

**Third Amendment**  
to the  
**Fairfax County Public Schools 403(b) Plan**

**WHEREAS**, Fairfax County Public Schools (the “Employer”) currently sponsors the Fairfax County Public Schools 403(b) Plan (the “Plan”); and

**WHEREAS**, the Plan was most recently restated effective January 1, 2016; and

**WHEREAS**, pursuant to Plan Section 8.2, the Employer may amend the Plan at any time; and

**WHEREAS**, the Employer, pursuant to the authority granted to it under Plan section 8.2, deems it desirable to amend the Plan to reflect the 2019 hardship withdrawal regulations issued by the Treasury Department and the Internal Revenue Service published September 23, 2019; and

**NOW, THEREFORE**, the Plan is hereby amended effective as of January 1, 2019 to replace Plan Section 5.4 in its entirety with the following:

**5.4 Hardship Withdrawals.** Distribution of Elective Deferrals may be made to a Participant in the event of hardship, except to the extent limited by the terms governing an applicable Individual Agreement. A hardship distribution may only be made on account of an immediate and heavy financial need of the Participant and where the distribution is necessary to satisfy the immediate and heavy financial need.

(a) The following are the only financial needs considered immediate and heavy:

- (i) Expenses for (or necessary to obtain) medical care that would be deductible under Code section 213(d), determined without regard to the limitations in Code section 213(a) (relating to the applicable percentage of adjusted gross income and the recipients of the medical care) provided that, if the recipient of the medical care is not listed in Code section 213(a), the recipient is a primary Beneficiary under the Plan;
- (ii) Costs directly related to the purchase of a principal residence for the Participant (excluding mortgage payments);
- (iii) Payment of tuition, related educational fees, and room and board expenses, for up to the next 12 months of post-secondary education for the Participant, for the Participant’s spouse, child or dependent (as defined in Code section 152 without regard to Code sections 152(b)(1), (b)(2) and (d)(1)(B)), or for a primary Beneficiary under the Plan;
- (iv) Payments necessary to prevent the eviction of the Participant from the Participant’s principal residence or foreclosure on the mortgage on that residence;

- (v) Payments for burial or funeral expenses for the Participant's deceased parent, spouse, child or dependent (as defined in Code section 152 without regard to Code section 152(d)(1)(B)), or for a deceased primary Beneficiary under the Plan;
- (vi) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code section 165 (determined without regard to Code section 165(h)(5) and whether the loss exceeds 10% of adjusted gross income); and
- (vii) Expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100-707, provided that the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster.

A "primary Beneficiary under the Plan" is an individual who is named as a Beneficiary under the Plan and has an unconditional right, upon the death of the Participant, to all or a portion of the Participant's account balance under the Plan.

- (b) A distribution will be considered necessary to satisfy an immediate and heavy financial need of the Participant only to the extent the amount of the distribution is not in excess of the amount required to satisfy the financial need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution). However, a distribution is not treated as necessary to satisfy an immediate and heavy financial need of a Participant unless each of the following requirements is satisfied:
  - (i) The Participant has obtained all other currently available distributions (but not hardship distributions) under the Plan and all other plans of deferred compensation, whether qualified or nonqualified, maintained by the Employer;
  - (ii) The Participant has provided to the Plan Administrator a representation in writing (including by using an electronic medium as defined in Treasury Regulation section 1.401(a)-21(e)(3)), or in such other form as may be prescribed by the Commissioner of the Internal Revenue Service, that he or she has insufficient cash or other liquid assets reasonably available to satisfy the need; and
  - (iii) The Plan Administrator does not have actual knowledge that is contrary to the representation.

The Plan will not suspend a Participant's Elective Deferrals under the Plan or the Participant's elective deferrals or employee contributions under any plan described in Code section 401(a) or 403(a), any section 403(b) plan, or any eligible governmental plan described in Treasury Regulation section 1.457-2(f) as a condition of obtaining a hardship distribution on or after January 1, 2019. Notwithstanding the prior sentence, Elective Deferrals will be suspended for six months after the receipt of a hardship distribution during the second half of 2018, even if such suspension continues into the first half of 2019.

The Individual Agreements shall provide for the exchange of information among the Administrator and its designee and the Vendors to the extent necessary to implement the Individual Agreements, as described in Plan section 7.5, including, in the case of a hardship withdrawal that is treated as necessary to satisfy the Participant's financial need (pursuant to Treasury Regulations section 1.401(k)-1(d)(3)(iii)), that the Vendor shall obtain information from the Administrator or its designee or other Vendors to determine the amount of any rollover accounts or employee contribution accounts that are available to the Participant under the Plan to satisfy the financial need. Alternatively, at the direction of the Administrator, the Vendor shall provide information to the Administrator or its designee who shall make such determination of the availability of a hardship withdrawal and so advise the Vendor and the Employer.

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**IN WITNESS WHEREOF**, the undersigned, authorized to act on behalf of the Employer, adopts and thereby makes effective the foregoing amendment, on this 21st day of November, 2019.

Fairfax County Public Schools

Helen Nixon  
By [Signature]

Helen Nixon  
[Printed Name]