he would normally be scheduled to work will be paid for such hours at his regular rate of pay provided that he:

- (1) Reports promptly for regularly scheduled hours of work during which he is not required to be a witness.
- (2) Surrenders to BOCES his witness fees and pay (not including mileage or meal allowance). Alternatively, an employee may, at his option, forego pay by BOCES and retain his witness fees and pay.
- (3) Shows BOCES the subpoena.
- (4) Leave under Section 7.1.6 shall be limited to one day per employee per fiscal year.

7.1.7 The Association shall be granted a maximum of five (5) days per year of authorized absence for union officers to attend to Association business. Such absences must be requested in writing, by the Association President, to the District Superintendent at least ten (10) working days prior to the date of the proposed absence. Such written request shall specify the reason therefor.

Section 7.2 Unpaid Absence

7.2.1 An employee may be granted an unpaid leave of absence not to exceed one year for the purpose of caring for an infant child of the employee who is under four (4) months of age at the time the leave begins. Upon approval of the District Superintendent, such a leave may be terminated prior to its scheduled expiration. The time spent on leave shall be deducted from the employee's seniority but shall not be subtracted from the employee's eligibility for time-accumulated benefits such as vacation or sick leave. While the employee shall not be eligible to use any benefit while on leave, all time-accumulated benefits shall be restored to the employee on return to work. The employee shall, if otherwise eligible, be allowed to continue in the insurance plans available under this Agreement but the employee shall pay the total premium for such participation during the period of the leave. Each monthly premium payment must be delivered to the BOCES' office by the 5th day of the month or the employee's coverage will be cancelled automatically. Application for the leave shall be made to the BOCES through the District Superintendent and shall specify the anticipated beginning and ending dates of the leave. An employee on leave may request in writing an extension of the leave which the District Superintendent may grant provided the original and extended periods combined do not exceed a total of one (1) year counted from the first day of leave. Between sixty (60) and ninety (90) days prior to the scheduled conclusion of a child-rearing leave, an employee on such leave shall confirm in writing (to the District Superintendent) his or her intent to return to work upon the scheduled expiration of the child-rearing leave. Upon the expiration of a child-rearing leave, an employee must return to work and render at least one full year of service prior to being eligible for another child-rearing leave. Upon return from leave, the employee shall be restored to the same position the employee held before the leave began unless the position has been abolished or has been filled pursuant to Section 4.3 of this Agreement or Title C of Article 5 of the New York State Civil Service Law or rules or regulations issued thereunder. Upon return from leave, the employee shall be paid at the rate of pay at which he or she was being paid on his or her last day of work plus any general pay increase granted during the leave pursuant to this Agreement.

ARTICLE 8. PAYCHECK

Section 8.1 Paycheck Error

- 8.1.1 In the event of a payroll error, the following procedures will be followed in lieu of a mutual agreement (employee and district) to expedite the time requirements:
- A. Employees who are underpaid by BOCES will be reimbursed through payroll in the same number of payrolls for which the employee was underpaid.
 - B. Employees who are overpaid by BOCES will reimburse BOCES through payroll, over the same number of payrolls for which the employee was overpaid.
 - C. The maximum time to correct the payroll error shall not be greater than one year.
 - D. Upon leaving employment of BOCES for any reason (retirement, disability, layoff) remedy must be made prior to the issuance of the last paycheck. No interest shall accrue to either BOCES or the employee during the payback period. Should the employee default on payback, the balance shall become payable immediately.

Section 8.2 Direct Deposit

- 8.2.1 Effective July 1, 2008, payroll shall be exclusively by direct deposit, except as prohibited by law.

Section 8.3 Utilization of Wincap Web Paycheck Self-Service

- 8.3 Members of the bargaining unit shall be encouraged to utilize, on a voluntary basis, the employee self-service options to acquire their payroll information, instead of being issued a payroll stub. The BOCES will ensure computer access at work.

SUBSCRIPTION

In witness of the foregoing, the authorized representatives of the Orleans/Niagara Board of Cooperative Educational Services and the Association have signed their names below on the _____ day of _____, 2013.

For Orleans/Niagara BOCES

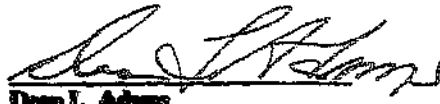


Clark J. Goshall, Ed.D.
District Superintendent

For the Association



Leonard Stanchik, President
CSEA, Inc. Local #837



Dan L. Adams
Labor Relations Specialist
CSEA, Inc. Representative

APPENDIX A
GRIEVANCE FORM

To: _____ (Supervisor's Name)

Date submitted to Supervisor: _____

(1) Who is grieving :*

Name: _____

Classification: _____

(2) What BOCES did or failed to do that the grievant(s) object to:

(3) Date on which occurrence took place: _____

(4) Each and every paragraph of the Agreement which the grievant(s) claim was violated by BOCES action or failure to act: _____

(5) Action the grievant(s) believe BOCES should take to remedy the foregoing situation:

*Grievant's signature

Date submitted

*If there is more than one grievant, the same information must be listed and each must sign on an attached sheet, except where the Association is considered to be the grievant. In such case, the unit president shall act as signator for the grievance.

APPENDIX A
(reverse side)

NOTE: THIS SIDE FOR BOCES USE ONLY.

- (1) Date of BOCES act claimed to have violated Agreement: _____
- (2) Date grievance form received by supervisor: _____
- (3) Date of Step 1 meeting, if any: _____
- (4) Date of Step 1 answer (copy attached): _____
- (5) Date appeal received by District Superintendent's Office: _____
- (6) Date of Step 2 meeting: _____
- (7) Date of Step 2 answer (copy attached): _____

APPENDIX B-1

WAGE GRADES

Grade 1:	Classifications Included: Electrician			
	<u>2011-2012</u>	<u>2012-2013</u>	<u>2013-2014</u>	<u>2014-2015</u>
Minimum	\$10.80	\$10.80	\$10.80	\$10.80
Maximum	\$31.44	\$31.44	\$33.01	\$34.00
Grade 2:	Classifications Included: Head Custodian			
	<u>2011-2012</u>	<u>2012-2013</u>	<u>2013-2014</u>	<u>2014-2015</u>
Minimum	\$9.93	\$9.93	\$9.93	\$9.93
Maximum	\$27.00	\$27.00	\$28.35	\$29.20
Grade 3:	Classifications Included: Audio-Visual Technician, Building Maintenance Worker, Sewage Treatment Plant Operator, Electrician's Helper, Auto Mechanic			
	<u>2011-2012</u>	<u>2012-2013</u>	<u>2013-2014</u>	<u>2014-2015</u>
Minimum	\$8.56	\$8.56	\$8.56	\$8.75**
Maximum	\$25.67	\$25.67	\$26.95	\$27.76
Grade 4:	Classifications Included: Custodian, Print Machine Operator			
	<u>2011-2012</u>	<u>2012-2013</u>	<u>2013-2014</u>	<u>2014-2015</u>
Minimum	\$8.24	\$8.24	\$8.24	\$8.75**
Maximum	\$24.23	\$24.23	\$25.44	\$26.20
Grade 5:	Classifications Included: Custodial Worker, Motor Vehicle Operator			
	<u>2011-2012</u>	<u>2012-2013</u>	<u>2013-2014</u>	<u>2014-2015</u>
Minimum	\$7.93	\$7.93	\$8.00*	\$8.75**
Maximum	\$23.38	\$23.38	\$24.55	\$25.29
Grade 6:	Classifications Included: Cleaner			
	<u>2011-2012</u>	<u>2012-2013</u>	<u>2013-2014</u>	<u>2014-2015</u>
Minimum	\$7.63	\$7.63	\$8.00*	\$8.75**
Maximum	\$22.60	\$22.60	\$23.73	\$24.44

*Effective January 1, 2014, the minimum salary shall be adjusted to \$8.00 per hour in accordance with the minimum wage imposed by law.

**Effective January 1, 2015, the minimum salary shall be adjusted to \$8.75 per hour in accordance with the minimum wage imposed by law.

APPENDIX B-2

LETTER OF UNDERSTANDING RE:
EXTENDED SICK LEAVE
AND EMERGENCY LEAVE

August 1, 1990

BOCES and the Association agree that Section III — Extended Sick Leave and Section IV — Emergency Leave of the "Policies Relating to Custodial Staff 1978-79, 1979-80," modified as set forth below, shall continue in effect during the life of the 2011-2015 Agreement:

Section III

Extended Sick Leave

1. Upon application of the District Superintendent and action of the Board of Education, additional sick leave not to exceed 75 percent of the number of days of unused accumulated sick leave credited to the employee as of the conclusion of the school year immediately preceding that in which the application is made will be granted, provided that the employee submits satisfactory medical evidence that he or she is medically unable to return to work. The District Superintendent may require that the employee submit updated medical evidence periodically thereafter, for as long as the leave continues.
2. Any employee who exhausts his sick leave allowance and any extension thereof shall be eligible for sick leave without pay or any other benefits for a definite period of time not to extend beyond the end of the school year in which he makes application, but subject to renewal upon further application for an additional year, upon approval of the Board.
3. The employee may continue membership in the BOCES health coverage during the term of the leave, but charges for such membership must be paid by the individual. A check from the employee to cover such charges must be in the BOCES Business Office by the 5th of each month during the term of the leave.

Section IV

Emergency Leave

Emergency leave with pay may be granted to all full-time employees for reasonable periods to meet individual or family emergencies. Written request is to be filed with the Superintendent in advance, if possible, or as soon as practical if the need is not anticipated. Such emergency leave may consist of: death in the immediate family (husband, wife, child, mother or father, or anyone who has acted in that capacity, brother, sister, mother-in-law, father-in-law, grandparent or anyone living in the immediate family unit), birth of a child, emergency surgical operation to a member of the immediate family performed in a hospital, emergency doctor, dentist or hospital visit for a member of the immediate family, or pall bearer or other similar

occurrence, subject to the discretion of the Superintendent. If any such leave exceeds five days, the Superintendent shall refer the matter to the next regular meeting of the Board.

With the exception of emergency personal leave granted for either death in the immediate family, emergency personal leave shall be deducted from the employee's accrual of paid sick leave. However, emergency personal leave shall not be counted towards or deducted from family illness leave as provided for in Section 7.1.3(2).

APPENDIX C

Substance Abuse Policy

DRUG AND ALCOHOL TESTING

FOR

REASONABLE SUSPICION

REASONABLE SUSPICION DRUG AND ALCOHOL TESTING

I. PURPOSE

- a. The purpose of this agreement is to establish a written procedure for conducting drug and alcohol tests within the Orleans/Niagara BOCES for employees when there is reasonable suspicion that such employee is under the influence of or using illegal controlled substances or under the influence of alcohol. References in this policy to illegal drug use shall encompass use of controlled substances without a prescription and/or use of lawfully prescribed drugs in a manner that is not in accordance with the terms of the prescription. An employee will be tested only when reasonable suspicion exists that such test would yield a positive result for the presence of illegal controlled substances or their metabolites or alcohol.

II. POLICY

a. Policy Statement

The use of illegal controlled substances or alcohol by an employee, regardless of the position held, adversely affects the accomplishment of the Orleans/Niagara BOCES mission, impairs the efficiency of the workforce, endangers the lives and security of employees and undermines the public trust and is, therefore, prohibited. In order to identify possible illegal controlled substances and alcohol usage, established procedures to test for the use of illegal controlled substances and alcohol shall be utilized. The Orleans/Niagara BOCES as part of its concern for its employees recognizes that the use of illegal controlled substances and alcohol causes problems, which may have a far-reaching negative effect on the health, well-being, and productivity of the workforce.

The Orleans/Niagara BOCES fully supports the community employee assistance programs ("EAP's") and encourages employees who are using illegal controlled substances and alcohol to seek the confidential service of such programs. A voluntary request for assistance must be made prior to the commission of any act subject to disciplinary action. Employees whose substance abuse or alcohol problem is disclosed/discovered only after a violation of this policy, will be addressed as provided for in this policy. Information concerning the use of illegal controlled substances and alcohol revealed to community EAP representatives by an employee cannot be used against the employee for any purpose except with employee consent as a condition of reinstatement or a return to duty, and provided the EAP's services were requested before an act subject to discipline. No term or provision of this policy (Appendix E) shall be construed to: Require the BOCES to fund or sponsor an employee's participation in an EAP; require the BOCES to select an EAP for an employee to utilize or participate in; or prohibit the BOCES from pursuing disciplinary action against an employee who has received a positive test result.

III. REASONABLE SUSPICION AND POST ACCIDENT TESTING

a. Determination of Reasonable Suspicion

An employee may be subject to reasonable suspicion drug testing whenever a BOCES administrator or supervisor has grounds to suspect that the employee is under the influence of drugs. An employee may be subject to reasonable suspicion alcohol testing whenever a BOCES administrator or supervisor has grounds to suspect that the employee is under the influence of alcohol while on duty, on BOCES property or on BOCES business.

The behavior giving rise to reasonable suspicion shall be a recognized symptom of impairment, due to alcohol or controlled substances, or there must be evidence of recent or on the job use of alcohol or controlled substances. Any employee exhibiting behavior, conduct, or personal or physical characteristics indicative of having used or consumed alcohol or drugs shall be subject to testing under this policy.

b. Post Accident Testing

Post-accident testing may be conducted when an employee has been involved in an accident on BOCES property, involving BOCES property, or while on BOCES business, where reasonable suspicion exists.

c. Right to Representation

When a decision is made to test, the employee shall be advised that the employee can consult with a union representative, as long as the union representative can respond without undue delay. Reasonable efforts shall be made (without delaying the process) to allow the employee to contact a Union Representative. In no circumstances shall testing be delayed more than 30 minutes.

d. All time spent administering a controlled substance or alcohol test, stemming from reasonable suspicion, will be paid at the employee's regular rate of pay or at their overtime rate, if applicable, and will include travel time.

e. Any employee who is not allowed to return to work while awaiting test results arising out of reasonable suspicion may use any accumulated paid leave benefits as noted in the current collective bargaining agreement during the waiting period for time lost and will be reimbursed for the time lost, should the test results prove negative unless the time off can be justified for an independent reason subject to the provision of the collective bargaining agreement.

f. If the employee requests the second part of a split specimen be tested by a certified laboratory of his/her choice, the employer is responsible for the cost of such controlled substances test.

g. Employees who participate in rehabilitation that cannot be scheduled outside of regularly scheduled hours of work will be entitled to all accumulated contractual benefits provided for in the current collective bargaining agreement.

IV. APPLICATION

- a. An employee of the Orleans/Niagara BOCES may be ordered to submit to testing to determine the presence of illegal controlled substances or alcohol.
- b. The order must be justified by a reasonable suspicion that the employee has reported to work under the influence of illegal controlled substances or alcohol, or evidence of recent or on the job use of alcohol or controlled substances, in accordance with Section III(a) above.
- c. While the "reasonable suspicion" standard does not lend itself to precise definition or mechanical application, vague or unparticularized or unspecified or rudimentary hunches or intuitive feelings do not meet the standard.
- d. Reasonable suspicion is the quantum of knowledge sufficient to induce an ordinary person to act under the circumstances. Reasonable suspicion must be directed at a specific person and be based on specific and articulable facts and the logical inferences and deductions that can be drawn from these facts.
- e. Reasonable suspicion may be based upon, among other matters: observable phenomena, such as observation of use and/or the physical symptoms of using or being under the influence of illegal controlled substances or alcohol such as slurred speech; disorientation; a pattern of abnormal conduct or erratic behavior; or information provided either by reliable and credible sources or which is independently corroborated.
- f. The BOCES will not test solely on the information of anonymous sources unless the information is corroborated by a reliable and credible source or objective evidence.
- g. It is intended that where a decision is made to test, the employee will be given a directive to submit to the test.
- h. If an employee is utilizing EAP services for his/her abuse of an illegal controlled substance or alcohol prior to an incident leading independently to the determination of the existence of reasonable suspicion of use of an illegal controlled substance or alcohol, or such employee is following the EAP program, the employee will not be subject to drug and alcohol testing under this policy for such prior use, but this policy will apply with full force to any subsequent incident where reasonable suspicion is found.

V. PROCEDURE

- a. An employee of the BOCES ordered to submit to testing shall be advised that he or she has a right to consult with a union representative and afforded the opportunity to consult with a union representative, or other union member without delaying the process in excess of 30 minutes. Reasonable efforts to allow the employee to contact a union representative or another union member shall be made.
- b. Throughout all aspects of these procedures, including transportation and the actual obtaining of the sample, every reasonable effort must be made to insure the dignity

and privacy of the employee. All reasonable efforts shall be made to avoid public attention and these procedures shall be carried out as discreetly as reasonably possible.

- c. Collecting, testing and medical review shall be in conformance with FHWA protocols for CDL drivers.
- d. If the results of any confirming test is negative, the request for testing, the finding of reasonable suspicion, as well as results of said test will not be kept. A positive reasonable suspicion controlled substances or alcohol test may result in discipline, consistent with applicable law and/or Section 4.2 of the collective bargaining agreement.

VI. GENERAL PROVISIONS

- a. An employee's refusal to submit to ordered testing or his or her refusal to cooperate in any aspects of testing procedures shall be considered insubordination and may result in discipline, consistent with applicable law and/or Section 4.2 of the collective bargaining agreement.
- b. In a case where an employee is judged too impaired to continue to work, he or she is to be assisted with making arrangements for transport to the collection center and home. The employee is to be strongly encouraged not to drive. If the employee insists on driving, the Superintendent or other appropriate authority should be immediately notified.
- c. When written reports of the laboratory test are received by the Superintendent, a copy shall be forwarded to the employee who was tested.
- d. Each test ordered under the policy shall be reviewed to insure compliance whenever possible with FHWA provisions.
- e. If, as a result of the investigation, the BOCES determines to pursue discipline, such discipline may be imposed consistent with applicable law and/or Section 4.2 of the collective bargaining agreement.
- f. Records concerning positive tests will be maintained confidentially in the personnel files. It is understood and agreed that no term or provision of this Appendix E shall be construed to prohibit disclosure of positive test results: (1) In disciplinary proceedings and/or any subsequent review thereof or appeal therefrom; or (2) if disclosure is required by law, court order, or lawfully issued subpoena.
- g. An employee who claims to have been tested under this policy without reasonable suspicion can assert such claim as a defense in any disciplinary proceeding brought against him/her. Nothing in this policy shall be construed to deprive an employee of any appropriate defenses or arguments in a disciplinary proceeding.
- h. If the employee requests to see a licensed medical professional due to an emergency health problem, the request shall not be unreasonably denied. Ordered drug or alcohol testing shall not be unreasonably delayed. Any

unreasonable delay in drug or alcohol testing caused by the employee shall constitute a refusal to submit to ordered testing, which, in accordance with Article VI(a) of these procedures, shall be considered insubordination and may result in discipline consistent with applicable law and/or Section 4.2 of the collective bargaining agreement.

VII. PROHIBITED ACTIVITY

No employee on premises will use, sell, purchase, distribute, dispense, manufacture, or possess any quantity of illegal drugs, unless such activity is related and necessary to the performance of their job functions or in accordance with a valid prescription. No employee may use, sell, purchase, distribute, dispense, manufacture, or possess any quantity of alcohol while on duty, on BOCES property, or while conducting BOCES business. A positive drug or alcohol test may be conclusive evidence of violation of this policy. Violation may result in discipline, consistent with applicable law and/or Section 4.2 of the collective bargaining agreement.

VIII. CONSTRUCTION AND SEVERABILITY

This Appendix E shall be construed in accordance with applicable Federal and New York State law. Any term or provision hereof that is inconsistent with or contrary to law shall be deemed severed, so that every other term or provision hereof shall remain fully in force and in effect.

Rev. 10/22/12