

MEMORANDUM OF AGREEMENT ("Agreement")
BETWEEN

The Boston Public Schools

AND

The Boston Teachers Union, LOCAL 66, AFT MASSACHUSETTS, AFL-CIO

Regarding the City of Boston Policy: Employee Vaccination Verification Requirement

WHEREAS, the Boston Public Schools ("BPS") and the Boston Teachers Union, Local 66, AFT Massachusetts, AFL-CIO (hereinafter the "Union") are parties to a collective bargaining agreement; and

WHEREAS, the City of Boston on December 20, 2021, announced an updated Vaccination Verification Requirement Policy (December Policy);

WHEREAS, the City and BPS (hereafter used interchangeably) provided notice to the Union regarding the December Policy and offered to meet and bargain said December Policy;

WHEREAS, the Parties have met and bargained such December Policy;

WHEREAS, due to the collaborative work of the City of Boston, BPS and the Union, over 95% of the City of Boston's employees are currently vaccinated against COVID-19; and

WHEREAS, vaccines are critical to ensuring the health of our city's workforce and the broader community, providing especially significant value during periods of higher COVID-19 concern; and

WHEREAS, ensuring that individuals within a workplace are vaccinated is of significant value during periods defined by public health data on hospital capacity, severity of COVID, and how widespread COVID is within the community.

NOW THEREFORE, the Parties agree as follows:

1. Vaccine Verification for COVID-19: The Union agrees to the December 20, 2021 Vaccine Policy except as amended below. The Parties agree to maintain the same Covid-19 sick leave benefits established in the Parties MOA RE Health and Safety for SY21-22.

2. Dismissal of Challenges: The Union agrees to withdraw with prejudice any grievances, appeals, or challenges to the provisions of this Agreement and the Policy filed in any forum, including but not limited to its charges filed with the Department of Labor Relations on January 24, 2022, MUP 22-9069. The Union shall notify all forums, including the Department of Labor Relations in writing within five (5) business days of the effective date of this Agreement of its withdrawal of the charge and/or Complaint with prejudice and shall copy the City on such written notice.

3. Requirements for New Employees: The Parties agree that compliance with the December Policy and providing proof of full vaccination shall be a requirement for new employees of the City of Boston. This requirement became effective on December 20, 2021. For the purposes of this MOA, non-compliant employees of the City that transfer from one City department to another shall be exempt from this requirement for new employees.

4. Definition of a Non-Verified Employee: For purposes of this MOA, the following employees will be considered Non-Verified:

- a. Employees who have not provided proof of vaccination as of the effective date of this MOA;
- b. Employees who have not been granted a medical, disability, or religious exemption while such exemption remains in effect. Employees with a pending request for an accommodation will not be subject to the provisions of this MOA until such a time as an adverse determination has been made.

On or before the date of execution of this Agreement, the City will provide to the Union a list identifying all of their members who are classified as Non-Verified Employees.

5. Factors for Determining Applicability of Surge Status

The public health context for COVID-19 will be determined by looking at three factors. The City will endeavor to give the Union the greatest possible notice of adjustments between levels of pandemic severity, but neither the benchmarks nor the determination that the metrics have exceeded the threshold set forth in this MOA shall be subject to collective bargaining or negotiation.

- The first factor is the capacity of our hospitals to care for individuals with severe illness of any type. A metric for this factor is “ICU Occupancy,” which is the percentage of beds occupied in Intensive Care Units in Boston hospitals (7-day moving average).
- The second factor is the severity of COVID-19. A metric for this factor is “Hospitalizations Per Day” which is the average number of daily cases of adult patients with COVID-19 in Boston hospitals (7-day moving average).
- The third factor is an estimate of disease spread within Boston. A metric for this factor is “Positivity Rate”, which is the number of people who test positive for COVID-19 divided by the total number of people tested in the community (7-day moving average).

More information about these three factors and definitions are available on the Boston Public Health Commission’s COVID Data Dashboard accessible at:

<https://bphc-dashboard.shinyapps.io/BPHC-dashboard/>

Each of these measures is tracked on a weekly basis and reported by the Boston Public Health Commission. Based on these measures and relevant other public health factors, the

Boston Public Health Commission will define the COVID-19 context for a particular week. The Boston Public Health Commission will use the tables below as a framework for making a determination of whether the application of the provisions of Section 7 is necessary.

6. Surge Status Levels and Thresholds

Red Zone Threshold

As of February 4, 2022, the City remains in the “Red Zone” for the Winter 2021-2022 Surge. The parties agree that to drop from the current Red Zone into Yellow Zone all three metrics must fall below the following thresholds. On February 8, 2022, the City announced the use of identical metrics to lift the indoor proof-of-vaccination requirement for certain businesses open to the public.

ICU Occupancy: $\geq 95\%$
Hospitalizations Per Day: ≥ 200
Community Positivity Rate: $\geq 5\%$

Yellow Zone Threshold

When all three metrics have fallen below these levels, the City will enter a “Yellow Zone” and will no longer be in the Red Zone.

Green Zone Threshold

When the Boston Public Health Commission’s Order Requiring Face Coverings in Certain Indoor Public Spaces is rescinded, the City will enter a “Green Zone” status. The City will move from Green back to Yellow in the event that the face coverings order is reinstated.

Subsequent Red Zone Threshold Metrics

In the event of a subsequent COVID-19 surge, the Boston Public Health Commission may determine that the City has reentered a Red Zone. The Boston Public Health Commission will not declare a Red Zone until the following minimum metrics are met:

ICU Occupancy: $\geq 90\%$
Hospitalizations Per Day: ≥ 150
Community Positivity Rate: $\geq 4\%$

Nothing in this MOA shall be construed to interfere with the Boston Public Health Commission’s authority to protect public health.

7. Requirements for Non-Verified Employees During Any Red Zone During any Red Zone Non-Verified Employees must either submit proof of vaccination into the City’s online portal or will be placed on unpaid administrative leave and not allowed in the workplace. To prevent being placed on unpaid administrative leave, Non-Verified Employees can choose to use accrued vacation, compensatory or personal time as an alternative. Employees who choose to use accrued vacation, compensatory or personal time are not allowed in the workplace and are prohibited from working for the City in any capacity. The unpaid administrative leave is not disciplinary and shall not, either in whole or in part, be subject to any contractual grievance or arbitration processes. No member will be subject to discipline for not being vaccinated against COVID-19.

If accrued vacation, compensatory or personal time is exhausted, an unverified employee may elect to use accumulated, unused sick days to be paid at a rate of 40% while on leave up to the following caps:

Union members with fewer than 10 years of service: Can use up to 25 accumulated, unused sick days paid at a rate of 40%, for a total of up to 10 paid days.

Union members with 10 years of service or more: Can use up to 100 accumulated, unused sick days paid at 40% rate, for a total of up to 40 paid days.

Union members must notify their direct supervisor and the Office of Human Capital via email within 48 hours of receiving notice that they are being transitioned to leave status if they would like to use their accumulated, unused personal and sick time to be compensated during their leave. Use of paid time as set forth above must be continuous during any Red Zone until the unverified member has exhausted the accumulated personal and sick leave available under the cap.

The Employer will continue to pay the employer's portion of healthcare during unpaid leave.

8. Requirements for Non-Verified Employees During Any Yellow Zone. Within the first five school days of the announcement of entering any Yellow Zone, Non-Verified Employees are required to submit proof two (2) times per calendar week of a negative COVID-19 screening test. Employees may make use of City testing locations that are open and available to all City employees, additional tests required as a part of this policy must be obtained at the employees own expense and on their non-work time. The City's current Temporary COVID-19 Paid Leave for Testing and Vaccination policy provides one hour per week of paid time off for testing, and testing is generally available to all City employees. This Temporary COVID-19 Paid Leave for Testing and Vaccination policy shall remain in effect until no later than December 31, 2022, unless renewed by the City.

9. Requirements for Non-Verified Employees During Any Green Zone. If and when the City of Boston lifts all its requirements for public indoor masking, then Non-Verified Employees will have no additional requirements on their employment related specifically to this MOA, barring any exigent public health circumstances identified by the Boston Public Health Commission. They will, however, continue to be required to comply with all other City policies and requirements.

10. Definition of Vaccination

Employees must verify their full vaccination status by uploading a copy of their COVID-19 vaccination card, other confirmation from a health care provider, or approved alternate documentation into the City's COVID Compliance online portal in compliance with the standards on the City's COVID Compliance online portal.

Until further notice, the definition of vaccination, and what number and type of vaccines are required and compliance deadlines will be as set forth in the December Policy. Namely, to be fully vaccinated under the existing policy, all employees are required to comply with this policy on the following schedule:

- On or before January 15, 2022: All employees must upload proof of at least one dose of a one- or two-dose vaccine.
- On or before February 15, 2022: All employees must upload proof of two doses of a two-dose vaccine.
- All vaccines authorized by the U.S. Food and Drug Administration (FDA) or the World Health Organization (WHO) will meet the City's vaccine verification requirement.

Employees who fail to maintain compliance with this schedule are Non-Verified. For the purposes of this MOA, vaccine booster shots are not included in the definition of fully vaccinated.

Employees who have the required vaccines but are unable to obtain and upload a copy of their COVID-19 vaccination card or other vaccination verification documentation may upload a signed statement from a medical provider verifying their fully vaccinated status.

11. Definition of Testing

Either a PCR (Polymerase Chain Reaction) test or an antigen test will be accepted as proof of a negative COVID-19 screening test during any period where testing is required; antibody tests will not be accepted.

12. Rehiring

- a. Employees who resigned or retired based on their refusal to comply with the December Policy or this MOA and who then come into compliance with the December Policy on or before March 15, 2022 will be rehired immediately, upon their request, into the position from which they resigned if the position remains vacant, they meet the Department's requirements regarding return and provided they sign an agreement waiving their right to challenge their separation from employment.
- b. To the extent reasonable and practicable, all rehiring decisions will be made consistent with seniority practices and protocols.
- c. Any employee who is rehired relative to paragraph (a) shall retain their seniority and level of pay and benefits.

13. Waiver: The Union agrees not to grieve, appeal, or otherwise challenge the provisions of this Agreement or the December Policy or its implementation via the Parties' collective bargaining agreement, through the contractual grievance process, through the Department of Labor Relations, or in any other forum, except to enforce its terms.

14. Bargaining Obligation: Union agrees the City has met any and all bargaining obligations it may have regarding the Policy. Should the City determine that changes to the December Policy, or this MOA, are necessary, it shall notify Union of any such changes and meet any bargaining obligation it may have regarding such changes.

15. No Admission: It is understood and agreed that this Agreement does not constitute an admission of wrongdoing by the Parties.

16. No Practice or Precedent: The Parties agree that this Agreement shall not be used to demonstrate a practice or create a precedent as between the Parties for any other matter. Nothing in this agreement diminishes any of the Parties' rights with respect to M.G.L. c. 41, s. 111F, M.G.L. c. 31 or the provisions of the collective bargaining agreement.

17. Severability: If any term(s) or provisions(s) of this Agreement shall be held to be invalid or unenforceable for any reason by a court of competent jurisdiction, the validity or enforceability of the remaining terms and provisions shall not be affected, and such invalid and/or unenforceable term(s) and/or provision(s) shall be deemed modified to the extent necessary to make it or them enforceable.

18. Enforceability: The Parties agree that the terms of this Agreement will not be enforced while there is a stay in place in Appeals Court docket 2022-j-0031. Moreover, the Parties agree that disputes regarding the terms of this Agreement will be resolved through the grievance and arbitration process of the collective bargaining agreement.

19. Vote: This MOA will become effective when voted on and approved by the majority of the Union membership present and voting at a meeting scheduled for this purpose or at a membership meeting, and it is subject to the approval of the Boston School Committee.

For the Boston Teachers Union:

_____ Date:
Jessica Tang, President, BTU

For the Boston Public Schools:

_____ Date:
Brenda Cassellius, Superintendent