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October 14, 2022

Steven Blivess, Esq.
Montgomery County Public Schools
850 Hungerford Drive, Room 55
Rockville, Maryland 20850

RE: MCEA/MCPS FY23 Negotiations

CHERYL BOST
President

THERESA MITCHELL
DUDLEY
Vice President

JOSEPH COUGHLIN
Treasurer

SEAN JOHNSON
Executive Director

Dear Mr. Blivess:

Please be advised that this office serves as counsel to the Montgomery County Education Association (MCEA), and its members. In that capacity, Heather Carroll-Fisher shared with me your correspondence, dated October 12, 2022, relative to discussions about negotiation procedures as well as her email to you, dated September 30, 2022. Based upon my review of this matter, and particularly your most recent letter, MCPS appears to unabashedly assert that the language contained in Article 4(A)(1) of the collective bargaining agreement, which only requires the parties “meet” to establish negotiation procedures, prevails over the statutory obligation of the parties to engage in good faith negotiations per Title 6, Subtitle 4 of the Education Article. To be clear, such an assertion as well as the continued barriers and delays on the part of MCPS serve only to thwart substantive negotiations for a successor agreement, and therefore, constitute an unfair labor practice.

Specifically, in your letter, you assert that an agreement must be reached on negotiation procedures before substantive negotiations commence. Article 4(A)(1), however, only requires the parties to meet to establish procedures addressing various topics. Nowhere in the language does it require “agreement” on all items; and more importantly, nowhere does the language explicitly state it is a condition precedent to commencing negotiations. Please note that this language has been a part of the collective bargaining agreement for more than 30 years. As a result, there is a long and established practice between the parties that is not diminished by a change in personnel.

To be clear, the parties have met repeatedly on the topic of negotiation procedures and have had multiple exchanges that MCEA initiated, dating back to June 2022.ⁱ As a result of the exchanges, it appears that both parties have engaged in the discussions and compromises have been made. Most significantly, agreements relative to the use

of the Zoom webinar function have been reached with more in the way of procedures than demanded in the last round of bargaining. While open negotiations may not be your personal preference, history demonstrates that it worked in the past with far fewer procedural necessities. MCPS' continued demands to limit the number of meetings wherein observers may be present (Zoom or in-person), as well as to have a list of attendees should not preclude the immediate commencement of negotiations. Certainly, if concerns arise during the course of substantive negotiations, I am confident that the parties are sophisticated enough to address them and continue with negotiations.

More importantly, however, history demonstrates that the agreement, or lack thereof, relative to negotiation procedures has never precluded the parties from engaging in substantive negotiations pursuant to Title 6, Subtitle 4 of the Education Article. In fact, as an attorney, you should know very well that the parties' statutory obligations outlined in §6-408(a) of the Education Article supersede any requirements outlined in a collective bargaining agreement. If, however, you feel that MCEA is in violation of the contract language (Article 4(A)(1)), then MCPS should avail itself of the agreed upon grievance/arbitration provision contained in Article 5, which is the exclusive mechanism by which such disputes must be resolved.

Finally, MCEA has repeatedly requested that MCPS come to the table prepared to engage in good faith negotiations; and it has committed to adhere to the procedures agreed upon to date (August 11, 2022 exchange). In this regard, I am constrained to quote from Ms. Carroll-Fisher's email to you on September 30, 2022, wherein she states:

Because ground rules are a permissive subject of bargaining, you should know that an agreement is not necessary for substantive negotiations to begin; therefore, we reject the MCPS counterproposal and agree to be bound by agreements reached between the parties up to and including the working document presented to you on August 11, 2022. In the alternative, we are ready to proceed with substantive negotiations without ground rules as the parties both have statutory obligations to fulfill, and our members are eager to get this process started.

Because there are sufficient agreements relative to procedures, there is no further need to delay bargaining in violation of the parties' statutory obligations. It appears that the primary, outstanding contention is the attempt of MCPS to limit the number of



observers or open negotiation meetings. As previously stated, MCEA will neither put a limit on transparency nor be required to engage its members in a scripted, joint town hall forum with MCPS. MCEA is more than capable of communicating with its members about the status of negotiations.

Rest assured, MCEA is prepared to pursue its complaint of an unfair labor practice, however, that is not the desired course and the statutory requirement to engage in good faith negotiations remains. I, therefore, encourage MCPS to engage in substantive negotiations per §6-408(a) of the Education Article under the currently agreed upon procedures presented by MCEA. Absent an affirmative effort on the part of MCPS to schedule substantive negotiation meetings and respond to the repeated MCEA information requests,ⁱⁱ MCEA will file its unfair labor practice by close of business on Tuesday, October 18, 2022.

Finally, if you disagree with my interpretation of the law, please do not hesitate to call me at (443)758-8395.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kristy K. Anderson", is written over the typed name.

Kristy K. Anderson

c: Heather Carroll-Fisher
Jennifer Martin
MCEA Bargaining Committee

ⁱ A summary of the meetings as provided by Ms. Heather Carroll-Fisher (HCF) includes the following:

1. 6.21.22 | 3:30 – 5:00 PM | Formal ground rules negotiation session (offered prior year's ground rules)
2. 7.11.22 | 9:30 – 10:30ish AM | Formal ground rules negotiation session
3. 7.14.22 | 3:30 – 5:00 PM | Formal ground rules negotiation session
4. 8.10.22 | 4:30 – 6:00 PM | Formal ground rules negotiation session
5. 8.11.22 | 9:30 – 10:30 AM | HCF discussion with MCPS Lead Negotiator, Steven Blivess
6. 9.1 22 | 9:30 – 10:30 AM | HCF discussion with MCPS Lead Negotiator, Steven Blivess
7. Several conversations between MCEA President Jennifer Martin and MCPS executive leadership
 - a. Chief Operating Officer – 8.31.22, 9.12.22, 9.23.22
 - b. Chief of Staff to Superintendent – 8.16.22, 9.14.22 (HCF also attended this meeting)
 - c. Superintendent – 9.22.22, 09.26.22 (joint meeting with the chief of staff)
 - d. Chief of Staff to Board of Education – 10.03.22, 10.13.22

ii MCEA has put forward dates for meeting as follows:

- o 3-Oct, 5p (Virtual)
- o 6-Oct, 5p (Virtual)
- o 13-Oct, 5p (Virtual)
- o 20-Oct, 5p (Virtual)
- o 25-Oct, 5p (Virtual)
- o 27-Oct, 5p (In person – MCEA office is available)
- o 1-Nov or 3-Nov, 5p (Virtual)
- o 10-Nov, 5p (Virtual)
- o 16-Nov or 17- Nov, 5p (In person – MCEA office is available 11/16)
- o 21-Nov, 2:30 PM (Virtual)
- o 1-Dec, 5p (Virtual)
- o 7-Dec, 2:30 (In person)
- o 8-Dec, 5p (Virtual)
- o 13-Dec or 15-Dec, 5p (Virtual)