



**San Marcos Unified School District
San Marcos Educators Association**

**Memorandum of Understanding
May 1, 2020**

This Memorandum of Understanding (“MOU”) is entered into by and between the San Marcos Unified School District (“District”) and the San Marcos Educators Association (“Association”).

The District and Association met in a collaborative manner and developed the terms of this MOU.

Catastrophic Leave Bank

The District and the Association have agreed to pilot a Catastrophic Leave Bank program (“program”) during the 2020-2021 school year. The purpose of the program is to create a bank of donated contractual days which may be used by Certificated bargaining unit members suffering from a catastrophic illness or injury. Catastrophic illness or injury is defined as a potentially life-threatening, severe, and/or incapacitating illness or injury which is expected to continue for an extended period of time which prevents the bargaining unit member from performing his/her duties for an extended period of time or affects an immediate family member, as described in the Withdrawal section below. Days in the Catastrophic Leave Bank shall accumulate from academic year to academic year. For the purposes of this MOU, a “Day” shall be a “Contractual Day” as defined in Article VII: Definitions.

Initial Donation Period

Any existing Certificated bargaining unit member who wishes to participate or continue membership in the program (“participant”) shall donate one (1) contractual day between July 1, 2020 and August 31, 2020 (the “Initial Donation Period”). After the Initial Donation Period, the donation cycle shall occur on an annual basis (July 1 through June 30) as described in the Annual Cycle section below. Participants may donate additionally to the bank at any time during each cycle.

Participation is voluntary, but only participants in the program will be permitted to withdraw from the Bank. Certificated bargaining unit members who initially decline to join the Catastrophic Leave Bank must complete a twenty (20) day waiting period before becoming eligible to request a withdrawal from the Bank after becoming a member of the program. New hires, and bargaining unit members returning from an extended leave of absence (which included the Initial Donation or Annual Cycle enrollment period), will be permitted to contribute within thirty (30) calendar days of the first day of service. The District shall supply program

enrollment forms to all new unit members and to those unit members returning from an extended leave of absence.

Annual Cycle

Following the Initial Donation Period, additional donations shall be made on an annual cycle (July 1, 2021-June 30, 2022, etc.). Unless a participant discontinues his/her membership in the program, his/her annual donation shall be automatically deducted from his/her Sick Leave account each year in order to maintain membership in the Bank. The annual rate of contribution for each participant shall be one (1) day of Sick Leave that shall be deemed to equate to the legal minimum required by Education Code § 44043.5.

To donate one (1) day, the Certificated bargaining unit member must have a Sick Leave accrual balance equal to at least the minimum number of days they wish to donate to the Bank. Each participant acknowledges that all Sick Leave donations are irrevocable and that all donations to the Bank (including special assessment donations, as described below) are general donations and cannot be assigned by him/her to any specific participant. Days shall be contributed to, and withdrawn from, the Bank without regard to the daily rate of pay of the participant.

A special assessment of one (1) additional day of contribution to the Bank will be required of each participant if the number of days in the Bank falls below two hundred (200) at any time. Participants who are withdrawing days from the Bank at the time of a special assessment shall not be required to contribute an additional day to remain a participant in the program. Each participant acknowledges that all special assessment donations are irrevocable. If a participant has less than one (1) day of accrued Sick Leave at the time of the special assessment, he/she shall not be required to contribute an additional day to the special assessment to remain a participant in the program.

No program contributions shall be required of participants if the total number of days in the Bank at the beginning of a school year exceeds one thousand (1,000). Participants joining the program for the first time, or returning from a Leave of Absence after not previously participating in the program, shall be required to contribute one (1) day to the Bank.

Catastrophic Leave Bank Committee

A Catastrophic Leave Bank Committee ("CLBC") shall be established and comprised of two (2) Association members, as determined by SMEA, and three (3) District representatives, as determined by the District. This Committee shall meet at mutually agreed upon intervals throughout the term of this MOU. The purpose of the CLBC shall be to collaboratively maintain the records of the program, review the withdrawal requests, approve or deny the withdrawal requests, and communicate its written decisions to the participants, the Association, and the District. The authority of the CLBC shall be limited to the purposes described in this section and it shall have the discretion to approve or deny all properly submitted requests complying with the terms of this MOU. Withdrawals shall not be denied on the basis of the type of illness and/or disability for any discriminatory reason.

The CLBC shall review and provide a written response within fifteen (15) days of receipt of each withdrawal application and the determinations made by the CLBC shall be final. The CLBC shall keep all records confidential and shall not disclose any information regarding any participant or other individual obtained through the CLBC, including the nature of an illness or injury, except as is absolutely necessary to process a request for withdrawal.

Withdrawal

In order to withdraw days from the Bank, a participant must meet all of the following conditions:

- The participant must have experienced a catastrophic illness or injury which is defined as any potentially life-threatening, severe, incapacitating illness or injury that affects him/her or a member of his/her immediate family for greater than ten (10) consecutive duty days and requires the participant to take time off of work to care for himself/herself or for an affected immediate family member. If a reoccurrence or a second illness or injury incapacitates a participant or member of the participant's immediate family within twelve (12) months, it shall be deemed catastrophic after five (5) consecutive days. (For example, a participant who was granted a withdrawal of twenty-five (25) days from the Bank to care for her/his spouse who subsequently dies of cancer, and after returning to work, the participant suffers a heart attack, he/she shall be deemed to have experienced a second catastrophic illness and may again withdraw from the Bank after five (5) consecutive days off of work.)
- The participant must have exhausted all fully paid leaves, including all full salary Sick Leave.
- The participant must have donated at least one (1) full day to the Bank either during the Initial Donation Period or during any subsequent donation period(s).
- If a participant is incapacitated, a withdrawal application may be submitted to the CLBC by a representative of the participant.

Withdrawals from the program shall be granted in units of no more than twenty (20) duty days. Participants may submit requests for extensions of withdrawals prior to the expiration of their current allocation of donated Sick Leave. A participant's withdrawal from the Bank may not exceed the statutory maximum period of twelve (12) consecutive months.

Participants applying to withdraw, or extend their withdrawal, from the program will be required to submit a physician's statement confirming that a catastrophic illness or injury has occurred and indicating the probable length of absence from work. Members of the CLBC shall review the request as described in the Catastrophic Leave Bank Committee section above and all requirements described in that section, including the confidentiality of information, shall apply to the CLBC's review.

Allocated Sick Leave donations from the Bank may not be used for an illness or disability which qualifies the participant for Worker's Compensation benefits unless the participant has already exhausted all of his/her Worker's Compensation leave and accrued Sick Leave. The unit member must then sign over any Worker's Compensation checks for temporary benefits to the District. If there are any Worker's Compensation checks signed over to the District, the Bank will

not be charged days, or if charged, will be reimbursed the number of days for which the Worker's Compensation payment is equivalent to a regular day of pay at the negotiated rate for that specific participant. If the District challenges the Worker's Compensation claim, the participant may withdraw days from the Bank, but upon settlement of the claim, the Bank shall be reimbursed the days by the District if the participant's Worker's Compensation claim is upheld.

If the Bank does not have sufficient days to fund a withdrawal request, the CLBC is under no obligation to provide days and the District is under no obligation to pay the participant any funds whatsoever. If a request for withdrawal, or an extension of withdrawal, is denied due to an insufficient number of available days in the Bank, the CLBC shall provide written notification to the participant.

Provisions

A participant may opt out of the program prior to May 31st of any year. Withdrawal from the program will become effective on July 1st of the new annual cycle. No later than October 31st of each school year, the District shall notify the CLBC of the following:

- The total number of accumulated days in the Bank as of June 30th of the previous school year.
- The number of days contributed by participants for the current year.
- The name of each participant.
- The total number of days available in the Bank.

Twice each year (October 31st and April 30th), the District shall notify the CLBC of the following:

- The names of any additional participants who have joined the program.
- The names of any participants who have canceled participation in the program.
- The total number of days in the Bank at the beginning of the most recent reporting period.
- The total number of days in the Bank at the end of the most recent reporting period.
- The total number of days awarded during the previous reporting period and to whom they were awarded.

Program Discontinuation

This Memorandum of Understanding ("MOU") is effective July 1, 2020, and it is the intent of the parties to pilot this program during the 2020-2021 school year. No later than April 30, 2021, the parties shall meet to collaboratively evaluate the effectiveness of this program and to discuss if mutual agreement exists to continue this program in subsequent years and/or to include it in future printings of the Master Contract. If the parties reach mutual agreement to discontinue this program after the pilot period, the parties agree to negotiate the terms of the distribution of any remaining unallocated participant Sick Leave donations.

This MOU shall remain in full force and effect through June 30, 2021, after which it will cease to have any force or effect absent an express written agreement between the Parties to the contrary. This MOU is non-precedential, will not bind the parties to any future action under similar conditions and is not evidence of past practice, intent of the parties or meaning or

