

AGREEMENT BETWEEN
THE HADLEY SCHOOL COMMITTEE
AND
THE HADLEY EDUCATION ASSOCIATION UNIT-D
AND THE
MASSACHUSETTS TEACHERS ASSOCIATION
AND THE
NATIONAL EDUCATION ASSOCIATION
July 1, 2018 to June 30, 2021

COLLECTIVE BARGAINING AGREEMENT

BETWEEN THE

HADLEY SCHOOL COMMITTEE

and the

HADLEY EDUCATION ASSOCIATION,

UNIT D

ARTICLE I – INTRODUCTION

This Agreement is made and entered into on July 1, 2018, by and between the HADLEY SCHOOL COMMITTEE, (hereinafter referred to as SCHOOL COMMITTEE) and the HADLEY EDUCATOR ASSOCIATION, UNIT D, (hereinafter referred to as the ASSOCIATION).

Nothing in this Agreement shall be construed as barring individual discussion between any member or employee of the SCHOOL COMMITTEE and any employee covered by this Agreement of any matter of particular concern to either; but no such discussion shall diminish or qualify in any way the rights and duties of the ASSOCIATION and the SCHOOL COMMITTEE, respectively, under paragraph (1) above.

For the purposes of Collective Bargaining with respect to wages, hours, standards of productivity, and other conditions of employment, the negotiation of a Contract and any questions arising therefrom, the SCHOOL COMMITTEE recognizes the ASSOCIATION as the exclusive bargaining agent and representative of all full time and regular part time Educational Support Professionals and Licensed Practical Nurses (hereinafter referred to as ESPs), and excluding all confidential, managerial, casual, temporary, and other employees.

The parties hereto agree as follows:

ARTICLE II - SALARIES

- 2.1 ESP employees are salaried non-exempt and are paid in bi-weekly installments consistent with pay schedules developed each year. Employees may choose to be paid either 22 or 26 pays during the school year.

2.2 Deductions from employee paychecks will be as follows:

- a) State and Federal Taxes and Retirement Deductions will be made as required by law.
 - b) Group Life Insurance. The Town Plans are available on an elective basis for all school employees. Deductions are made each pay period.
 - c) Dues for the NEA, MTA, and HEA, when authorized individually and voluntarily by an employee, will be deducted each pay period in such equal amounts as to complete the authorized deduction by the end of June. Money deducted as dues will be paid to the ASSOCIATION Treasurer.
 - d) Premiums for approved Health Insurance, when authorized individually and voluntarily by an employee, will be deducted each pay period.
 - e) The employee's share for Health Insurance will be paid on a before-tax basis. Participation in the program is optional. An employee wishing not to participate must file a waiver form with the Town Treasurer's Office.
- 2.3 An ESP who serves as the teacher while a teacher is out of the classroom shall receive \$6.00 per hour actually worked in addition to his/her regular hourly rate.
- 2.4 The salary schedule is attached as Appendix A

ARTICLE III – CONDITIONS OF EMPLOYMENT

- 3.1 The salary schedule placement of Unit D Personnel employed for the first time in Hadley shall be determined by the Superintendent based on an evaluation of the individual's training and experience. Once placed on the schedule, the conditions of the Contract shall apply equally to all employees.
- 3.2 The Employer shall schedule the workday of each employee. All employee hours worked in a day shall be consecutive.
- 3.3 All employees who work at least six (6) hours will be provided with a half hour of unpaid lunch.
- 3.4 Staff Meeting: The Principal has the sole discretion as to require the attendance of an ESP at a staff meeting. When attendance is required the ESP will be notified at least five (5) work days in advance of the staff meeting. This notice is waived if there is an emergency where it would be unreasonable to provide this prior notice of the meeting. Time for attending the meeting will be paid at the ESP's regular rate of pay. If the ESP cannot attend the meeting, the ESP has the

responsibility of following up with the Administrator on the agenda items discussed at the meeting.

- 3.5 The work year for all employees will consist of the student days, consistent with the school calendar and two (2) non-student days at the start of the school year. Part-time staff will be required to work the full day on the non-student days at the start of the school year. Part-time staff will be paid for the time worked on these non-student days. If the Principal requires additional days, ESPs are paid at their per diem rate.

ARTICLE IV – WEATHER RELATED DELAYS

- 4.1 If the opening of school is delayed for a weather-related reason, the ESPs shall be paid for the length of the delay, provided they report to work at least by the delayed opening time. If an ESP does not report to work by at least the delayed opening time, the ESP will only be paid for time worked. If an ESP works a part-time schedule and the normal reporting time is at or beyond the delayed opening time, the ESP shall report to work at the regularly scheduled reporting time. Similarly, if the school is dismissed early for a weather-related reason ESPs shall be allowed to leave early once the student dismissal process has been completed. ESPs will be paid for the lost time done to the early dismissal. If an ESP does not remain at work until student dismissal is complete, the ESP shall only be paid up to the time of his/her departure.

ARTICLE V – PAID HOLIDAYS

- 5.1 All employees covered by this agreement shall receive the following nine (9) paid holidays:

Labor Day	Columbus Day
Veteran's Day	Thanksgiving
Day After Thanksgiving	Christmas
New Year's Day	Martin Luther King Day
Memorial Day	

- 5.2 Employees, both academic year and calendar year employees are entitled to one floating holiday which is earned as of July 1 of each year and must be taken prior to June 30 of the following year.

ARTICLE VI – PROBATIONARY PERIOD

- 6.1 New hires must serve a probationary period of ninety (90) days actually worked. During this time period an employee may be terminated from employment at any time. In such circumstances, the discharged employee shall not have access to the grievance and arbitration provisions of this Agreement. After the

completion of the probationary period an ESP may only be disciplined for just cause.

- 6.2 An employee may resign from his/her employment Contract by giving written notice of his/her intent to resign to the Superintendent of Schools at least fourteen (14) calendar days in advance of the effective date of the resignation.

If a satisfactory replacement is obtained, prior to the effective date of the resignation, the resigning employee may request to be released from his/her obligation to work out his/her resignation notice.

ARTICLE VII – VACANCIES

- 7.1 The parties acknowledge that ESPs are assigned according to the needs of the District on an annual basis, or when necessary during the school year based on instructional requirements and the best interests of the School System. ESPs will be assigned or reassigned with consideration given to experience, performance, and qualifications. Upon request, the ESP will be provided with a rationale for the assignment.
- 7.2 Any ESP desiring a transfer will submit a written request to the Superintendent or his/her designee, stating the assignment desired. Before filling any permanent vacancy, transfer requests on file will be considered.
- 7.3 All vacancies other than those requiring immediate filling, will be posted for five (5) work days by means of the office bulletin board in each school, and to the Association President by school email. Applications must be filed in writing with the Superintendent within the time limit specified in the notice.
- 7.4 All ESPs will be given adequate opportunity to make application for such vacancies. Applications must be filed in writing with the Superintendent within the time limit specified in the notice.
- 7.5 ESPs who desire a change in assignment or who desire to transfer to another building for the next school year shall file a written statement of such desire with the Superintendent of Schools or his/her designee.

ARTICLE VIII – AGENCY SERVICE FEE

- 8.1 Fair Share

Effective thirty (30) days after the commencement of employment, each employee, in accordance with G.L., C. 150E, § 12, shall be required to pay the service fee to the HEA as a condition of his/her employment in the district.

Any employee who fails to pay the agency fee in lieu of dues to the exclusive bargaining agent will be subject to legal action by the HEA for collection of said fee. Any cost of collecting said fee will be added to the individual's total service fee due. The HEA will be solely responsible for enforcing the provisions of this Section. The School Committee will not be responsible to enforce any provision of the Section.

The service fee shall be calculated in accordance with the provisions of the M.G.L., C. 150E, § 12, and applicable state and federal constitutional law. Payment of said fee will not entitle the fee payer to be a member in good standing with the HEA.

- 8.2 The HEA will indemnify, defend, and hold harmless the School Committee against any and all claims, actions, or lawsuits of any kind or description, whether at law or equity, and whether based on statute, constitution or common law, made or instituted against the School Committee or its agents, employees or administrators, resulting from this Section. Specifically, the HEA will have no right of action by way of contribution, counterclaim, or other basis against the School Committee. Should any administrative agency or court of competent jurisdiction find the School Committee liable for any damages as a result of this Section, the HEA will pay any and all of those damages, including interest and charges.

If any court of competent jurisdiction determines that any part of this Section VIII, is unconstitutional, in violation of statute, or otherwise unenforceable, all of the other parts of this Section VIII, will be null and void.

ARTICLE IX – TEMPORARY EMPLOYEE

- 9.1 From time to time it is necessary to hire an individual for temporary employment in the bargaining unit. Examples include: filling in for an employee who is on an approved leave, including Paternity, Family and Medical Leave, Worker's Compensation, working with a student on a temporary basis while a decision is made relative to the needs of the student, and filling in for an ESP member on child rearing leave or has been selected to fill a temporary vacancy in a teaching position. An employee who completes four (4) months of continuous work in the bargaining unit shall be placed on the salary schedule and shall be entitled to the benefits of the bargaining unit beginning after the four (4) month period has been worked.

ARTICLE X – PROFESSIONAL IMPROVEMENT

- 10.1 Tuition Reimbursement: An ESP who is required to take courses by the Superintendent will be reimbursed for those courses.
- 10.2 ESPs are included in the professional development committee. The committee will meet during the school year to discuss professional

development program offerings that will benefit the ESPs and other school personnel. The offerings may include workshops to be held on professional development days, after-school workshops/courses, and summer courses.

- 10.3 Annually, the School Committee shall create a conference account for ESP's. Each ESP shall have up to one hundred and fifty dollars (\$150.00) per year available to him/her for attendance at conferences.

ARTICLE XI – LEAVES OF ABSENCE

11.1 Personal Days

- a) Each employee shall be permitted three (3) Personal Days with pay each school year, subject to the approval of the Principal and the Superintendent based on the operational considerations. Up to one (1) day of the unused personal days will be transferred to the ESP's accrued sick time at the end of the school year.
- b) Personal Days may not be taken prior to or immediately following a school vacation or holiday except in case of an emergency and upon approval of the Superintendent of Schools.
- c) Personal days will be converted into hours. In requesting personal time, the requests and related deduction of time shall be in a minimum of one hour increments.
- d) When an employee has utilized all of his/her personal time, the employee does not have a right to utilize unpaid time. When an employee has utilized all of his/her personal time, the employee is faced with a serious personal matter, the employee may request to both the principal and the superintendent to take unpaid time. Such request will be in writing and in sufficient detail to explain the need for unpaid time. If the request is denied, the denial shall not be subject to the grievance procedure.

11.2 Temporary Leaves of Absence With Pay

Employees will be granted the following temporary leaves of absence with pay each school year upon the approval of the Superintendent of Schools.

- a) Death in the Immediate Family – Up to five (5) work days of leave may be taken for the death in the immediate family, as allowed by the Superintendent, to arrange for and attend the funeral and deal with other associated issues without being charged sick leave or personal leave. Immediate family shall mean wife, husband, son, daughter, father, mother, brother, sister, domestic partner.

Up to three (3) work days of leave may be taken for the death of a grandparent, grandchild, father-in-law, mother-in-law, sister-in-law, and brother-in-law and other members of the employee's immediate household. At the discretion of the Superintendent, bereavement leave may be granted for the death of someone not in the employee's immediate household.

b) Sick Leave

The purpose of paid sick time is to provide a continuation of income to ESP employees whose absences from work is necessitated by their personal illness (or in the case of family illness, the illness of an immediate family members which requires the ESP employee to provide direct care for this immediate family member). Sick leave provided by the district is to be used for the purposes intended.

(1) Any ESP who shall be absent in any school year on account of personal sickness or any quarantine regulations of the Board of Health shall be granted sick Leave benefits to the extent of their accumulated Sick Leave which shall be earned as follows:

a) ESPs shall be granted ten (10) sick days per year in the first three (3) years of employment, and fifteen (15) sick days beginning in the fourth year of employment.

(2)

a) ESPs may accumulate up to two hundred (200) days of sick leave.

b) ESPs may utilize up to five (5) days of their earned sick leave to care for sick members of their immediate families per school year as defined in Article V, B.

(3) The annual sick leave amount will be pro-rated for those ESPs who commence or end employment in the course of the school year.

(4) The Superintendent or his/her designee may require sick leave medical certification for any absence from work under the Family and Medical Leave Act of 1993 or the Massachusetts Maternity Leave Act. In addition, medical certification may be required for any absence of three or more consecutive days, as well as, in instances where there is excessive, patterned, or reason to believe there is an abuse of sick leave.

(5) When taking a sick day an employee shall be compensated for all hours for which he/she was scheduled to work.

(6) Sick days will be converted to hours in proportion to the regular work schedule of the employee. Sick leave will be deducted in increments of one (1) hour.

a) Sick Leave Buyback

Any employee with fifteen (15) consecutive years of service with the Hadley School System who retires with one hundred (100) or more sick days unused from the Hadley School System will receive three thousand (\$3,000) dollars sick leave buy back.

b) Early Retirement Notice Incentive:

An employee in this unit who retires with fifteen (15) years of consecutive service with the Hadley School Department shall be entitled to a payment of \$1,000.00 if the employee notifies the Superintendent, in writing, of his/her decision to retire prior to September 1st of the school year proceeding retirement. (i.e., an employee planning to retire in June 2016 would need to provide written notice by September 1, 2014, in order to qualify for this retirement incentive); or payment of \$500.00 if said notice of retirement is received after September 1st but before January 2nd of the calendar year before the school year of his/her retirement (i.e., an employee planning to retire in June 2016, who did not notify the School Department of his intent by September 1, 2014, must do so in writing between September 2, 2014 and January 1, 2015 to qualify for this retirement incentive).

11.3 Sick Leave Bank

It is the district's intent to create a district wide Sick Bank policy, at such time and if the policy meets with approval from labor, the sick bank provisions included in this section shall apply to all employees in the district who contribute to the district sick bank. The intent in establishing a sick leave bank is to assist a ESP to cover catastrophic illness after cumulative sick days are exhausted.

A sick leave bank is hereby established to be maintained for staff under the following conditions:

1. The maximum amount of days available in the Sick Leave Bank during any year will not exceed 180 days. The amount of days shall be carried over from year to year.
2. If needed to reach the maximum number of days, each staff, (except first-year staff who are excluded from the provisions of

the Sick Leave Bank), will donate one (1) day of his/her sick leave into a bank. The Superintendent's office shall provide each employee with information regarding sick time used and sick time available. Sick time used shall include time donated to the sick bank per section 11.3.2. and 11.3.3. The Superintendent will provide a balance of the sick bank to the HEA on an annual basis.

3. An additional day will be donated to the Sick Leave Bank by each eligible ESP as the need arises.
4. Sick Leave Bank days can be granted only for illness/accident of the eligible ESP
5. The initial grant of sick leave by the Sick Leave Bank Committee to an eligible employee shall not exceed thirty (30) days.
6. Upon completion of the thirty (30) day period, the period of entitlement may be extended by the Sick Leave Bank Committee upon demonstration of need by the applicant. The maximum number of Sick Leave Bank days granted to a teacher who has requested days shall not exceed one hundred (100) days for any one illness.
7. The Sick Leave Bank shall be administered by a sick leave bank committee consisting of six (6) members. Three (3) members shall be designated by the President of the Association and two (2) members of the School Committee and the Superintendent. The Sick Leave Bank Committee shall determine the eligibility for the use of the Bank by personnel, and the amount of leave to be granted. The following criteria shall be used by the Sick Leave Bank Committee in administering the Bank and in determining eligibility and amount of leave.
 - a. Adequate medical evidence of serious illness.
 - b. Prior utilization of all eligible sick leave.
 - c. Length of service in the Hadley School System.
8. The decision of the Sick Leave Bank Committee shall not be subject to the grievance procedure contained in this Agreement.

ARTICLE XII – ESP EVALUATION

- 12.1 All ESP staff shall be evaluated on an annual basis.

ARTICLE XIII – REDUCTION IN FORCE

- 13.1 The School Committee will determine the number of ESP positions that are needed in the school system.
- 13.2 If the School Committee determines that the number of positions, or the hours of work within positions, is to be reduced, it agrees to accomplish such reduction within the impacted classifications as follows:
- a) Probationary employees within each classification, where a reduction is to occur, who have not completed the probationary period of 90 days actually worked, shall be laid off first, or have hours reduced, unless in relation to the needs of the district, there is a demonstrated need for the background/experience or demonstrated ability of the person in question (e.g. foreign language, sign language, etc.).
 - b) When the number of ESPs, or hours within positions, is to be reduced the affected employee(s) in the position(s) shall be notified at least fifteen (15) calendar days in advance of the effective date of the reduction.
 - c) An ESP laid off, or has hours of work reduced, will be given priority, by seniority, to transfer to other vacancies for which he/she is qualified or to exercise bumping rights to a position held by an employee with less seniority within the same classification, unless in relation to the needs of the district, there is a demonstrated need for the background/experience of demonstrated ability of the person in question (e.g. foreign language, sign language, etc.).
 - d) Seniority for the purpose of this article is the length of continuous employment as an ESP in the Hadley Public Schools. An employee shall be placed on a seniority list after completing the probationary period.
 - e) An ESP who is laid off due to reduction in force will be eligible for recall for an open position within the classification formerly employed for a period of twelve (12) months after the layoff. An ESP who is recalled to work within the twelve month period will not suffer a break in continuous service, but doesn't accrue seniority during the recall period. The recalled ESP will retain previously accrued sick leave and step placement on the salary schedule.

- f) Recall notices will be sent by certified mail, return receipt, and regular mail. Such notices will be sent to their last address of record. A recalled member shall have ten (10) calendar days of the recall notice to accept that position. If the unit members either rejects the recall offer or fails to respond to the recall notice, the unit member's name shall be removed from the recall list and the position shall be offered to the next person, if any, on the recall list. An ESP who is recalled to work but who refuses the position shall forfeit all recall rights. If an ESP is recalled but is unable to accept the work for medical reasons, he/she can remain on the list for recalls if they provide medical documentation supporting their inability to accept the work. This provision will not change the duration of time the employee is on the recall list. If the individual is later rehired, the ESP will be considered a new employee with no carryover of continuous service and related benefits.
- g) To the extent permitted by applicable state and federal laws, laid off ESPs may continue in the Town's group health and life insurance program. The ESP shall be responsible for paying the entire cost of the premium.
- h) The Superintendent shall prepare a list specifying the seniority of each ESP and copies will be forwarded to the President of the ESPs by November 15. If no challenge to the list is made by the Association within thirty (30) calendar days of receipt of the list, the list will stand as written. Final copies will be sent to each school.
- i) Nothing in this section shall limit the management rights of the Superintendent to terminate the employment of any ESPs under Massachusetts State Law.

ARTICLE XIV – ASSISTANCE IN CASE OF ASSAULT

- 14.1 ESPs shall be required to report to the building principal, in writing, any case of assault, in connection with their employment. The central office will supply each school with the appropriate form to report the incident. A copy of the completed form will be submitted by the building principal/administrator to the Superintendent or designee.
- 14.2 If an ESP, because of injury sustained in the course of and arising out of the ESP's employment, is receiving benefits under §34 of Chapter 152 of the General Laws of the Commonwealth of Massachusetts (Worker's Compensation Act), the ESP will receive payments under the statute and will be permitted to receive the difference in pay up to the ESPs regular rate of pay for accumulated sick leave until such point in time that the accumulated

sick leave has been exhausted. Thereafter, the ESP will be paid only the amount provided for by statute.

- 14.3 **Damage of Loss of Property.** An ESP shall report, in writing, any loss, damage or destruction of personal property to the Principal immediately upon becoming aware of such loss, damage, or destruction. The District will reimburse the assistant for loss of essential items such as eyeglasses, contact lenses or hearing aids if they are damaged in an assault. Reimbursement will be processed upon submission of a written claim and satisfactory proof in support of said claim.

ARTICLE XV – Contract Access

The School District will post the ESP contract on the School District website. One copy is available in the Superintendent's Office and each school building.

ARTICLE XVI – TRAVEL REIMBURSEMENT

ESPs shall be reimbursed for all costs associated with District mandated travel. Mileage shall be reimbursed at the current Town rate.

ARTICLE XVII – GRIEVANCE AND ARBITRATION

- 17.1 A grievance is defined as a question, complaint or dispute, involving the interpretation or application of or the failure to comply with or the alleged violation of the terms and provisions of this Agreement. Any matter which is reserved to the discretion of the School Committee or any matter which is not covered by the provisions of this Agreement, shall not be the subject of a grievance. All time limits shall be maximums and be construed to mean working days.

A grievance filed prior to the end of the school year shall continue to be processed during the summer months. When school is out of session for the summer, workdays shall mean days when the Central Office of the School System is open for business to the public. Either party or the grievant(s) may request in writing a reasonable extension of time due to vacation and/or personal commitments.

- 17.2 The parties acknowledge that it is usually more desirable for an ESP and his/her administrative supervisor to resolve problems through free and informal communications. However, should such informal processes fail to satisfy the ESP, then a grievance may be reduced to writing and processed as follows:

17.2.1. The ESP or ESPs aggrieved shall present a grievance in writing within ten (10) days (excluding vacation days between September and June) of the date he/she knew or should have known of the occurrence which gave

rise to the grievance. Any complaint, dispute or question presented after the above time shall be considered untimely and not grievable.

17.2.2. The written grievance must be presented to the administrative supervisor who will arrange for a meeting within ten (10) days of the receipt of the written grievance. The aggrieved ESP, with or without a representative of the Association at the option of the ESP, shall be present for the meeting. The administrative supervisor must provide the aggrieved ESP with a written answer on the grievance within ten (10) days of the meeting.

17.2.3. Step 2 - If the matter is not satisfactorily settled in 9.2.2., the Association shall refer the grievance to the Superintendent within ten (10) days. The Superintendent shall arrange for a meeting with the Association's representative with or without the aggrieved employee within ten (10) days of the receipt of the appeal in an effort to resolve the grievance. The Superintendent will provide the Association representative and the aggrieved employee with his/her written decision within ten (10) days of the conclusion of the meeting.

17.2.4. Step 3 - If the grievance is not satisfactorily settled in Step 2, the Association will forward written notice to the Superintendent within ten (10) days and the Superintendent, or designee, will arrange for a meeting between the Association's representative and the School Committee to take place no later than the next regularly scheduled meeting of the School Committee after the Association's referral. (Such meeting shall be held in executive session). Upon conclusion of the meeting, the School Committee will provide the Association with their written decision within ten (10) days.

17.2.5. Step 4 - If the Association is not satisfied with the disposition of the grievance in Step 3, or the Step 3 time limit expires without issuance of School Committee's written answer, then the parties either jointly or singularly may demand arbitration. The arbitrator for the duration of this Agreement shall be the American Arbitration Association.

The arbitrator and the parties agree to be bound by the time limits for arbitration contained in the rules of the American Arbitration Association. If the demand for arbitration is not filed within ten (10) days from the date of the School Committee's Step 3 reply, then the grievance will be deemed withdrawn.

17.2.6. The Arbitrator's decision shall not extend beyond the submission nor alter, amend or modify the provisions of the Agreement. Nor shall the Arbitrator render a decision which shall impinge upon any reserved rights of the School Committee.

17.2.7. The expenses of the Arbitrator shall be borne equally by both parties.

17.2.8. Pending final resolution of any complaint, the ESP shall comply with the instructions of the Department Chairman or similar supervisor, Principal or Assistant Principal, Director, Superintendent or School Committee.

ARTICLE XVIII - DURATION

This Agreement and its provisions shall be effective July 1, 2018 and shall remain in full force and effect up to and including June 30, 2021.

In WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed in their names on their behalf by duly authorized officers thereof, this ____ day of _____.

For The Hadley
School Committee

Matthew S. Kessel

Dated: 4/22/2018

For The Hadley
Education Association, Unit D

Jason A. Burns

Dated: 4/3/2018

Appendix A

Salary Schedule:

Step	FY 19	FY 20 – 1.6%	FY 21 – 1.75%
2	\$14.52	\$14.77	\$15.03
3	\$14.99	\$15.23	\$15.50
4	\$15.50	\$15.75	\$16.02
5	\$16.07	\$16.33	\$16.61
6	\$16.63	\$16.90	\$17.19
7	\$17.06	\$17.33	\$17.64
8	\$17.68	\$17.96	\$18.28
9	\$18.25	\$18.54	\$18.87
LPN	\$19.56	\$19.87	\$20.22

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FAMILY AND MEDICAL LEAVE

A. **Leave Without Pay**

1. Employees may take leave without pay when they have exhausted their leave benefits and need additional leave to cover personal illness; the illness of a spouse, child, or parent; the birth or adoption of a child; for any "qualifying exigency" arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty, or has been notified of an impending call or order to active duty as a member of the National Guard or Reserves, in support of a contingency operation; or to care for a covered service member with a serious injury or illness if the employee is the service member's spouse, son, daughter, parent, or next of kin.
2. An employee is not entitled to leave without pay unless:
 - a. that employee has been employed for at least twelve (12) months by the School Committee* **and**
 - b. that employee has worked at least 1250 hours in the previous 12 month period or has a salaried position of at least .5 F.T.E.s
- * While the twelve (12) months of employment need not be consecutive, employment periods prior to a break in service of seven (7) years or more need not be counted unless the break is occasioned by the employee's fulfillment of his/her National Guard or Reserve military obligation (as protected under the Uniformed Services Employment and Reemployment Rights Act (USERRA)), or a written agreement, including a collective bargaining agreement, exists concerning the employer's intention to rehire the employee after the break in service.
3. Extent of leave:
 - a. An eligible employee may take up to twelve weeks (or twenty-six (26) weeks if leave to care for a covered servicemember with a serious injury or illness is also used) of leave total during a twelve (12) month period, including any paid leave used. The employee must exhaust all sick leave as per contracts with any collective bargaining units, available paid vacation leave and personal leave before being entitled to take leave without pay.

Adopted By The
Hadley School Committee: May 19, 2014

4. Definitions:

- a. "Child" means a son or daughter, whether biological adopted, foster child, a stepchild, legal ward or child to whom the employee stands in loco parentis, if the child is either under the age of eighteen (18) years or is incapable of self-care because of a mental or physical disability.
- b. "Health care provider" means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state where the doctor practices, or any person determined by the Secretary of Labor to be capable of providing health care services.
- c. "Intermittent Leave" means leave taken in whole day periods but less than a whole work week.
- d. "Parent" means a biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.
- e. "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per work week, or hours per workday, of an employee.
- f. "Serious health condition" means an illness, injury, impairment, or physical or mental condition which involves either

(1) inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care;

or

(2) continuing treatment by a health care provider, which includes:

- (a) A period of incapacity lasting more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes:
 - a. treatment two (2) or more times by or under the supervision of a health care provider (i.e., in-person visits, the first within seven (7) days and both within thirty (30) days of the first day of incapacity); **or**
 - b. one (1) treatment by a health care provider (i.e., an in-person visit within seven (7) days of the first day of incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy); **or**
- (b) Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; **or**

- (c) Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for absence; or
- (d) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or
- (e) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three (3) days if not treated.

- g. "Spouse" means a husband or wife, as defined by state law.
- h. "Twelve Month Period" the preceding twelve-month period from when the leave commences.

B. Types of Leave Without Pay

- 1. Personal Medical Leave Without Pay: The Superintendent may grant a medical leave of absence without pay to an employee who, because of a serious health condition is unable to perform the functions of his or her job.
 - a. An employee must exhaust all available sick leave before taking leave without pay.
 - b. Medical Certification:
 - (I) The Superintendent may require a medical certification from the employee's health care provider, stating—
 - i. the date on which the health condition began,
 - ii. the probable duration of the condition,
 - iii. the appropriate medical facts within the health care provider's knowledge regarding the condition,
 - iv. a statement that the employee is unable to perform the functions of his/her job.

- (2) If the Superintendent has reason to doubt the validity of the medical certification provided by the employee's health care provider, he or she may require, at the School Committee's expense, a second opinion. The employee must obtain the opinion of the School Committee's designated health care provider concerning the information in b., above.

The health care provider giving the second opinion may not be a person regularly employed by the School Committee.

- (3) If the second opinion conflicts with the first, the School Committee may require, at the School Committee's expense, a third opinion. The third health care provider's opinion shall be final and binding on the School Committee and the employee.
 - (4) The Superintendent may require an employee on medical leave without pay to provide medical certifications at reasonable intervals.
- c. If the necessity for leave is foreseeable based on planned medical treatment, the employee—
 - (1) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the school, subject to the approval of the employee's health care provider.
 - (2) shall give the employee's supervisor at least thirty (30) days' notice, before the date the leave is to begin, of the employee's intention to take personal medical leave without pay, except that if the date of treatment requires the leave to begin in less than thirty (30) days, the employee shall provide such notice as practicable.
 - d. If the necessity for leave is foreseeable less than thirty (30) days in advance, the employee must provide notice as soon as practicable – generally, either the same or next business day.
 - e. If the necessity for leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, employees must comply with the employer's usual and customary notice and procedural requirements for requesting leave.
 - f. The employee may take intermittent leave or take leave on a reduced leave schedule when medically necessary.
 - g. Before the employee may resume work, the employee must present his or her supervisor with written medical certification from the employee's health care provider that the employee is able to resume work. If reasonable safety concerns exist, the School Committee may, under certain circumstances, require such a certification for employees returning from intermittent FMLA

leave.

2. Family Medical Leave Without Pay: The Superintendent may grant a medical leave of absence without pay to an employee who needs the time off to care for the employee's spouse, child or parent, if the spouse, child or parent has a serious health condition.

- a. Medical Certification

- (1) The School Committee may require a medical certification from the health care provider for the spouse, child, or parent, as the case may be, stating -
 - i. the date on which the health condition began,
 - ii. the probable duration of the condition,
 - iii. the appropriate medical facts within the health care provider's knowledge regarding the condition,
 - iv. that the employee is needed to care for the spouse, child, or parents, as the case may be, and an estimate of the amount of time that such employee is needed to care for the spouse, child, or parent.
- (2) If the School Committee has reason to doubt the validity of the medical certification provided by the employee's health care provider, he or she may require, at the School Committee's expense a second opinion. The employee must obtain the opinion of the School Committee's designated health care provider concerning the information in b., above. The health care provider giving the second opinion may not be a person regularly employed by the School Committee.
- (3) If the second opinion conflicts with the first, the School Committee may require, at the School Committee's expense, a third opinion. The third provider's opinion shall be final and binding on the School Committee and the employee.
- (4) The Superintendent may require an employee on medical leave without pay to provide medical certification at reasonable intervals.

- b. If the necessity for leave is foreseeable based on planned medical treatment, the employee—

- (1) Shall make a reasonable effort to schedule the treatments so as not to disrupt unduly the operations of the school, subject to the approval of the health care provider for the spouse, child, or parent of the employee, as the case may be, and
 - (2) Shall give the employee's supervisor at least thirty (30) days notice, before the date the leave is to begin, of the employee's intention to take family medical leave without pay, except that if the date of the treatment requires the leave to begin in less than thirty days, the employee shall provide such notice as practicable.
 - c. If the necessity for leave is foreseeable less than thirty (30) days in advance, the employee must provide notice as soon as practicable – generally, either the same or next business day.
 - d. If the necessity for leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, employees must comply with the employer's usual and customary notice and procedural requirements for requesting leave.
 - e. the employee may take intermittent leave or take leave on a reduced leave schedule when medically necessary.
3. Parental Leave Without Pay: An employee may take parental leave without pay within one year of the birth of the child in order to care for that child. An employee may take parental leave without pay within one year of the placement of a child with the employee for adoption or foster care.
- a. When the need for parental leave without pay is foreseeable based on expected birth or placement, the employee shall give his or her supervisor at least thirty (30) days' notice before the date the leave is to begin. If the date of the birth or placement requires leave to begin in less than thirty (30) days, the employee shall provide such notice as is practicable. Absent unusual circumstances, employees must comply with the employer's usual and customary notice and procedural requirements for requesting leave.
 - b. An employee taking parental leave without pay may not take intermittent leave or work on a reduced leave schedule without the express consent of the Superintendent in writing.
4. Qualifying Exigencies Leave Without Pay: An employee may take leave without pay for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or

parent is on active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation. Qualifying exigency leave is not available to family members of military members in the Regular Armed Forces. A qualifying exigency is defined as: (1) Short-notice deployment (i.e., deployment on seven or less days of notice) for a period of seven days from the date of notification; (2) Military events and related activities; (3) Childcare and school activities; (4) Financial and legal arrangements; (5) Counseling; (6) Rest and recuperation; (7) Post-deployment activities; and (8) Additional activities not encompassed in the other categories, but agreed to by the employer and employee.

a. Certification

(1) Leave for a qualifying exigency must be supported by a copy of the covered military member's active duty orders and certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought, including contact information if the leave involves meeting with a third party. A second and third opinion and recertification are not permitted for certification of a qualifying exigency. The employer may contact the individual or entity named in a certification of leave for a qualifying exigency for purposes of verifying the existence and nature of the meeting.

b. An employee must provide notice of the need for foreseeable leave due to a qualifying exigency as soon as practicable. When the need is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Generally, it should be practicable to provide notice for unforeseeable leave within the time prescribed by the employer's usual and customary notice requirements.

c. Leave may be taken intermittently for a qualifying exigency.

5. Care for Service Member Leave Without Pay: An employee who is a spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness may take leave without pay for up to a total of twenty-six (26) workweeks during a single twelve (12) month period to care for the servicemember.

A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness. A serious injury or illness is one that was incurred by a servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating. The "single 12-month period" for leave to care

for a covered servicemember with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12 month period established by the employer for other types of FMLA leave. An eligible employee is limited to a **combined** total of 26 workweeks of leave for any FMLA-qualifying reason during the "single 12-month period." (Only 12 of the 26 weeks total may be for a FMLA-qualifying reason other than to care for a covered servicemember).

a. Medical Certification

- (1) Leave to care for a covered servicemember with a serious injury or illness must be supported by a certification completed by an authorized health care provider **or** by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family. Second and third opinions and recertification are not permitted. The employer may use a health care provider, a human resource professional, a leave administrator, or a management official – but not the employee's direct supervisor – to authenticate or clarify a medical certification of a serious injury or illness, or an ITO or ITA.
- b. Employees seeking to use military caregiver leave must provide thirty (30) days advance notice of the need to take FMLA leave for planned medical treatment for a serious injury or illness of a covered servicemember. If leave is foreseeable, but thirty (30) days advance notice is not practicable, the employee must provide notice as soon as practicable – generally, either the same or next business day. When the need is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Generally, it should be practicable to provide notice for unforeseeable leave within the time prescribed by the employer's usual and customary notice requirements.
- c. Leave may be taken intermittently whenever **medically necessary** to care for a covered servicemember with a serious injury or illness. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation.

C. Special Rules

- I. Rules Applicable to Instructors in Periods Near the Conclusion of the Academic Term:

The following rules apply to any employee who takes leave without pay under this policy and who is employed principally in an instructional capacity.

- a. If leave without pay begins more than five weeks before the end of an academic term, the principal may require the employee to continue taking leave until the end of that academic term, if--

- (1) the leave is of at least three weeks duration, and

- (2) the return to work would occur during the three-week period before the end of the academic term.

- b. If leave because of the birth of a son or daughter; leave because of the placement of a son or daughter for adoption or foster care; leave taken to care for a spouse, parent, or child with a serious health condition; or leave taken to care for a covered servicemember without pay begins within five weeks before the end of an academic term, the principal, may require the employee to continue taking leave until the end' of that term, if--

- (1) the leave is of at least two weeks duration, and

- (2) the return to work would occur during the two-week period before the end of the academic term.

- c. If leave because of the birth of a son or daughter; leave because of the placement of a son or daughter for adoption or foster care; leave taken to care for a spouse, parent, or child with a serious health condition; or leave taken to care for a covered servicemember without pay begins within three weeks before the end of an academic term the principal may require the employees to continue taking leave until the end of that term, if the leave is for more than five working days.

- d. The extended leave is counted against the teacher's FMLA allotment. If the teacher's FMLA allotment expires during the extension, the additional time is nevertheless deemed FMLA leave.

2. Intermittent Leave and Reduced Leave Schedules:

- a. If the intermittent leave or reduced leave schedule is foreseeable based on planned medical treatment, the Superintendent may require the employee to transfer temporarily to an available alternate position—

- (1) which is offered by the Superintendent,

- (2) for which the employee is qualified,

- (3) which has equivalent pay and benefits, and
 - (4) which better accommodates recurring periods of leave than the regular employment position of the employee.
 - b. If a teacher does not give the School Committee the required thirty (30) days notice for intermittent leave or a reduced leave schedule which is foreseeable, he or she must delay the taking of leave until the notice provision is met.
 - c. If a teacher takes intermittent leave or a reduced leave schedule which is for more than 20% of the normal working days over the period of the leave, that teacher must instead take the entire period as FMLA leave.
3. Benefits during Leave:
- a. While the employee is on leave, the Hadley Public Schools shall maintain coverage of that employee under its group health plan at the level and under the conditions which would have been provided if the employee had continued in employment instead of being on leave.
 - b. If the employee normally had a monthly payment to that plan, the employee must make that monthly payment. If the employee fails to make such payments, the Hadley Public Schools shall, if possible, continue the benefits at the reduced rate. If such a reduced rate is not possible, then the employee shall be excluded from the group health plan.
4. Employment and Benefits upon Return to Work:
- a. Any employee who takes leave under this Policy for the intended purpose of the leave shall be entitled, on return from leave--
 - (1) to be restored to his or her former job, or
 - (2) to be placed in an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.
 - b. The taking of leave under this policy shall not result in the loss of any employment benefit accrued before the date on which the leave began, nor be counted against the employee under a "no fault" attendance policy. If a bonus or other payment, however, is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance, and the employee has not met the goal due to FMLA leave, payment may be denied unless it is paid to an employee on equivalent leave status for a reason that does not

qualify as FMLA leave.

- c. No employee shall accrue seniority or employment benefits during any period of leave, nor shall the employee be entitled to any right, benefit, or position of employment other than those to which the employee would have been entitled if the employee had not taken the leave. This policy does not change the legal status of probationary teachers or the Superintendent's authority under M.G.L. Chapter 71, sec. 41 and 42.
5. Failure to Return from Leave: The Hadley Public Schools may recover the premium which it paid for maintaining coverage of the employee under its group health plan during the employee's unpaid leave under this policy if--
- a. the employee fails to return from unpaid leave under this policy after the period of leave to which the employee is entitled has expired; and
 - b. the employee fails to return to work for a reason other than--
 - (1) the continuance, recurrence, or onset of a serious health condition which would entitle the employee to personal or family medical leave without pay, or
 - (2) other circumstances beyond the control of the employee.
6. Prohibited Acts:
- a. No employee of the Hadley Public Schools shall interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under this policy.
 - b. No employee of the Hadley Public Schools shall discriminate against any individual for opposing any practice contrary to this policy.
 - c. No employee of the Hadley Public Schools shall discriminate against any individual for:
 - (1) filing any charge, instituting or causing to be instituted any proceeding, under or related to this policy,
 - (2) giving, or being about to give, any information in connection with any inquiry or proceeding relating to any right provided under this policy, or

- (3) testifying, or being about to testify, in any inquiry or proceeding relating to any right provided under this policy.

LEGAL REFS.: P.L. 103-3 "Family and Medical Leave Act of 1993"
 29 U.S.C. S 2601 et seq.
 Department of Labor Regulations, 29 C.P.R. Part 825
 Va Code S 22.1-303.
 P.L. 110-181, "National Defense Authorization Act"