

FEDERAL EDUCATION ASSOCIATION/STATESIDE REGION  
CERTIFIED UNIT  
ASSOCIATION GRIEVANCE SY 2019-2020, No. 37

This grievance is being filed under Article 26 of the Master Labor Agreement (MLA) entered into by the Stateside Region of the Federal Education Association (FEA/SR) and the Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS).

Grievance:

This Association Grievance is being filed over the unilateral implementation of changes to conditions of employment resulting from the decision of the DoDEA Americas Director of Student Excellence to close DDESS schools to students and educators and to institute a digital learning policy during the COVID-19 pandemic. Management violated Article 7 of the MLA and committed an unfair labor practice under 5 U.S.C. § 7116(a)(1), (5), and (8) by failing to provide adequate notice of the myriad of changes to conditions of employment associated with the transition to a digital learning platform and by implementing those changes prior to completing its bargaining obligations under 5 U.S.C. § 7101, et seq.

Management made substantive changes to mandatory subjects of bargaining without adequate notice and without bargaining. Management failed to bargain impact and implementation when exercising management rights under 5 U.S.C. § 7106(a) in violation of Article 7 of the MLA and 5 U.S.C. § 7106(b). Management further committed an unfair labor practice under 5 U.S.C. § 7116(a)(1) by unlawfully dealing directly with bargaining unit employees on matters for which the Agency has an obligation to deal with the Union as the exclusive representative.

The Agency is violating Article 18 by failing to compensate bargaining unit employees for work hours assigned in excess of the “Workday” defined under Article 18, section 1 of the MLA. Additionally, the Agency is violating MLA provisions covering Sign-in Procedures, Health and Safety, Academic Freedom, and Professional Development, including, but not limited to:

- Article 9, section 6;
- Article 11, section 1(d);
- Article 11, section 5 (a);
- Article 14, section 1;
- Article 18, section 6;
- Article 19, section 1.

The following relief is sought for this grievance:

- Return to the status quo ante;
- That the Agency maintain a safe and healthy work environment for all bargaining unit employees;
- That the Agency desist from bad faith bargaining;
- That the Agency desist from unlawful direct dealings with bargaining unit employees;
- That the Agency negotiate, in good faith, policies and procedures covering the continued operations of digital learning when school is closed to students due to a pandemic/and or emergency situation;
- That all impacted bargaining unit employees be paid at their Earned Hourly Rate for work hours in excess of the “Workday” defined under Article 18, section 1 of the MLA;

- Make whole relief for all impacted bargaining unit employees who, as a result of the transition to a new digital learning policy, worked additional work hours without compensation;
- Make whole relief for any reduction in pay, allowance, and/or differential that would not have occurred but for the Agency's unlawful implementation, 5 U.S.C. § 7116(a) violations, and/or MLA violations;
- Restoration of any leave that would not have been charged but for the Agency's unlawful implementation, 5 U.S.C. § 7116(a) violations, and/or MLA violations;
- Correction and/or rescission of any personnel or disciplinary action that would not have occurred but for the Agency's unlawful implementation, 5 U.S.C. § 7116(a) violations, and/or MLA violations;
- Correction and/or rescission of the placement of any bargaining unit employee in an AWOL or LWOP status that would not have occurred but for the Agency's unlawful implementation, 5 U.S.C. § 7116(a) violations, and/or MLA violations;
- That the Agency comply with MLA provisions covering Sign-in Procedures, Health and Safety, Academic Freedom, and Professional Development;
- Back pay, plus interest;
- Attorney fees and costs;
- Any additional appropriate relief.

Association Point of Contact is:

Ben Hunter  
FEA-Stateside Region General Counsel  
(202) 834-3427

Signature: 

Date: 9 April 2020

cc:

Jane Loggins  
FEA Director for DDESS

**Subject:** Re: Notice (FEA-SR) - Teacher Status - School Closures

**Date:** Wednesday, April 1, 2020 at 4:45:10 PM Eastern Daylight Time

**From:** Hunter, Benjamin [NEA]

**To:** Rogers, Dean A. Mr. CIV OSD/DoDEA, Woods, Elgin, Mr., CIV, OSD/DoDEA-Americas

**CC:** Loggins, Jane, Ms., CIV, OSD/DoDEA-Americas, James, Ronald Mr. CIV OSD/DoDEA, Graham, Lenoir Ms. CIV OSD/DoDEA, Martin, Patrick E. Mr. CIV OSD/DoDEA, feaddress, Stubbs, Angelia [FEA], Minor, Judith A. Dr. SES OSD/DoDEA

Dear Dean and Elgin:

To date, the only notice the Union has received regarding potential changes to conditions of employment related to the COVID-19 pandemic is the March 11, 2020 message below attaching a memorandum from the Director invoking Management Rights under 5 U.S.C. 7106(a)(2)(D) to direct or authorize bargaining unit employees to work at an alternative worksite, to include his/her home. As you are aware, Article 7 covers the specific bargaining requirements "[i]n the event that the Agency exercises its rights under 5 U.S.C. 7106(a)." The Agency has since implemented a myriad of changes to policies and procedures, not referenced in Mr. Brady's March 11, 2020 memorandum, impacting conditions of employment.

In the context of the COVID-19 crisis, OPM has issued guidance reminding agencies invoking 5 U.S.C. 7106(a)(2)(D) that "[i]f the agency needs to act quickly due to the circumstances of the emergency, the agency is strongly encouraged to begin communicating with the appropriate union representatives as soon as possible and otherwise satisfy any applicable collective bargaining obligations under the law at the earliest opportunity, including on a post-implementation basis." [OPM Fact Sheet: Additional Guidance in Connection with the COVID-19 Emergency (3/20/2020)]. FEA-SR requests the Agency immediately provide Article 7 notice of all changes to conditions of employment relating to Dr. Minor's decision to close DDESS schools to students and educators and to implement a digital learning platform. If such notice is not provided by Wednesday, April 8, 2020, FEA-SR will pursue the available statutory and or contractual remedies.

FEA-SR has provided management a number of unsolicited proposals to address changes to conditions of employment that have been reported by bargaining unit employees and local union leadership to include a measurably increased workload and the extension of educators' workday. However, without the benefit of understanding whether there is any Agency-wide expectation and/or policy for delivering digital learning to DDESS students, it seems as if the Union is trying to hit a moving target. Below is an updated list of FEA-SR's current proposals. FEA-SR reserves the right to change or add to its proposals once the Agency provides specific notice per Article 7 of the MLA. FEA-SR also requests to meet and bargain at the earliest opportunity.

- The Agency will not require sign-in/sign out procedures.

- Any digital observation (or pop-in) will be announced to a bargaining unit employee one (1) day before accessing a live feed. The Agency will not observe a bargaining unit employee's live feed without her/his permission. The bargaining unit employee's supervisor will follow up any digital observation or pop-in with a one-on-one conversation to provide guidance and/or support.

- The Agency will commit to providing one (1) full day of administrative time for teachers during the first two (2) full weeks of April. If management is unable to provide a full day dedicated to administrative duties, the Agency will compensate employees for one (1) day at their Earned Hourly Rate to complete administrative tasks on their own time.

- It is understood that educators require at least two (2) hours/per day to complete administrative tasks such as uploading lessons, contacting parents, recording attendance, following-up on student questions, contacting specialist, etc. This time is in addition to the 225 minutes per week educators require for instructional planning. Educators will be compensated at their Earned Hourly Rate up to two (2) hours/per day if the Agency is unable to schedule a full

two (2) hours of administrative time into a bargaining unit employee's daily schedule.

[Alternative proposal: Educators will report to their supervisors the time spent outside the duty day to complete assigned tasks on a weekly basis. The Agency will compensate employees at their Earned Hourly Rate for time spent completing assigned activities.]

-The Agency will not restrict bargaining unit employees from selecting an alternative work site that is safe and where they have access to the necessary technology to deliver digital learning.

-In the event a school reopens, bargaining unit employees will be provided at least 3 days' notice to prepare for a return to the classroom.

-If directed, Focus Collaboration and/or PLC meetings will be scheduled at the teacher's discretion. No meeting minutes or Agenda will be recorded.

-The Agency will issue guidance that faculty meetings need only be held if absolutely necessary. Further, faculty meetings should not be held for training purposes.

-Any formal observations be held in abeyance.

-The use of live feed video will be optional.

-Educators will be provided flexibility working in this new learning environment. The performance expectations for bargaining unit employees using the digital learning platform will be adapted to reflect teaching in a virtual environment.

-The safety of the digital learning platform for educators and students be reviewed and secured. Procedures will be established in case the digital learning platform is breached. It is understood that the Agency will immediately contact the appropriate law enforcement agency if a breach occurs. The Agency will notify FEA-SR and impacted bargaining unit employees immediately after a breach occurs.

-The Agency will immediately notify FEA-SR when it learns that an employee has tested positive for COVID-19. The Agency will provide FEA-SR the name of the employee's duty location and indicate whether the employee has been in contact with other employees in the last 14 days.

-The Agency will provide paid "excused leave" for same reasons outlined under the Families First Coronavirus Response Act.

Please let me know when the Agency is available to discuss.

Sincerely,

Ben Hunter  
FEA-Sideside Region General Counsel  
Phone: (202) 834-3427  
Email: [bhunter@nea.org](mailto:bhunter@nea.org)

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On 3/11/20, 4:57 PM, "Rogers, Dean A. Mr. CIV OSD/DoDEA" <[Dean.Rogers@dodea.edu](mailto:Dean.Rogers@dodea.edu)> wrote:

Jane,

Please see the attached memorandum dated March 11, 2020, from Mr. Tom Brady, DoDEA Director.

One (1) Adobe PDF Attachment:

Teacher Status - School Closures Memo (1 page)

If you decide to bargain appropriate arrangements related to this decision, please submit a request to bargain and any negotiable proposals to me in accordance with the negotiated agreement.

Please contact me if you have any questions.

Thanks,

Dean Rogers  
Labor and Employee Relations Specialist  
Human Resources Division  
DoDEA-Headquarters  
Phone: (571) 372-5904  
eMail: [dean.rogers@dodea.edu](mailto:dean.rogers@dodea.edu)

**Subject:** Fwd: Americas Alternate Work Location Request SOP : EFFECTIVE WED 8 April 2020  
**Date:** Wednesday, April 8, 2020 at 12:09:03 PM Eastern Daylight Time  
**From:** Jane Loggins  
**To:** Minor, Judith A. Dr. SES OSD/DoDEA  
**CC:** Hunter, Benjamin [NEA], Stubbs, Angelia [FEA], Brady, Thomas M. Mr. SES OSD/DoDEA, Hovanic, Stephen, Mr., CIV, OSD/DoDEA-Americas  
**Attachments:** Application for Alternate Work Location--Americas Employees.pdf

Judy:

I hope this is not what you meant by "stay tuned." The requirements for alternative work locations are subject to bargaining. You did not provide me a copy of this form before it was sent to bargaining unit employees in the field. We have submitted specific proposals regarding educators' eligibility to work at a location outside the commuting area as well as proposals regarding compensation for the requirement that bargaining unit employees work outside the duty day. The agency is attempting to enter into agreements with individual bargaining unit employees regarding mandatory subjects of bargaining. This is a blatant bypass. Please hold this form in abeyance until we come to an agreement.

Jane

Jane Loggins  
FEA Director for DDESS

*You reign but for a season*

-----Original Message-----

From: Council, Charlie, Mr., CIV, OSD/DoDEA-Americas  
Sent: Wednesday, April 8, 2020 9:34 AM  
To: Mid-Atlantic ALL <[MidAtlanticALL@dodea.edu](mailto:MidAtlanticALL@dodea.edu)>  
Cc: Hovanic, Stephen, Mr., CIV, OSD/DoDEA-Americas <[Stephen.Hovanic@DODEA.EDU](mailto:Stephen.Hovanic@DODEA.EDU)>; Minor, Judith A. Dr. SES OSD/DoDEA <[Judith.Minor@DODEA.EDU](mailto:Judith.Minor@DODEA.EDU)>; Cuadrado, Donato, Dr., CIV, OSD/DoDEA-Americas <[Donato.Cuadrado@DODEA.EDU](mailto:Donato.Cuadrado@DODEA.EDU)>  
Subject: FW: Americas Alternate Work Location Request SOP : EFFECTIVE WED 8 April 2020  
Importance: High  
Sensitivity: Private

Good morning friends,

Please review carefully the message below from Mr. Hovanic related to Alternate Work Location, as well as the attached document. Have a great Wednesday.  
CC2

-----Original Message-----

From: Hovanic, Stephen, Mr., CIV, OSD/DoDEA-Americas

Sent: Wednesday, April 8, 2020 8:51 AM

To: Council, Charlie, Mr., CIV, OSD/DoDEA-Americas <[Charlie.Council@DODEA.EDU](mailto:Charlie.Council@DODEA.EDU)>; Bull, Gregory, Mr., CIV, OSD/DoDEA-Americas <[Gregory.Bull@DODEA.EDU](mailto:Gregory.Bull@DODEA.EDU)>

Cc: DoDEA Americas Comm. Supts <[DDESS.Asst.Supts@dodea.edu](mailto:DDESS.Asst.Supts@dodea.edu)>; DoDEA Americas Principals <[DoDEAAmericasPrincipals@dodea.edu](mailto:DoDEAAmericasPrincipals@dodea.edu)>; Huddleston, Christy, Dr., CIV, OSD/DoDEA-Americas <[Christy.Huddleston@DODEA.EDU](mailto:Christy.Huddleston@DODEA.EDU)>; Cuadrado, Donato, Dr., CIV, OSD/DoDEA-Americas <[Donato.Cuadrado@DODEA.EDU](mailto:Donato.Cuadrado@DODEA.EDU)>; Minor, Judith A. Dr. SES OSD/DoDEA <[Judith.Minor@DODEA.EDU](mailto:Judith.Minor@DODEA.EDU)>; Woods, Elgin, Mr., CIV, OSD/DoDEA-Americas <[Elgin.Woods@DODEA.EDU](mailto:Elgin.Woods@DODEA.EDU)>; Hovanic, Stephen, Mr., CIV, OSD/DoDEA-Americas <[Stephen.Hovanic@DODEA.EDU](mailto:Stephen.Hovanic@DODEA.EDU)>

Subject: Americas Alternate Work Location Request SOP : EFFECTIVE WED 8 April 2020

Importance: High

Sensitivity: Private

Good morning Americas Team:

Please distribute as appropriate.

Effective Wednesday 8 April 2020:

The following procedure will be used by any DoDEA Americas employee seeking Alternate Work Location approval outside their normal commuting area due to impacts of COVID 19.

All employees must be able to perform their normal duties at an approved alternate work location. Employees will be expected to return to their assigned permanent duty station when schools reopen and/or otherwise directed to do so. Failure to report to the worksite as directed may result in AWOL and/or other disciplinary action

Any costs associated with traveling to, staying at and traveling back from an approved alternate work location are not reimbursable by the Agency.

Night differential pay is not available.

Alternate Work Site (AWS) Request SOP

1. Employees that are requesting to work from an alternate work location outside their normal commuting area, will submit an Alternate Work Location Request (attached) to their immediate supervisor and copy their Community Superintendent when they send the request.

The Community Superintendent will then forward the request to the District Superintendent.

District Superintendent will then forward the employee request to Dr. Minor and copy Mr. Scott Simoni.

Approval authority rests with the DSE.

Turnaround time goal for each request will be one (1) business day after Dr. Minor receives the request from the District Superintendent.

Employees should not depart for their requested alternate work location until they have an approved request in hand.

2. A teacher planning to travel for spring break and who does NOT intend to return to their residence (current alternate work location) after Spring Break, must submit the request for a new alternate work location prior to departure and take their GOV laptop and necessary materials with them so they are able to perform their normal duties. (CAC, property pass etc.)

3. Employees who are approved for alternate work location need to review and ensure their FEPAAS information is up to date and current!

4. Prior to traveling, employees are encouraged to review : <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html> and are reminded to comply with applicable state/local restrictions pertaining to travel during the pandemic.

Thank you and stay safe and stay vigilant!

Steve Hovanic  
CoS  
DoDEA Americas