

## **RESOLUTION PROVIDING FOR COLLECTIVE BARGAINING**

**WHEREAS**, the Virginia Constitution vests authority to supervise schools in local School Boards; and

**WHEREAS**, the 2020 General Assembly amended Virginia Code Section 40.1-57.2 to permit, e.g., the school board employees to collectively bargain with respect to matters relating to their employment or service beginning May 1, 2021; and

**WHEREAS**, the legislation grants school boards the authority to recognize any Employee Organization or labor union to exclusively represent school employees, to certify/decertify freely chosen Exclusive Representatives, and to collectively bargain and enter into Collective Bargaining Agreements with such exclusive representative; and

**WHEREAS**, the Loudoun County School Board ("Board") has determined that enabling Collective Bargaining by employees under the terms of this Resolution will serve its interest in promoting orderly and constructive relationships between the Board and its Employees subject, however, to the supreme responsibility of the Board to provide the best free and fair public education to students within its legal responsibility to do so; and

**WHEREAS**, the Board has determined that the best interests of its students and employees may be served by (1) granting to certain Board employees the right to organize and choose freely their representatives; (2) permitting the Superintendent and Loudoun County Public Schools ("LCPS") administration, acting in the interests of the Board, to negotiate and bargain in good faith with Exclusive Bargaining Representatives representing Board Employees and to enter into written agreements evidencing the result of such bargaining; and (3) establishing procedures to provide for the protection of the rights of the Board, Board Employees, students, and larger community served by the Board; and

**WHEREAS**, the purpose of this Resolution is to establish and set forth the rights, responsibilities, and procedures for Collective Bargaining by Board Employees and the Board.

**NOW, THEREFORE, BE IT RESOLVED** by the Loudoun County School Board that it hereby enables Collective Bargaining by Board Employees, as defined herein, under the following provisions and conditions:

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## **SECTION 1. DEFINITIONS.**

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

*“Administrative Employee”* means a principal, assistant principal, administrative intern, and any employee who is required by the Virginia Department of Education and/or their job description to have an endorsement in administration and supervision preK-12.

*“Athletic Coach”* means all personnel who are employed by LCPS only as a coach of an LCPS extracurricular activity or sports team and are paid a stipend that is not tied to hours worked. Employees who serve as an Athletic Coach in addition to another LCPS employment position will have their eligibility for Collective Bargaining determined by their primary LCPS position.

*“Bargaining Unit”* means a group of Employees who share a community of interest and may reasonably be grouped together for purposes of Collective Bargaining.

*“Benefits”* means, for the purpose of this Resolution, leave (paid and unpaid, vacation, and holidays), disability insurance, health insurance, and life insurance (including contributions and levels of coverage). There shall be no Collective Bargaining regarding Benefits that are provided or administered solely by the Commonwealth of Virginia through the Virginia Retirement System, through Loudoun County, through the Loudoun County Retirement Board, or any other benefits established by and administered in accordance with the Code of Virginia over which the Board does not have sole control.

*“Certified Employee”* means an Employee who is required to have a state-issued professional license from the Virginia Board of Education or Virginia Board of Health to be employed in their current LCPS position (e.g., teacher, counselor, psychologist). This includes both full-time and part-time permanent Employees.

*“Collective Bargaining”* means to perform the mutual obligation by representatives of the Board and the Exclusive Bargaining Representative of Employees in a Bargaining Unit identified in this Resolution to meet at reasonable times and places to negotiate in good faith with respect to wages, Benefits, and Working Conditions, as those terms are defined herein, with the intention of reaching and executing a legally enforceable written agreement. There shall be no Collective Bargaining regarding matters controlled, prohibited, or preempted by any federal or state constitutional provision, law, rule, or regulation.

*“Collective Bargaining Agreement”* means a contract between the Board and an Exclusive Bargaining Representative representing the Employees in a Bargaining Unit authorized by this Resolution and resulting from Collective Bargaining as defined herein. Any agreement reached by Collective Bargaining shall be subject to approval, budgeting, and annual appropriation of funds to the School Board by the Loudoun County Board of Supervisors.

*“Confidential Employee”* means an employee whose job duties require access to confidential, budgetary or fiscal information, personnel data, management emails, or strategy relevant to subjects of Collective Bargaining as set forth in this Resolution or an employee in any department

who assists in a confidential capacity or a person who formulates, determines, or effectuates school policies in the fields of employee relations. Confidential Employees include, but are not limited to, employees who work in or for:

1. Any employee of the Office of the School Board;
2. The Office of the Superintendent and any Executive Assistant/Specialist assigned thereto;
3. The Superintendent's Cabinet and any Executive Assistant or Specialist assigned thereto;
4. Employees within the Department of Human Resources and Talent Development;
5. Employees within the Department of Business and Financial Services – as this provision applies, such that school-based Department of Business and Financial Services Employees would not fall within the definition of “Confidential Employees”;
6. Employees within the Department of Digital Innovation – as this provision applies, such that school-based Department of Digital Innovation Employees would not fall within the definition of “Confidential Employee; and
7. Division Counsel and any direct reports in the Office of Division Counsel.

*“Employee”* means a full-time or part-time employee of the Loudoun County School Board in an active paid status who is not an Administrative Employee, Confidential Employee, Temporary Employee, Supervisory Employee, Athletic Coach, Intern, or Volunteer; or a member of the School Board; unless such member is an employee who would otherwise be entitled to engage in Collective Bargaining under the terms of this Resolution.

*“Employee Organization”* means an organization or union in which employees participate, and that exists for the purpose, in whole or in part, of representing employees in Collective Bargaining and/or advocating for public employees in matters within the scope of Collective Bargaining set forth in this Resolution.

*“Exclusive Bargaining Representative”* means an Employee Organization recognized by the Board pursuant to procedures established by this Resolution as the only organization that may represent and bargain collectively for all Employees in a Bargaining Unit, as defined herein, and may engage in Collective Bargaining, as defined herein, on behalf of said Employees.

*“Impasse”* means the failure of the Board, acting through the Superintendent or designee, and an Exclusive Bargaining Representative to reach agreement in the course of Collective Bargaining.

*“Intern (Paid)”* means individuals who are completing course work or are working in a professional field and who are working at LCPS to gain supervised practical experience (e.g., school psychologist intern) or to support LCPS' activities without compensation.

*“Intern (Unpaid)”* means individuals who are completing course work or are working in a professional field and who are working at LCPS to gain supervised practical experience (e.g., student teacher) or to support LCPS' activities without compensation.

*“Mediation”* means assistance by an impartial third party chosen in accordance with procedures set forth in this Resolution to resolve an Impasse between the Board, acting through the

Superintendent, and an Exclusive Representative arising in the course of the Collective Bargaining process.

*“Non-Certified Employee”* means an Employee who is not required to have a professional license to qualify for their current LCPS position (e.g., paraprofessional, administrative assistant, custodian, bus driver). This includes both full-time and part-time permanent employees.

*“School Board”* or *“Board”* means the Loudoun County School Board or its designated agents.

*“Superintendent”* means the Superintendent of Schools for Loudoun County or their designee.

*“Supervisory Employee”* means an employee having authority in the interest of the School Board to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees; or responsibility to direct them; or to adjust their grievances; or effectively to recommend such action, if the exercise of this authority is not merely of a routine or clerical nature, but requires the exercise of independent judgment. Principals and Assistant Principals are Supervisory Employees.

*“Temporary Employee”* means an individual who is hired into a time-limited position and who works fewer than 800 hours per fiscal year (July 1 through June 30); provided, however, that any employee who has worked for LCPS for more than 800 hours in the prior fiscal year shall not be considered a temporary employee, for the purposes of this Resolution, in the following fiscal year assuming they are still employed by LCPS. “Temporary Employee” does not include a part-time permanent LCPS Employee who has been issued a Personnel Action Report or is contracted to work a set number of hours for a specific time period during the contract year.

*“Working Conditions”* means, during the term of the first Collective Bargaining Agreement negotiated between the Board (by its designated members and/or designees) and an Exclusive Bargaining Representative, only the topics, up to a maximum of four, agreed to by the Exclusive Representative and designated Board members and/or designees, prior to the commencement of Collective Bargaining negotiations. In the following two successive rounds of Collective Bargaining negotiations, the Exclusive Bargaining Representative and the designated Board members and/or designees may each make proposals to bargain up to six (6) additional bargaining topics (hereinafter, “Negotiated Topic” or “Negotiated Topics”), excluding those subjects and rights reserved to the Board in this Resolution. After the third successive round of Collective Bargaining negotiations, there will be no further limits on bargaining topics.

## **SECTION 2. RIGHTS OF EMPLOYEES.**

Employees shall have the right to:

- A. Organize, form, join, assist, and pay dues or contributions to Employee Organizations, to bargain collectively through an Exclusive Bargaining Representative of their own choosing, and to engage in other concerted activities for the purpose of Collective Bargaining or other mutual aid and protection insofar as such activity is not inconsistent with this Resolution or prohibited by other applicable law. Employees shall also have the right to refrain from any or all such activities.

- B. Be represented fairly by their Exclusive Bargaining Representative in the conduct of Collective Bargaining.
- C. Hold informal conversations and interactions with one another to discuss workplace and Employee Organization issues while on duty, providing that such conversations do not interfere with an Employee's job duties.
- D. Nothing in this section shall prohibit an Employee from presenting, discussing, or resolving any personnel matter directly with the School Board and without the intervention of an Exclusive Bargaining Representative, provided that any resolution of the matter between an employee and the Board without participation of the Exclusive Bargaining Representative shall not be inconsistent with the terms of any applicable Collective Bargaining Agreement.

### **SECTION 3. RIGHTS OF EXCLUSIVE BARGAINING REPRESENTATIVE(S).**

An Employee Organization recognized in accordance with this Resolution as the Exclusive Bargaining Representative for Employees in a Bargaining Unit identified in this Resolution shall have the following rights:

- A. To speak on behalf of, and represent the interests of, all members of a Bargaining Unit without discrimination and without regard to Employee Organization membership.
- B. To hold group and individual meetings with members of the Bargaining Unit, as provided below, so long as any non-LCPS staff follow existing LCPS safety and security policy and procedures. For non-LCPS staff, an individual's failure to follow existing LCPS safety and security policy and procedures may result in revocation of access to individual Employees within LCPS facilities.
  - 1. To hold group meetings with members of the Bargaining Unit, provided that:
    - a. The meeting is not held during an Employee's working time;
    - b. A written notice for the use of facility premises is submitted to the site supervision at least three (3) business days in advance of the meeting, in accordance with the Board's Facility Use Policy (Policy 6310) and its accompanying Regulation (6310-REG). The notice shall include an estimate of the number of attendees expected at the meeting;
    - c. The Exclusive Bargaining Representative enters LCPS facilities through designated entrances and follows all applicable protocols for registering, showing identification. etc. that applies to visitors, if they are not an employee of the facility; and
    - d. Group meetings shall be permitted in designated spaces, and shall otherwise adhere to Board Policy 6310 and its accompanying Regulation. The space designated for such group meetings shall be agreed upon by both the Exclusive Bargaining Representative and the Principal or designee (or Building Administrator or designee, where applicable).

Requests submitted in accordance with Section 3(B)(1) shall not be unreasonably denied.

2. To access individual Employees that they represent, provided that such access does not interfere with the operation of the facility or the Employee's contracted job duties.
- C. To meet with newly hired Certified Employees during new teacher orientation or like activities and to meet with newly hired Non-Certified Employees at an LCPS-arranged new employee meeting.
- D. To receive from LCPS Human Resources a spreadsheet of Employees' name, hire date, job title, worksite location, and work email address twice a year.
- E. To be the only Employee Organization eligible to receive from LCPS amounts deducted from the pay of Employees as authorized by written assignment of the Employees, for the payment of regular and periodic dues to the Exclusive Bargaining Representative. Any such authorization may be revoked in accordance with the terms of the authorization at the election of the employee. An authorization that satisfies the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 et seq.) shall be valid for Employees' authorizations for payroll deductions, including without limitation electronic authorizations and voice authorizations. Unless an Employee requests a cancellation or changes an authorization for payroll deductions, their questions regarding dues shall be directed to the Employee Organization and not to LCPS. Nothing shall prohibit an Employee Organization from collecting dues directly from Employees.
- F. To use the Board's electronic mail system to communicate with members of the Bargaining Unit, subject to the terms of Board policies or regulations pertaining to the use of computer or network systems and acceptable use. Records in the Board email system may be subject to the Virginia Freedom of Information Act and, as such, communications on such systems are not considered private.

#### **SECTION 4. BOARD RIGHTS AND RESPONSIBILITIES.**

- A. This Resolution shall not be deemed in any way to limit or diminish the authority of the Board, through the Superintendent, to manage and direct the operations and activities of LCPS to the fullest extent required, authorized, and permitted by law. Thus, the Board retains exclusive rights, including, but not limited to, the rights:
  1. To determine the type and scope of work to be performed by Employees, and the manner in which services are to be provided;
  2. To direct the work of Employees and determine the number of Employees to perform any work or service;
  3. To hire, promote, transfer, assign, retain, supervise, classify, evaluate and schedule all Employees, including the right to establish, revise and eliminate the qualifications for hiring, transfers and promotions;

4. To suspend, demote, discharge, or take other disciplinary action against Employees, subject to any right an employee may have to grieve such action pursuant to the Code of Virginia or regulations issued by the Virginia Board of Education;
  5. To determine, increase and decrease staffing levels, including the right to relieve Employees from duties by layoff or other reduction-in-force due to lack of work, changed working conditions/requirements, budget limitations, or for other reasons in the Board's reasonable business judgment and not prohibited by law;
  6. To introduce new or different services, methods, equipment, or facilities;
  7. To contract for, expand, reduce, sell, transfer, convey, eliminate, or change in any way the operations of the school division, as well as any department, office, or part thereof;
  8. To establish and change standards of behavior or performance, staffing levels, job qualifications, performance evaluations, and job descriptions;
  9. To determine the kind, type, location, and use of Board-owned equipment or facilities provided that the Board does not require use or operation of unsafe equipment or the unsafe operation of equipment;
  10. To establish, maintain, modify, and eliminate Board rules, regulations and policies, including health and safety rules, provided, however, that Collective Bargaining concerning rules, regulations, and policies on Wages, Benefits, and Working Conditions, as defined herein, is permitted, subject to the Boards' legal obligation to comply with the Virginia Code in all respects;
  11. To maintain the efficiency and integrity of the operations entrusted to the Board, including the determination of curriculum, standards of service, utilization of technology, and organizational structure;
  12. To determine in its sole discretion, its budgets and appropriations; and
  13. To do all things reasonable and necessary, in the Board's judgment, to carry out the mission of the Board during operational or emergency situations declared by the Board, the Superintendent, or any state, local, or federal official, including, but not limited to, a terrorist attack, active shooter, pandemic, or natural disaster.
- B. In accordance with Virginia Code § 40.1-57.2(B), nothing in this Resolution or any Collective Bargaining Agreement shall be deemed to restrict the Board's authority to establish the budget or appropriate funds. All financial commitments on behalf of the Board in any Collective Bargaining Agreement shall at all times be subject to, and conditioned upon, the Board's exercise of its unfettered discretion to determine the budget and to fund such commitments. If a Collective Bargaining Agreement is approved that extends for more than one fiscal year, each fiscal year's financial commitments shall be subject to, and contingent upon the Board's receipt of appropriations from the Loudoun



County Board of Supervisors which, in the Board's sole judgment, are sufficient to fund its commitments for that fiscal year.

#### **SECTION 5. BARGAINING UNITS.**

- A. The Board shall recognize only the following Bargaining Units of Employees for the purposes of Collective Bargaining:
  - 1. Certified Employees (excluding any Administrative Employee, Confidential Employee, Temporary Employee, Athletic Coach, Intern, or Volunteer).
  - 2. Non-Certified Employees (excluding any Administrative Employee, Confidential Employee, Temporary Employee, Athletic Coach, Intern, or Volunteer).

#### **SECTION 6. LABOR RELATIONS NEUTRAL.**

- A. A labor relations neutral ("LRN") shall be an experienced labor relations professional who serves as a neutral third-party to carry out the duties set out in Section 6(G), below, for the administration of procedures provided by this Resolution. There may be more than one LRN assisting with matters under this Resolution. The LRN shall be an independent contractor and shall not be deemed an employee or agent of the Board for any purpose.
- B. An LRN shall be experienced as a neutral in the field of public-sector labor relations, and must not be a person who, because of vocation, employment, or affiliation, can be categorized as a representative of the interests of the Board or of any Employee Organization.
- C. An LRN shall be jointly agreed upon by: (i) the Board, acting through the Superintendent; and (ii) those Employee Organizations that have notified the Superintendent of an interest in representing Bargaining Units permitted by this Resolution, if no Exclusive Bargaining Representative has been recognized by the Board at the time the selection process begins, or (iii) by the Exclusive Bargaining Representative of the Bargaining Units permitted by this Resolution. In the event an LRN is engaged for the purpose of adjudicating a dispute under Section 11 of this Resolution, all parties to the dispute (including any Employee parties) shall participate in and agree upon the selection of the LRN.
- D. If, within 15 days of the date on which a party is notified in writing by another party of the existence of a matter requiring the engagement of an LRN, the parties to the proceeding are unable to reach an agreement on the appointment of the LRN, they shall secure a list of names from the Federal Mediation and Conciliation Service or a similar impartial service provider.
- E. The parties to the proceeding shall attempt to reach an agreement on the appointment of one of the persons named on the list. If they are unable to reach an agreement, each party to the proceeding, in order determined by a coin flip, shall alternately strike names from the list until one name remains, who shall be the LRN.

- F. The LRN shall be compensated at the daily or hourly rate established at the time of their appointment. The LRN's fees shall be shared equally by all parties to the proceeding.
- G. The LRN shall:
1. Oversee elections for certification or decertification pursuant to the provisions of this Resolution;
  2. Request from the Board or an Employee Organization any relevant assistance, service, data, or information that will enable the LRN to properly carry out duties under this Resolution;
  3. Hold hearings, make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony, receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents, to the extent permitted by applicable law, in proceedings within the responsibility of the LRN under this Resolution;
  4. Investigate and attempt to resolve or settle charges made by the Board, an Employee Organization, or an Employee alleging prohibited conduct as defined in this Resolution;
  5. Determine disputed issues of Employee inclusion in or exclusion from the Bargaining Units permitted under this Resolution;
  6. Determine any issue regarding the negotiability of any Collective Bargaining proposal as a subject of bargaining permitted under this Resolution;
  7. Exercise any other powers and perform any other duties and functions specified in this Resolution of an administrative nature; and
  8. Promulgate rules applicable to the execution of the procedural responsibilities set forth in this Section.

**SECTION 7. CERTIFICATION AND DECERTIFICATION OF EXCLUSIVE BARGAINING REPRESENTATIVE(S).**

- A. Certification by Election. The Board shall recognize an Employee Organization that has been certified as the Exclusive Bargaining Representative for a Bargaining Unit in accordance with the procedures set forth in this Section. The procedures for an election shall be as follows:
1. An Employee Organization seeking certification as the Exclusive Bargaining Representative for a Bargaining Unit(s) shall file a request for an election with the Chief Human Resources Officer and deliver a copy to the Superintendent. The request shall include: (1) the Employee Organization's name and address; (2) the Bargaining Unit(s) that it seeks to represent; (3) the proposed date, time, place, and method for an election; and (4) a statement certifying that at least thirty percent

(30%) of the Employees in the Bargaining Unit(s) wish to be represented by the Employee Organization as evidenced by any of the following from current Employees: membership cards, dues payment records, a petition signed by Employees, and/or authorization cards signed by current Employees.

2. Upon receipt of a request for certification, the Superintendent or their designee and the Employee Organization seeking certification shall meet for the purpose of selecting an LRN in accordance with Section 6 of this Resolution. Such meeting shall occur within 15 days of the Board's receipt of the request for certification unless the parties agree to extend the timeframe for meeting. The LRN selected by the parties shall be responsible for administering the election pursuant to procedures established by the LRN and the provisions of this Resolution.
3. The Board may, but is not required to, direct the LRN to verify whether thirty percent (30%) of the Employees in a Bargaining Unit wish to be represented by the Employee Organization.
4. Within seven (7) days of the LRN's verification of the adequacy of the showing of interest, if requested, or, if no such request is made, within 15 days of the appointment of the LRN, the Superintendent shall: notify all Employees in the Bargaining Unit(s) of the date, time, place, and method for the election; provide public notice of the election request in the manner provided for Board meetings; and provide the Employee Organization requesting the election, in an electronic, editable format, the following information for all Employees in the Bargaining Unit(s): name, hire date, job title, worksite location, and work email address. Notice of the election shall be posted in a common area at each worksite of the Employees in the Bargaining Unit(s) and shall include a contact email or phone number for the LRN engaged to oversee the election. The timeframes set forth in this section may be extended by mutual agreement of the parties or by order of the LRN.
5. The notices required by Section 7(A)(4) shall include a statement that other Employee Organizations may intervene to be included on the election ballot by filing a request for election with the Chief Human Resources Officer and the LRN within seven (7) days from the date of the Notice. The request to intervene shall include (1) the Employee Organization's name and address, (2) the Bargaining Unit(s) it seeks to represent, (3) a statement certifying that at least thirty percent (30%) of the Employees in the Bargaining Unit(s) wish to be represented by the intervening Employee Organization, and (4) that it wishes to be included on the secret ballot. The Board or Employee Organization that initially filed the certification request may invoke the process in Section 7(A)(3) to verify whether thirty percent (30%) of the Employees in a Bargaining Unit wish to be represented by the intervening Employee Organization. If an Employee Organization successfully intervenes, a revised notice of election shall be provided to Employees and the public as set forth in Section 7(A)(4).

6. The question(s) on the ballot will read: “Do you wish to be represented for purposes of collective bargaining by [Name of Employee Organization]?” followed by “yes” or “no” for each participating Employee Organization (with an accompanying instruction to vote “yes” for no more than one). In any election in which there is more than one Employee Organization on the ballot, there shall also be an option for an employee to select: “I do not wish to be represented by any Labor Organization on this ballot.”
7. The Superintendent and the Employee Organization(s) may contract with a vendor or neutral third party to conduct the election. The LRN, working with the Superintendent and the Employee Organization(s), shall determine the election procedures, which by default shall be an electronic election unless otherwise agreed to by the Superintendent and the Employee Organization(s) seeking certification. The Board and the Employee Organizations seeking certification will equally split the cost of conducting the election. The election shall begin within forty-five (45) days after a request for certification is filed unless otherwise agreed by the LRN, Superintendent, and Employee Organization(s) or ordered by the LRN. The LRN shall establish the cutoff date for employees to be eligible to vote in the election and resolve any disputes, disagreements about procedures, or challenges arising from the election.
8. If an Employee Organization receives a majority of the valid votes cast in the election, it shall be certified by the LRN and recognized by the Board as the Exclusive Representative of all employees in the Bargaining Unit for purposes of Collective Bargaining. In the event that there are multiple Employee organizations seeking certification and none of the choices on the ballot receives the vote of a majority of the Employees voting, a run-off election among the two choices receiving the greatest number of votes will be held within 30 days. Notice of the run-off election shall be provided in the manner set forth in Section 7(A)(4).
9. At an agreed-upon time no later than one business day after the polls are closed, the LRN will tally the election results in the presence of the election observers and issue a tally of ballots revealing the number of ballots cast for each choice. The LRN shall serve upon the Board and the participating Employee Organizations(s) a report certifying the results of the election.
10. The LRN’s certification of election results is final unless, within fourteen (14) days after the service of the report and certification, any party serves on all other parties and files with the LRN objections to the election. The objections should be verified and detail the facts that call into question the validity of the election. The LRN shall investigate those allegations and if it finds that a dispute exists that calls into question the validity of the election, hold a hearing promptly. If not, the LRN will dismiss the objection(s) and certify the election results to the Board. If the LRN finds that the election did not substantially conform to this Resolution, it shall order a new election. The LRN shall complete this process within 30 days from the date

of the filing of the objections and issue a final certification unless a new election has been ordered.

11. Nothing in this Resolution shall require or permit an election in any Bargaining Unit within twelve (12) months of the certification of the results of a previous election held in such Bargaining Unit pursuant to this Resolution, notwithstanding the outcome of that election, except that this provision is inapplicable to any rerun election that might be ordered by the LRN under Section 7(A)(10).
12. Within 15 days of submitting a request for certification as an Exclusive Bargaining Representative, an Employee Organization shall file with the Chief Human Resources Officer the name and current contact information for the agent authorized to receive notice of legal proceedings under this Resolution and a copy of the Employee Organization's current constitution and bylaws. All changes and amendments to the Employee Organization's constitution and bylaws shall be filed with the Chief Human Resources Officer no later than 15 days after the effective date of such amendment. If an Employee Organization fails to comply with this provision, it shall file its current constitution and bylaws within 15 days of a notice of noncompliance from the Chief Human Resources Officer. If an Employee Organization fails to file its current constitution and bylaws within 15 days after the date of the notice of noncompliance, the Exclusive Bargaining Representative will be subject to decertification, unless good cause is shown, as determined by the School Board.

B. Decertification of an Exclusive Bargaining Representative.

1. Recognition of an Employee Organization as the Exclusive Bargaining Representative for a Bargaining Unit permitted by this Resolution shall continue until a majority of Employees participating in a decertification election vote to no longer be represented by the Exclusive Bargaining Representative, and the decertification election is certified, as outlined below.
2. An Employee or Employee Organization seeking decertification shall file a petition for decertification with the Chief Human Resources Officer and deliver a copy to the Superintendent and Exclusive Bargaining Representative as follows:
  - a) If filed by an Employee, the request shall include: (1) the Employee's name, job title, and work location; (2) the Bargaining Unit(s) that no longer wish to be represented by the Exclusive Bargaining Representative; (3) the proposed date, time, place, and method for an election; and (4) a statement certifying that at least thirty percent (30%) of the Employees in the Bargaining Unit(s) no longer wish to be represented by the Exclusive Bargaining Representative as evidenced by a petition signed by Employees or other evidence of an Employee's desire to not be represented by the Exclusive Bargaining Representative for purposes of Collective Bargaining. The foregoing items will be accepted as evidence

of Employees' wish only if signed within the 12 months prior to the date on which the election request was submitted.

- b) If filed by an Employee Organization, the request shall include: (1) the Employee Organization's name and address; (2) the Bargaining Unit(s) that it seeks to represent; (3) the proposed date, time, place, and method for an election; and (4) a statement certifying that at least thirty percent (30%) of the Employees in the Bargaining Unit(s) wish to be represented by the Employee Organization as evidenced by a petition signed by Employees or other evidence of an Employee's desire to be represented by the Exclusive Bargaining Representative for purposes of Collective Bargaining, and (5) a statement certifying that at least thirty percent (30%) of the Employees in the Bargaining Unit(s) no longer wish to be represented by the Exclusive Bargaining Representative as evidenced by a petition signed by Employees or other evidence of an Employee's desire to not be represented by the Exclusive Bargaining Representative for purposes of Collective Bargaining. The foregoing items will be accepted as evidence of the Employees' wish only if signed within the 12 months prior to the date on which the Employee Organization submitted its election request.
  - 3. The Board or the Exclusive Bargaining Representative may invoke the process in Section 7(A)(3) to verify whether thirty percent (30%) of the Employees in a Bargaining Unit support decertification of an existing Exclusive Bargaining Representative. The decertification process shall follow the same procedures and election requirements set forth in Section 7(A).
  - 4. For a period of twelve (12) months following certification of an Exclusive Bargaining Representative, no decertification petitions may be filed.
  - 5. The Employee Organization previously recognized by the Board as the Exclusive Bargaining Representative no longer shall be recognized as the Exclusive Bargaining Representative of the Employees in the Bargaining Unit if a majority of Bargaining Unit Employees participating in a decertification election vote to no longer be represented by the Employee Organization.
- C. Rights of Petitioner During Certification or Decertification.

An Employee Organization that is seeking certification or decertification, or an Employee or group of Employees that is seeking decertification, shall have the following rights:

- 1. To hold group meetings with members of the Bargaining Unit, provided that:
  - a) A written request for the use of the facility is submitted to the site supervisor at least three (3) days in advance of the meeting in accordance

with the Board's Facility Use Policy (Policy 6310) and its accompanying regulation (6310-REG), and any successors thereto;

- b) The request is approved;
- c) The meeting is not held during an employee's working time; and
- d) The Employee or Employee Organization agrees to pay any customary charges that may be assessed for space use, custodial services, and utilities.

Requests submitted in accordance with Section 7(C)(1) shall not be unreasonably denied.

- 2. To use Board email systems to communicate with Bargaining Unit members, subject to the terms of Board policies or regulations pertaining to the use of computer or network systems and acceptable use. Records in the Board email system may be subject to the Virginia Freedom of Information Act and, as such, employee communications on such systems are not considered private.
- 3. To distribute and post notices, circulars, and other materials relating to the certification or decertification election in employee lounges, breakrooms, employee mailboxes, and on bulletin boards ordinarily used to communicate with employees, as available, provided that such distribution or posting only occurs before the beginning or after the end of the school's regular workday and otherwise in accordance with agree-upon policies and procedures. Any material not posted or distributed in accordance with this section will be removed.

## **SECTION 8. COLLECTIVE BARGAINING DUTIES AND RELATED PROCEDURES.**

- A. Commencement of Bargaining. A written request for bargaining must be submitted by the Exclusive Bargaining Representative to the Superintendent no later than March 1st, and negotiations must begin by April 15th and conclude by December 1st of any year where a Collective Bargaining Agreement is sought to be effective at the beginning of the next fiscal year, in order to accommodate the LCPS budget preparation schedule. Failure of the parties to reach agreement by October 1st shall constitute Impasse and automatically trigger Impasse resolution procedures under this Resolution.
- B. Good Faith Bargaining. Bargaining representatives shall meet at reasonable times, including meetings in advance of the LCPS budget preparation schedule, to negotiate in good faith. While the parties shall conduct themselves in good faith at every stage of the Collective Bargaining, Mediation, and Impasse processes, nothing in this Resolution requires either party to make any concessions or agree to the other party's proposals in bargaining.

1. The Exclusive Bargaining Representative and the Superintendent shall each designate at least one, but not more than five, individuals to represent them in Collective Bargaining negotiations. All Collective Bargaining shall remain confidential and shall take place only between persons who are designated members of the respective bargaining teams.
  2. Collective Bargaining shall be conducted in accordance with written rules established and signed by the parties' authorized representatives at the commencement of the bargaining process. All negotiations will be conducted in a confidential, professional, and courteous manner.
  3. The parties will schedule negotiations of a Collective Bargaining Agreement at times and places that will not interfere with school operations or the performance of the Employees' job duties. If negotiations occur during an Employees scheduled working hours, adequate coverage must be secured before an Employee is released from duty. Employees who serve as bargaining representatives will be compensated only if the negotiations take place during hours that the Employee is scheduled to work. Unless otherwise prohibited by law, an Employee who serves as a bargaining representative will not be compensated for hours spent bargaining when those hours do not overlap with hours that the Employee is regularly scheduled to work.
  4. Within the first nine (9) days of the Collective Bargaining period for a successor Collective Bargaining Agreement, the parties will discuss and agree upon Negotiated Topics, as provided in Section 1 of this Resolution.
  5. A Collective Bargaining Agreement may include a grievance procedure for the interpretation of contract terms and the resolution of disputes arising under the agreement. If a Collective Bargaining Agreement includes such a procedure, it shall be the exclusive method for the resolution of disputes arising out of an alleged violation or interpretation of a provision(s) of the agreement, unless such matters are grievable pursuant to the Code of Virginia or regulations issued by the Virginia Board of Education. If such matters are grievable pursuant to the Code of Virginia or regulations issued by the Virginia Board of Education, an Employee who elects to file a grievance under the statute or state regulations may not file a grievance under a Collective Bargaining Agreement.
- C. Reopener. A Collective Bargaining Agreement is subject to sufficient appropriation and funding by the Loudoun County Board of Supervisors. If the Loudoun County Board of Supervisors fails to appropriate, or if the Board fails to receive, funds which in the Board's sole discretion are sufficient to implement the agreement, either party may reopen negotiations. Such negotiations must be completed no later than five (5) business days after the Loudoun County Board of Supervisors adopts its budget. If the parties are unable to reach agreement on new terms after this five (5) day period, the Board may take actions it deems necessary to modify the terms of the Collective Bargaining Agreement that require funding from Loudoun County Board of Supervisors.



## **SECTION 9. IMPASSE RESOLUTION.**

- A. If the Exclusive Representative and the School Board's bargaining representatives are unable to reach an agreement by September 15<sup>th</sup> of the year preceding the commencement of the upcoming fiscal year, either party may declare an Impasse.
- B. After an Impasse has been declared or is automatically triggered pursuant to Section 8.A, either party may seek Mediation through the Federal Mediation and Conciliation Service or similar, mutually agreed upon dispute resolution service. A party seeking Mediation shall provide written notice to the other parties and the dispute resolution service at least 15 days before the anticipated first Mediation meeting.
- C. The parties shall share the costs of the services of the mediator equally.
- D. Costs incurred by a party to prepare, appear, or secure representation, expert witnesses, or evidence of any kind shall be borne exclusively by that party. Communications between an Exclusive Bargaining Representative and the Employees that it represents regarding the Mediation process shall not constitute public disclosure under this Section.
- E. The parties shall engage in Mediation for a period of at least 30 days unless the parties mutually agree in writing to the termination or extension of the Mediation or reach an agreement.
- F. The contents of a Mediation proceeding under this Section may not be disclosed by the parties or the mediator unless otherwise required by law.
- G. The Mediation process is advisory only, and the mediator shall have no authority to bind either party.
- H. If the parties mutually agree to some matters through Collective Bargaining and/or Mediation, those matters may be implemented, subject to School Board approval.
- I. If Impasse continues past the expiration date of an existing Collective Bargaining Agreement, the terms and conditions of the expired Collective Bargaining Agreement shall remain in effect until the earlier of:
  - 1. The parties reaching a new agreement; or
  - 2. One year from the date the Collective Bargaining Agreement was scheduled to expire.

Following that, the Board may, in its sole discretion, choose to continue any or all of the provisions of an expired Collective Bargaining Agreement.

- J. Nothing in this section shall prohibit or impede the Board and Exclusive Bargaining Representative from continuing to bargain in good faith or from voluntarily reaching an agreement during an Impasse.

#### **SECTION 10. APPROVAL OF TENTATIVE AGREEMENT.**

- A. The Board's bargaining representatives and the Exclusive Bargaining Representative must reduce an agreement to writing when it is reached.
- B. An agreement is enforceable and effective when it is ratified by:
  - 1. The Board; and
  - 2. Members of the Bargaining Unit in a ratification vote conducted pursuant to the bylaws of the Exclusive Bargaining Representative.
- C. The failure of either the Board or the members of the Bargaining Unit to ratify a tentative agreement shall require the parties to resume Collective Bargaining, provided, however, that such negotiations must be completed no later than five (5) business days after the Loudoun County Board of Supervisors adopts its budget. If the parties are unable to reach agreement on new terms after this five (5) day period, the Board may take actions it deems necessary to modify the terms of the Collective Bargaining Agreement that require funding from Loudoun County Board of Supervisors.
- D. Any Collective Bargaining Agreement reached between the Board and an Exclusive Representative shall be contingent upon the appropriation of sufficient funds by the Loudoun County Board of Supervisors in the next ensuing budget cycle.

#### **SECTION 11. PROHIBITED CONDUCT AND RESOLUTION PROCEDURES.**

- A. Board Unfair Labor Practices. It shall be an unfair labor practice for the Board or its representative or agents to engage in the following conduct:
  - 1. Interfere with, restrain, or coerce Employees in the exercise of their rights guaranteed under this Resolution;
  - 2. Dominate or interfere with any Employee Organization or contribute financial support to it;
  - 3. Discriminate in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any Employee Organization;
  - 4. Discharge or otherwise discriminate against an Employee because of their exercise of rights under this Resolution, including for giving information or testimony in related processes; or

5. Fail or refuse to negotiate in good faith with an Exclusive Representative.
- B. Employee Organization Unfair Labor Practices. It shall be an unfair labor practice for an Employee Organization or its representative or agent to engage in the following conduct:
1. Interfere with, restrain, or coerce employees in the exercise of their rights guaranteed by this Resolution;
  2. Deny membership in an Employee Organization or fail to represent an Employee because of their race, color, religion, sex, national origin, age, disability, political affiliation, sexual orientation, gender identity, genetic information, status as a service-disabled veteran, or any other basis prohibited by federal, state, or local law, ordinance, code, or regulation;
  3. Fail to fairly represent an Employee in a Bargaining Unit for which the Employee Organization is the Exclusive Bargaining Representative concerning matters within the scope of Collective Bargaining and without regard to membership in the Employee Organization or dues-paying status;
  4. Fail or refuse to negotiate in good faith with the Board;
  5. Retaliate against any Employee for exercising their rights set forth in this Resolution, including filing charges against the Employee Organization or refusing to participate in Employee Organization activities; or
  6. Violate Code of Virginia § 40.1-55 and/or the provisions of Section 12 of this Resolution.
- C. Procedure
1. In the event that a claim is made that an unfair labor practice has been committed by either the Board or an Employee Organization, the complaining party shall serve the other party with a verified complaint setting forth a detailed written statement of the alleged unfair labor practice no later than 30 days after the occurrence of the alleged unfair labor practice. The responding party shall have the right to serve a written answer to the complaint within 10 days after service of the complaint. The complaint and answer shall be served by email and regular mail.
  2. The parties shall submit the unfair labor practice to an LRN selected in accordance with the requirements of Section 6 of this Resolution. The costs associated with the LRN shall be shared equally by the parties.
  3. The LRN shall have the following authority with respect to the investigation and adjudication of unfair labor practice charges and determination of remedies for unfair labor practices:

- a) After reviewing the complaint and any answer thereto, the LRN may issue an order dismissing the complaint or schedule an evidentiary hearing at a designated time and place within Loudoun County.
  - b) If a hearing is ordered, the LRN may issue subpoenas, administer oaths, and take testimony and other evidence.
- 4. The LRN shall issue written findings and conclusions. If the LRN finds that a party has violated one or more of the provisions of this Section, they may issue an order directing the party to cease and desist engaging in the violation and may order such other reasonable affirmative relief as is necessary to remedy the violation. If the party filing an unfair labor practice charge is an Employee alleging a violation of Section 11.B.3, affirmative relief shall include the recovery of reasonable attorneys' fees and costs incurred by the Employee, including reimbursement of the Employee's share of the costs of the LRN's fee.
- 5. If an Employee Organization or Exclusive Bargaining Representative is found to have violated Section 11(B)(6), the Charging Party shall be entitled to recover reasonable attorney's fees and costs incurred by the Board, including reimbursement of the Board's share of the cost of LRN's fee.

## **SECTION 12. STRIKES AND LOCKOUTS.**

Pursuant to Virginia Code Section 40.1-55, any employee of the Board who, in concert with two or more other such employees, strikes or willfully refuses to perform the duties of their employment in order to influence wages, Benefits, or other terms and conditions of employment, shall be deemed by that action to have terminated their employment and shall be ineligible for employment by the Board in any position or capacity during the next twelve (12) months. If any Employees represented by an Exclusive Bargaining Representative engage in a strike in violation of this section, the Exclusive Bargaining Representative shall publicly disavow (through a press release, social media posts, or similar means) its support for or participation in the strike within 24 hours of learning of the strike. The Board shall not engage in an employee lockout.

## **SECTION 13. TIME LIMITS.**

Any time limits in this Resolution may be extended by written agreement of the Board, the Employee Organization, if applicable, and any other appropriate parties.

## **SECTION 14. COMPUTATION OF TIME.**

- A. In general. In computing a period of time described in this Resolution, the designated period of time begins to run the next business day after the event or action occurs.
- B. Last day. The last day of the period of time computed under subsection A of this section shall be included unless it is a Saturday, Sunday, or Board holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or Board holiday. Any deadline will be by 5 p.m. on the last day.

## **SECTION 15. NOTICES.**

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

## **SECTION 16. SEVERABILITY.**

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

## **SECTION 17. CONFLICTS; GOVERNING LAW.**

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