

PREAMBLE

This agreement between the State of Maine (hereinafter referred to as the State) and KidsFirst, Maine State Employees Association, Service Employees International Union, Local 1989 (hereinafter referred to as KidsFirst) is entered into pursuant to Title 22 Section 8308 which authorizes KidsFirst as the sole and exclusive bargaining agent for all family child care providers in the State of Maine. It is the mutual goal of both the State and KidsFirst to improve the quality of child care throughout the State of Maine as well as to improve access of parents to quality child care, offer flexible choices of care settings and to help support a workforce of quality family child care providers throughout the State. The State recognizes the importance of both licensed and legal, unregulated providers in providing flexibility and choice to parents.

Therefore, this Agreement by and between the parties is entered into as of _____.

ARTICLE 1. CHILD CARE ADVISORY COUNCIL AND OTHER STANDING COMMITTEES

In the interest of open and regular communication between the parties:

1. Upon request of KidsFirst, a representative of DHHS will meet with a representative of KidsFirst prior to each monthly Child Care Advisory Council meeting to discuss upcoming agenda items or other issues relevant to the work of the Child Care Advisory Council.
2. DHHS and KidsFirst will work together to ensure that KidsFirst is part of other DHHS standing committees on child care.

ARTICLE 2. CONCLUSION OF NEGOTIATIONS

A. The State and MSEA-SEIU agree that this Agreement concludes all collective negotiations during its term. Neither party will during the term of this Agreement seek to unilaterally modify its terms through legislation or other means which may be available to them.

B. Each party agrees that it shall not attempt to compel negotiations during the term of this Agreement on matters that could have been raised during the negotiations that preceded this Agreement, matters that were raised during the negotiations that preceded this Agreement or matters that are specifically addressed in this Agreement.

ARTICLE 3. DUES AND FEES

1. All family child care providers may choose to either become a full member of KidsFirst or to pay a service fee as understood under applicable state statute and as provided for in Title 22 Section 8308 (1)(C)(5) and (6).

2. KidsFirst shall determine the amount of the service fee to be charged to non-members, consistent with both law applicable in the employment setting and this Article.

3. The parties agree to work in good faith to design an automated process for deduction of dues and service fees from reimbursements provided to family child care providers by DHHS. It is understood by both parties that all costs associated with the development, implementation and maintenance of this design shall be borne by MSEA-SEIU.

4. KidsFirst shall make membership and or service fee arrangements available to all family child care providers for the purposes of membership within the union, representation and member services and benefits.

5. Indemnification

MSEA-SEIU agrees that it shall indemnify, defend, reimburse, and hold the State harmless (collectively, "Indemnification") against any claim, demand, suit, cost expense, damages, or any other form of liability, including attorneys' fees, costs, or other liability arising from or incurred as a result of any act taken or not taken by the State, its members, officers, agents, or representatives in complying with or carrying out the provisions of this Article in reliance on any notice, letter, or authorization forwarded to the State by MSEA-SEIU pursuant to this Article; and including but not limited to any charge that the State failed to discharge any duty owed to child care providers arising out of the dues or service fee deduction; *provided that*, nothing herein shall require Indemnification for any intentional deprivation of an individual's constitutional rights by the State. MSEA-SEIU will intervene in and defend any administrative or court litigation concerning the propriety of any act taken or not taken by the State under this Article. In such litigation the State shall have no obligation to defend its act taken or not taken.

6. Severability

Should the United States Supreme Court, the First Circuit Court of Appeals or any Court in Maine hold indemnity clauses relating to service fees void or unenforceable on Constitutional or public policy reasons, this Article shall be stricken as it relates to service fees upon written notification to MSEA-SEIU by the State. Should any Court find the indemnity clause in this Article to be void or unenforceable for any reason, or should any Court find the automatic deduction provision of Title 22, Section 8308 (3)(E) to be void or unenforceable for any reason, this Article shall be stricken in its entirety upon written notification to MSEA-SEIU by the State. Should the State provide such written notification, the parties shall enter into negotiations regarding a replacement dues and fees Article.

ARTICLE 4. GRIEVANCE PROCEDURE

1. Definitions and Scope

1.1 The MSEA-SEIU shall have the right to present grievances to the Department of Health and Human Services in accordance with the procedures prescribed in this Article.

1.2 For purposes of this Agreement, a grievance is a dispute concerning the interpretation or application of the terms or provisions of this Agreement.

1.3 All of the time limits contained in this Article may be extended by mutual agreement of the parties and such extensions shall, in order to be effective, be confirmed in writing. The parties may mutually agree to bypass steps of the grievance procedure.

1.4 Grievances resolved at Steps 1, 2 or 3 shall not constitute a precedent unless specific agreement to that effect is made by the Director of the Office of Child and Family Services or his/her designee and KidsFirst.

1.5 Any grievance involving two (2) or more child care providers within the bargaining unit may be processed jointly.

1.6 Before a grievance moves to arbitration, the parties may, by mutual agreement, hire and evenly share the costs of an impartial mediator who will attempt to resolve the grievance.

2. Procedure

2.1 Step 1: Within fifteen (15) workdays after the act or omission which gives rise to the grievance or the date when a child care provider becomes or should have reasonably become aware that he or she has a grievance, a union representative shall present the grievance in writing, stating the nature of the grievance and the remedial action requested to the Director of the Early Childhood Program in the Office of Child and Family Services within the Department of Health and Human Services or that person's designee.

2.2 Step 2: If the grievance is not resolved within thirty (30) workdays of submission at Step 1, the Union may request in writing that the grievance be moved to Step 2, to be heard by the Director of the Office of Child and Family Services or that person's designee.

2.3 Step 3: If the grievance is not resolved within thirty (30) days at Step 2, the Union may request in writing to move the grievance to Step 3, to be heard by the Commissioner of the Department of Health and Human Services or that person's designee.

2.4 Step 4:

(a) If the grievance has not been satisfactorily resolved at Step 3, then the Union may submit the grievance to arbitration by submitting a request for arbitration to the Director of the Office of Child and Family Services as well as a statement of the grievance specifying the Article, section or clause of the contract

alleged to have been violated, along with the concise statement of facts surrounding the issue and the remedial action requested. The request for arbitration shall be received by the Director of the Office of Child and Family Services through personal service or by mailing by registered or certified mail within fifteen (15) workdays of the receipt of the Step 3 decision.

(b) Upon receipt by the Director of the Office of Child and Family Services of a request for arbitration, the parties shall attempt to mutually agree upon an arbitrator. If unable to agree upon an arbitrator within fifteen (15) days of receipt of the request for arbitration, the arbitrator shall be selected through the American Arbitration Association ("AAA") in accordance with the AAA rules then in effect.

The request for arbitration along with a request for a list of arbitrators must be received by AAA within six (6) weeks of the Director of the Office of Child and Family Services' receipt of the request for arbitration, in order for the AAA administration fees to be shared equally by the parties. If such request is not received by AAA by the expiration of the six (6) weeks but is filed within twelve (12) weeks, KidsFirst shall pay the entire AAA administration fee. If a request has not been received by AAA within twelve (12) weeks of the Director of the Office of Child and Family Services' receipt of the request for arbitration, KidsFirst will be deemed to have waived its right to appeal the Step 3 decision to arbitration.

(c) The decision of the arbitrator shall be final and binding consistent with applicable law and this Agreement. The arbitrator shall have no authority to add to, subtract from or modify any provisions of this Agreement. The arbitrator shall have no authority to award interest on any award. All costs of arbitration, including fees and expenses of the arbitrator, shall be divided equally between the parties, except as provided in section 2.4(b) of this Article, and except that each party shall bear the costs of preparing and presenting its own case.

(d) The arbitrator shall fix the time and place of the hearing, taking into consideration the convenience of the parties. The arbitrator shall be requested to issue a written decision within thirty (30) days after completion of the proceedings. The arbitrator shall be bound by the rules of the AAA which are applicable to labor relations arbitrations and which are in effect at the time of the arbitration. In the event of a disagreement regarding the arbitrability of an issue, the arbitrator shall make a preliminary determination as to whether the issue is arbitrable. Once a determination is made that such a dispute is arbitrable, the arbitrator shall then proceed to determine the merits of the dispute.

ARTICLE 5. ISSUE RESOLUTION

Systematic Issues of Mutual Interest

The State and KidsFirst agree that they will meet as needed to discuss and attempt to resolve **systemic** issues of administration and policy that impact their joint interests in enhancing the quality of child care in the family child care

system, to discuss the impact of the system upon providers and/or explore joint initiatives which might increase the effective quality or choice to parents of the family child care system. Either party may call for a meeting which both sides will make an effort to hold within ten (10) days but should be held within thirty (30) days of the notification of the request to meet.

ARTICLE 6. RATE STRUCTURE COMMITTEE

During the term of this agreement a maximum of three (3) people representing KidsFirst and a maximum of three (3) people representing the State will form a Rate Structure Committee for the purpose of examining the current rate structure and exploring the alternatives to the current rate structure.

Each side shall appoint its three (3) representatives although both sides reserve the right to replace and substitute its members.

The Committee shall meet within sixty (60) days of the ratification of this Agreement and shall set the schedule of meetings and other logistical internal rules by mutual agreement.

ARTICLE 7. STATE'S RIGHTS

The State of Maine ("the State") reserves exclusively all the inherent rights and authority to manage and operate its programs. The parties agree that all rights not specifically granted in this Agreement are reserved solely to the State and the State has the right to decide and implement its decisions regarding such rights without negotiating about the decision and/or the effects of those decisions. Examples of the rights reserved solely to the State, its agents and officials include but are not limited to: to operate so as to carry out the statutory mandate of the State; to establish the State's missions, programs, objectives, activities and priorities; to plan, direct and control, the use of resources, including all aspects of the budget in order to achieve the State's missions, programs, objectives, activities and priorities; to manage, direct and control all of the State's activities in delivering programs and services; to develop, modify and administer all policies, procedures, rules and regulations and to determine the methods and means by which operations are carried out; to determine eligibility and requirements of providers; to make, extend, modify, limit, execute and terminate contracts and all other instruments necessary or convenient for the performance of the State's duties or exercise of the State's powers, including contracts with public and private agencies, organizations, corporations or individuals; to determine the State's organizational structure and to take whatever action the State deems necessary to carry out services when the State determines an emergency; to maintain or modify any and all operations and requirements entrusted to the State to provide services.

The above enumerations of the State's rights are not inclusive and do not exclude other rights not specified, including those duties, obligations, and/or

authority provided under law. The State retains these rights whether exercised or not.

ARTICLE 8. SUBSIDY RATE

Subsidy rates in effect as of October 1, 2009 will remain in effect through September 30, 2011.

ARTICLE 9. UNION RIGHTS

A. Union Recognition and Maintenance

KidsFirst is recognized as the sole and exclusive bargaining agent for all family child care providers as defined in Title 22, section 8308(B) for the purpose of conferring and negotiating regarding issues of mutual concern to the extent not prescribed or controlled by law or otherwise outside of the State's control. "Issues of mutual concern" means and is limited to:

- (1) Training and other requirements and opportunities that are appropriate for providers;
- (2) Reimbursement rates;
- (3) Payment procedures;
- (4) Contract grievance arbitration;
- (5) Member dues deduction;
- (6) Representation or service fees for nonmembers; and
- (7) Any changes to current practice other than those listed in subparagraphs (1) to (6) that would improve recruitment and retention of qualified providers, would improve the quality of the programs they provide, would encourage qualified providers to seek additional education and training and would promote the safety of providers and the children in their trust.

B. Union Information

1. DHHS will provide KidsFirst with a list of licensed child care providers and of CCDF-reimbursed legal, unregulated family child care providers on a monthly basis. The list of providers shall include, as information is available, Provider Name, Business Name, Address, Zip Code and all available Telephone Numbers. KidsFirst agrees to contact DHHS within five (5) working days of the end of the month if the list has not been received and DHHS will provide it as soon as possible
2. DHHS will notify KidsFirst of all scheduled DHHS child care provider forums and will provide KidsFirst an opportunity at each forum to distribute information about KidsFirst.

3. KidsFirst will provide printed information about the Union to DHHS which DHHS will include in the "Getting Started" packet given to new child care providers.
4. DHHS will include a clause in its contracts with RDCs directing RDCs to provide space in each RDC facility for KidsFirst to display informational pamphlets.
5. The State shall list contact information for and a brief synopsis of KidsFirst on its web site. The content of this listing shall be mutually approved.

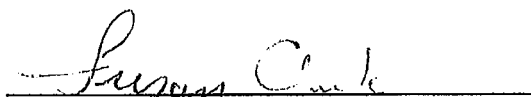
ARTICLE 10. TERM OF AGREEMENT

This Agreement shall be effective from _____ through June 30, 2011. Either party shall give sixty (60) days' written notice of a desire to negotiate a new collective bargaining agreement or to modify this Agreement.

Memorandum of Agreement

The parties agree that DHHS will seek approval to submit emergency legislation to give Kids First a seat on the Child Care Advisory Council and will apprise Kids First of the status of that request, as information becomes available.

Tentatively agreed to: Aug. 25, 2009



For the State
Susan Clark, Labor Relations Spec.
Office of Employee Relations
Chief Negotiator
Chief Negotiator



For KIDSFIRST MSEA-SEIU,
Local 1989
Mike Sylvester, Director of
Organizing

**MEMORANDUM OF AGREEMENT
BETWEEN THE STATE OF MAINE
AND
MSEA-SEIU, LOCAL 1989, KIDSFIRST**


Limited Reopener for Economic Matters

A. The parties recognize the unprecedented fiscal crisis faced by the State of Maine and its impact on all State services, including the State's child care subsidy system. The parties remain committed to ensuring that providers receive fair compensation for the services they provide and that the State's child care subsidy system remain accessible to all Mainers who are qualified and in need of such services.

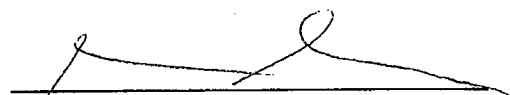
B. The parties agree to reopen on economic matters at the request of either party, should the State receive increased, new and/or significant funding for the State's child care subsidy system. The State shall notify KIDSFIRST of the receipt or anticipated receipt of such funding as it becomes aware.

C. Except as specified above all provisions of the ____-2011 collective bargaining agreement will remain in full force and effect and are not affected by or subject to re-opener negotiations. Specifically, this Memorandum of Agreement does not amend, conflict with, or affect in any way the operation of Article __ Conclusion of Negotiations, as it appears in the parties' collective bargaining agreement.

Tentatively agreed to: 11.04.09



For the State
Susan Clark, Labor Relations Spec.
Office of Employee Relations
Chief Negotiator



For KIDSFIRST MSEA-SEIU,
Local 1989
Mike Sylvester, Director of
Organizing
Chief Negotiator