

Certificated

Kindergarten through Twelfth Grade Districts and County Offices of Education

CONTRACT REFERENCE MANUAL

**NEGOTIATIONS & ORGANIZATIONAL
DEVELOPMENT DEPARTMENT**

California Teachers Association

National Education Association

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F O R W A R D

In the twenty-four years since the enactment of California's collective bargaining law for education employees, CTA has published several versions of its contract reference manual. This manual is the latest revision, the first since 1997. The present manual, like the earlier versions on which it builds, charts the growing sophistication of association leaders both in bargaining and other organizational activities; it also reflects the ever-changing conditions in public education.

This manual is to serve as a resource, reference guide and training aid.

General credit for this manual's contents goes to the many local bargaining team members and statewide CTA leaders and staff who have contributed to the yearly and on-going evolution of collective bargaining for education employees. Continuing credit goes to CTA staff, active and retired, who contributed to the earlier versions of the manual. Special credit belongs to the contract reference manual re-write work team who wrote and compiled this latest revision: Marty Kahn, and Felice Strauss, Negotiations and Organizational Development Department; Bob Lindquist, Department of Legal Services; Craig Nelson, Instruction and Professional Development Department. Credit also goes to members of the Negotiations and Organizational Development Department, Instruction and Professional Development Department, Department of Legal Services, Governmental Relations, Institute for Teaching, and Human Rights Department for their contributions. Finally, a special thanks goes to Polly Rink, Associate Staff in CTA's Concord office; Linda Hale in the Negotiations and Organizational Development Department; the CTA Integrated Systems & Strategies Department for all of the word processing and other help in compiling this revision; and to Liz Tokar in the Instruction and Professional Development Department for her help in setting-up this manual on CD-ROM.

We hope this manual serves each of CTA's more than 1,000 local associations well, and that it contributes its share to our collective effort to ensure a better future for our members through collective bargaining.

INTRODUCTION

USING THIS MANUAL

This *Contract Reference Manual* is designed to be used by certificated bargaining teams in a kindergarten through twelfth grade setting, including county offices of education, child development centers, adult education, regional occupation and similar programs found in California's public school system. It contains thousands of ideas for contract improvement.

Prior to the development of initial contract proposals, bargaining teams should review past grievances, member surveys and Association goals and objectives. Proposals should be fashioned so as to provide maximum satisfaction of member and Association interests.

This manual is a source of information, ideas and sample contract language that should be used to develop contract proposals unique to the interests and goals of the local Associations and its members. Bargaining teams should not just lay the manual's sample language on the table "as is." In the twenty-four years since the enactment of California's education employment collective bargaining law, most local Associations have created mature contract language, and a bargaining history that needs to be considered before changes are sought. The Association should address only those areas that need improvement, while leaving alone the provisions that are working.

Each of the articles in the manual contains a general narrative of the basic issues concerning topics covered in the article. In addition, sample contract language is provided for each topic, along with notes that provide additional guidance in developing language unique to each Association. At the end of each article is a reference list of *California Education Code* sections related to the topics in the article. Many of the issues covered in the manual are complex, and local Associations should contact CTA staff for further assistance.

The best approach to contract proposal writing is common sense. Each idea presented in this manual should be weighed in light of the interests and needs of local Association members.

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ARTICLE 1

AGREEMENT

AGREEMENT is a technical Article establishing the basis and duration of the Agreement and recognition of the exclusive representative. In some contracts, duration is treated as a separate Article.

SAMPLE LANGUAGE

- 1.1 This Agreement is made and entered into by and between the Board of Education of the _____ School District, which together with its administrative staff and representatives shall be referred to in this Agreement as the "District" and the _____ Association, CTA/NEA, the certificated employees' exclusive representative, which together with its officers and representatives shall be referred to in this Agreement as the "Association."
- 1.2 This Agreement is entered into pursuant to Chapter 10.7, Sections 3540-3549 of the Government Code which shall be referred to as the "EERA."
- 1.3 This Agreement shall remain in full force and effect from _____ until _____.

TOPIC: NO REPRISALS

Although "no reprisals" clauses occasionally appear in collective bargaining Agreements, they are usually the result of a strike or other severe confrontations between management and labor. A no reprisals clause should not be part of an initial proposal.

Since the bargaining of a no reprisals clause takes place at a very sensitive time, significant care must be taken to make the concept palatable to the other side. Titles such as "Return to Normalcy" or "Reciprocal Non-Recrimination" tend to represent more acceptable models and can be used to help get buy-in from the other side. A no reprisals clause that represents an exchange of value and/or responsibility is easier to enforce than a promise from the District which can later be repudiated on the basis of "That is not what we really meant."

WARNING!!! A no reprisals clause should be used as a peace treaty following a serious conflict, not as a premature promise of amnesty. If the desire for a no reprisals clause is touted during the crisis, the cost of securing such a clause may rise and the price may eventually be more than the members or the Association are willing or able to pay. Consult CTA staff regarding the use of a no reprisals clause.

SAMPLE LANGUAGE

- 1.4 The Association and the District, having resolved the current dispute, agree to return the District to normalcy. To promote this end, neither party, nor its agents, shall take any punitive action or reprisal against each other, any individual, including pupils, parents, or organizations on account of participation, involvement, support, sympathy, or lack thereof as related to any activities involved in the current dispute.

TOPIC: INDIVIDUAL CONTRACTS

An individual contracts clause is a provision which assures that the Agreement controls all terms and conditions of employment. The integrity and consistency of terms within the Agreement must control if collective bargaining is to remain meaningful; an Agreement that can be undercut is useless.

SAMPLE LANGUAGE

Any individual contract between the District and a unit member shall be subject to and consistent with the terms and conditions of this Agreement.

LEGAL REFERENCES

A. Education Code Sections Cited

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Act

3540.1(b) - Certified organization

3540.1(d) - Employee organization

3540.1(e) - Exclusive representative

3540.1(h) - Meeting and negotiating

3540.1(k) - Public school district

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ARTICLE 2

RECOGNITION

RECOGNITION is an important technical provision identifying bargaining unit members and reserving bargaining unit work to unit members.

SAMPLE LANGUAGE

2.1 The District recognizes the Association as the exclusive representative of all certificated employees excluding the following:

(Insert a description of the management, confidential, and supervisory employees who are excluded from the bargaining unit as found in PERB documents.)

2.2 The parties to this Agreement recognize that the duties and work performed by the certificated employees in the bargaining unit described above shall be performed only by unit members and shall not be subcontracted or otherwise transferred out of the bargaining unit.

2.2.1 The District shall approve only those charter school applications which do not result in bargaining unit work being transferred or subcontracted to a different district or bargaining unit.

(NOTE: Check to see that management rights are consistent with Section 2.2.1.)

LEGAL REFERENCES

A. Education Code Sections Cited

47600-47616 - Charter schools

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Act

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ARTICLE 3

DEFINITIONS

DEFINITIONS included in this Article are designed to set a standard of consistency of terms used in various Articles throughout the Agreement, particularly when they may have multiple meanings such as the term "day," as in school-year day, calendar day, week day, or other. Many Agreements do not have a separate Article entitled "Definitions." They incorporate each definition into the specific Article to which it pertains. Either method is acceptable as long as terms are consistent throughout the Agreement.

SAMPLE LANGUAGE

- 3.1 "District" is the _____ School District, its Board of Education, Administration, and other designated representatives.
- 3.2 "Association" means the _____ Association, CTA/NEA, its officers, and representatives. The Association is the exclusive representative of the certificated bargaining unit in the District.
- 3.3 "Immediate Supervisor" means the unit member's administrator, supervisor, or line manager employed by the District who has direct responsibility for supervising the Unit Member. Usually this person is the building principal.

3.4 "Unit Member" means any certificated employee of the district who is included in the appropriate unit as defined in Article 2 and therefore covered by the terms and provisions of this Agreement.

(NOTE: Coordinate the definitions of day with the various parts of the Agreement. The grievance procedure should use Section 3.6 to define day tied to the specific days the grieving unit member serves.)

3.5 "Day" means days the main district office is open for business.

3.6 "Duty Day(s)" means day(s) during which unit members are required by contract to render service.

3.7 "Instructional Day(s)" means any day(s) pupils are present for instruction.

3.8 "Pupil-Free Day" means any day of service required of unit members for the purposes of staff development, preparation, planning, or other professional activity.

3.9 "Paid Leave of Absence" means that a unit member shall be entitled to receive wages and all fringe benefits, including, but not limited to, insurance and retirement benefits, return to the same or similar assignment which she/he enjoyed immediately preceding the commencement of the leave, and receive credit for annual salary increments provided during her/his leave.

3.10 "Unpaid Leave of Absence" means that a unit member shall be entitled to the same benefits accorded unit members who are on paid leave, excluding wages.

3.11 "Immediate Family" means any spouse, domestic partner, mother (stepmother, mother-in-law), father (stepfather, father-in-law), daughter (stepdaughter, daughter-in-law), son (stepson, son-in-law), grandmother, grandfather, granddaughter, grandson, sister (stepsister, sister-in-law), brother (stepbrother, brother-in-law), niece, nephew, aunt, uncle, and any person living in the household of the unit member.

3.12 "Dependent" means any spouse, domestic partner, or other person for which the unit member has physical or legal custody. Age limits and other requirements such as college attendance for children are defined here as _____.
(Include requirements of health insurance carriers concerning the eligibility of older children.)

3.13 "Daily Rate of Pay" means the unit member's annual scheduled salary divided by the number of duty days required by the Agreement.

3.14 "Hourly Rate of Pay" means the daily rate of pay divided by ___ daily duty hours.

3.15 "Site" means a building or location where unit members work.

- 3.16 "Year-Round Unit Member" is one employed as a unit member whose days of service as defined in this Agreement are distributed over the twelve-month, year-round school program or a twelve-month services program.
- 3.17 "Summer School Unit Member" is a unit member employed as described in this Agreement to teach summer school.
- 3.18 "Intersession Unit Member" is a unit member employed in a year round setting, as defined in this Agreement, to teach intersession in a similar capacity as a summer school teacher.

LEGAL REFERENCES

A. Education Code Sections Cited

44985, 88194 - Immediate family Re: bereavement leave
46111-46113, 46117, 46141-46142 - Minimum school day
45033, 87815-87816 - Salaries, computation for less than full year
44908, 44914, 87468-87470 - School year
84893 - Contract hours
44977 - Differential pay
37220-37232 - Holidays
44813-44814, 87710-87715 - Duty free lunch

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Act

C. Miscellaneous

Administrative Code 5, Cal. Administrative Code 5600 - Duty Free Lunch
(Retitled California Code of Regulations)

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NEGOTIATIONS PROCEDURE

NEGOTIATIONS PROCEDURE provides a basic format for the parties to begin negotiations for a successor Agreement. It also contains a procedure for amending the Agreement for a specific site. If the Agreement has reopeners, procedures and limitations on reopening the Agreement are given. It should be noted that CTA generally recommends multiple-year Agreements only in cases where the Association has binding arbitration and agency fee. An Association should consult with CTA staff if considering a multiple-year Agreement. If the multiple-year Agreement has reopeners, the no-strike clause must be suspended during impasse. The EERA sets three (3) years as the maximum duration of an Agreement. This Article also provides a structure for the parties to follow when negotiating reopeners or a successor Agreement.

The negotiations process is dynamic and ongoing. Conditions change and needs arise during the term of any contract. CTA advises Associations to avoid broad zipper or waiver of bargaining clauses during the term of the Agreement.

Site specific school improvement plans sometimes justify site specific contract amendments. The Association should develop internal procedures to deal with site specific amendment requests that include a requisite petition format and site unit member showing of support.

SAMPLE LANGUAGE

- 4.1 No later than the month of _____ of the year in which this Agreement expires, the Association and District shall submit their initial proposals to each other for a successor Agreement. The District shall give proper public notice of such proposals at the first school board meeting following the submission of the proposals.
- 4.2 No later than the month of _____ of the year of this Agreement, the parties shall submit their initial proposals to each other. The parties may open _____ Articles each year for the purposes of reopeners. The District shall give proper public notice of such proposals at the first school board meeting following the submission of the proposals.
- 4.3 The parties shall commence to meet and negotiate on reopeners or a successor Agreement beginning no later than five (5) days after the completion of the public notice requirements listed above. Any Agreement reached between the parties shall be reduced to writing and signed by them.
- 4.4 Within thirty (30) days of ratification of the Agreement by both parties herein, the District shall have _____ copies prepared and delivered to the Association for distribution to each unit member in the District plus _____ for use by the Association. The District shall give a copy of the Agreement to any new bargaining unit members it hires during the term of the Agreement.
- 4.5 This section shall provide the District's schools a mechanism for site specific contract amendments during the term of this Agreement for the purposes of school improvement.

(NOTE: Waivers of board policy and law are found in Article 12. See also Article 28, School Improvement, for suggested Association Bylaws language concerning waivers of contract provisions.)

- 4.5.1 Upon notification of the Association, the District shall consider a site specific amendment(s) to this Agreement. The notification shall contain a list of provisions of this Agreement to be amended and the amendment(s) along with the effective date and duration of the amendment(s).
- 4.5.2 If the District and Association ratify the proposed site specific contract amendment(s), the District and Association shall inform the unit members at the worksite and the District shall distribute copies of the amendment(s) to all unit members at the worksite and the Association.
- 4.5.3 All site specific contract amendments shall, upon ratification by the parties, be fully incorporated into this Agreement.

LEGAL REFERENCES

A. Education Code Sections Cited

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Act

3540.1(h) - Meeting and negotiating

3543.1(c) - Rights of employee organizations

3543.5(e) - Refusal to participate in impasse

3543.7 - Good faith negotiations

3548-3548.3 - Impasse procedures

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ARTICLE 5

MAINTENANCE OF STANDARDS

MAINTENANCE OF STANDARDS is an important provision because it preserves accumulated employee rights and privileges resulting from past practice and ensures proper application of the Agreement.

SAMPLE LANGUAGE

- 5.1 The District shall not reduce or eliminate any benefits or professional advantages which were enjoyed by unit members as of the effective date of this Agreement unless otherwise provided by the express terms of this Agreement.
- 5.2 This Agreement shall supersede any rules, regulations, or practices of the District, except as provided in Section 5.1 above, which are, or may in the future be, contrary to or inconsistent with the express terms of this Agreement.
- 5.3 The parties to this Agreement shall not interpret or apply this Agreement, any of its terms, or the work rules, which implement this Agreement in a manner that is arbitrary, capricious, or discriminatory.

5.4 The parties shall administer this Agreement, all its terms, and the work rules which implement this Agreement with uniform application and effect. The parties shall treat all bargaining unit members equitably in the interpretation of this Agreement, its terms, and the work rules which implement this Agreement.

(NOTE: In California, the law implies into every contract a covenant of "good faith and fair dealing." Thus, by voluntarily agreeing to the terms of any contract, California courts deem that the parties have an additional obligation imposed by law: the Implied Covenant of Good Faith and Fair Dealing. The specific nature of the obligations imposed by the implied covenant of good faith and fair dealing are dependent on the nature and purpose of the underlying contract and the legitimate expectations of the parties arising from the contract. However, at its simplest, the Implied Covenant of Good Faith and Fair Dealing requires "that neither party do anything that will deprive the other party of the benefits of the agreement." As such, the Implied Covenant of Good Faith and Fair Dealing means that the union and the unit members have a right to the benefit of the rules and regulations established in the collective bargaining agreement for their protection. It requires a district to treat both the union and unit members openly and fairly. It also requires "like cases to be treated alike.")

5.5 The parties represent that they know and understand that California law deems an implied covenant of good faith and fair dealing, to be a term and condition of this Agreement.

LEGAL REFERENCES

A. Education Code Sections Cited

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Act
3543.2 - Scope of representation
3543.5(c) - Unlawful practices - districts

NON-DISCRIMINATION

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ARTICLE 6

NON- DISCRIMINATION

NON-DISCRIMINATION is included to clearly state for all parties concerned that the District is aware and acknowledges that it may not discriminate in its employment practices and terms and conditions of employment. The sample language is drafted so that unit members who are victims of alleged discrimination can seek administrative or judicial remedy without having to go through the grievance and arbitration provisions of the contract. Employee discrimination cases are very complex, and arbitrators are generally not equipped to hear and rule on such matters. Therefore, unit members, with the assistance of CTA's Group Legal Services program, should be able to take discrimination cases directly to administrative agencies or the courts.

SAMPLE LANGUAGE

6.1 The District is aware of and acknowledges the following state and federal statutes prohibiting discrimination: Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act of 1967, the California Fair Employment and Housing Act, the Education Code Sections 44100, 44105, and 44830, Public Law No. 101-336, Education Code Sections 212.5, 212.6, and Government Code Section 3543.5. Further, the District is aware and acknowledges that it is unlawful to discriminate because of race, color, national origin, religion, sex, sexual orientation, age, physical disability, marital status, economic status, political affiliation, domicile, membership in an employee organization, participation in the activities of an employee organization, union affiliation, or exercise of the rights contained in this Agreement. The remainder of this article represents the agreement between the

District and Association to implement the prohibitions delineated herein. Further, nothing in this Article shall constitute a waiver of a unit member's rights to process a discrimination claim through an appropriate government agency, or a court of competent jurisdiction.

- 6.2 Application forms and oral interview procedures shall not refer to membership in or preferences for employee organizations.

TOPIC: AMERICANS WITH DISABILITY ACT

The Americans with Disability Act of 1990, Public Law No. 101-336, and the California Fair Employment and Housing Act prohibit discrimination in terms, conditions, and privileges of employment against qualified disabled individuals because of their disability. These statutes require districts to make reasonable accommodations to the known physical and mental disabilities of employees unless doing so would cause an undue hardship.

The approach urged by the Equal Employment Opportunity Commission (EEOC) in determining which, if any, reasonable accommodation is appropriate, is communication directly between the district and the qualified individual with a disability. The EEOC advises that there should be consultation by the district with the disabled individual to ascertain the individual's job-related limitations, how such limitations can be overcome, and to identify and assess possible accommodations.

In contrast, the Educational Employment Relations Act (EERA) requires that districts not bypass or circumvent an Association through direct dealing with an employee in the bargaining unit. Even where an individual employee initiates contact with a district, where the subject matter of the communication falls within the scope of representation, the district may not deal individually with the employee but must instead deal through the Association.

Where the changes being discussed are merely the provisions of special assistance to a disabled individual to permit performance of the same job but in a fashion different than other employees, such changes may not implicate the Association's jurisdiction. For example, putting a teacher's desk on blocks to accommodate a wheel chair, providing a ramp to permit wheelchair access, and/or other adjustments to equipment or facilities to permit a disabled individual to perform services in the workplace, probably would not raise issues requiring involvement of the Association.

On the other hand, changes in bargaining unit employment practices such as seniority, job classifications, or workload would implicate the jurisdiction of the Association. Such changes must be discussed with, and only with, the Association.

Where the requested accommodation does fall within the jurisdiction of the Association, discussion and negotiations over the proposed accommodation is required prior to its implementation. This is true whether or not there exists an Agreement that establishes the district's policy regarding the subject of the proposed accommodation.

For example, if the proposed accommodation is a transfer of a qualified disabled employee to a different position, which would necessitate an involuntary transfer of the employee now in that position, and if the transfer policy, whether contained in an Agreement or otherwise, does not permit an involuntary transfer for this reason, the district must either negotiate the accommodation with the Association, or the district must seek to implement a different accommodation.

However, an Association may not unreasonably refuse to agree to a proposed accommodation, even though it may constitute an exception to an established policy or contract provision, since the Association may be held liable for unlawful discrimination against a qualified individual with a disability.

SAMPLE LANGUAGE

6.3 District's Duties Under the Americans with Disabilities Act

6.3.1 The District and the Association mutually agree that:

6.3.1.1 Both shall provide reasonable accommodation to persons with disabilities; and

6.3.1.2 a unit member seeking an accommodation has the right to be represented by the Association in discussions with the District regarding such accommodation.

6.3.2 Upon receiving from any disabled unit member or other disabled person a request for accommodation of the disability, which accommodation potentially could impact directly or indirectly upon terms and conditions of employment of any unit member, the District shall:

6.3.2.1 Notify the Association in writing of such request before either discussing such accommodation individually with any unit member or agreeing with any non-employee regarding such accommodation;

6.3.2.2 Provide the Association all relevant information in the District's possession regarding all proposed accommodations and/or the asserted need(s) therefor. The Association agrees that it shall maintain the

confidentiality of medical records of any disabled unit member.

- 6.3.3 If approached by a unit member regarding an accommodation, the District shall initially refer the unit member to the Association. The Association may agree to represent the employee, or the Association may authorize the District to discuss the accommodation individually with the unit member. Only if the Association authorizes individual discussions may the District thereafter meet and discuss the accommodation individually with the unit member.
- 6.3.4 Where the Association authorizes individual discussions, the District shall:
- 6.3.4.1 Provide the Association within five (5) duty days of any individual discussion, a written summary thereof and a copy of any accommodation agreed to by the District in such discussion;
 - 6.3.4.2 Bargain with the Association, upon request, over the impact or effects on other unit members of any accommodation agreed to in any such individual discussion; and
 - 6.3.4.3 Upon revocation by the Association of the authorization for individual discussions, cease immediately individual discussions with the unit member.
- 6.3.5 The District and the Association acknowledge that particular accommodations are intended to meet the individual needs of particular persons. Acceptance by the District and the Association of a particular accommodation shall not obligate either of them to accept the same or similar accommodation for a different individual. Agreement by the District to a particular accommodation for an individual employee may be introduced by either party, or an employee, as evidence to support the reasonableness of the same or similar accommodation in any proceeding arising under this Agreement or under state or federal non-discrimination statutes.
- 6.3.6 As used in this Article only, the term "unit member" refers only to a person who at the time of a request for an accommodation either holds a position within the Association's bargaining unit, or claims the right to reinstatement to such a position.

TOPIC: SEXUAL HARASSMENT

Education Code Section 212.6, effective January 1, 1993, requires each educational institution in California to have a written policy on sexual harassment that includes "information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies". This policy is to be posted in a prominent location, and a copy provided to all staff at the beginning of the 1993-94 school year and each year thereafter.

The Association should demand to bargain any changes in this area. The purpose of negotiating such policies is twofold: to prevent sexual harassment by requiring training and prompt investigations of complaints, and to provide due process to those accused of sexual harassment by pupils or employees.

Some districts have instituted elaborate procedures for investigating claims of sexual harassment, including use of high-priced outside investigators and mini-trials. The Association should demand to bargain procedures. Elaborate procedures should generally be resisted since they are usually a waste of scarce resources and an abuse of the rights of the alleged harasser and the complainant. The only party that is served by elaborate procedures is the district, which hopes to avoid liability for sexual harassment. Districts can, however, insulate themselves from liability by following a sound sexual harassment policy and complaint procedure such as is suggested in the CTA sample language.

SAMPLE LANGUAGE

- 6.4 Sexual harassment is as defined in the Education Code and applicable non-discrimination law. Education Code Section 212.5 defines sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the workplace or educational setting, under any of the following conditions:
- 6.4.1 Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.
 - 6.4.2 Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
 - 6.4.3 The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

- 6.4.4 Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

(NOTE: Education Code Section 48900.2 states: For the purposes of this chapter, the conduct described in Section 212.5 must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual's academic performance or to create an intimidating, hostile, or offensive educational environment.)

- 6.4.5 Sexual harassment can be verbal (such as comments about a person's clothing or sex life, sexual jokes and innuendoes, repeated requests for dates, suggestive comments or sounds, or sexual propositions), physical (such as hugging, touching, impeding movement, rubbing up against someone or suggestive gestures), or visual (such as pictures, cartoons, or sexually suggestive objects).

- 6.5 Employees are prohibited from engaging in sexual harassment. This prohibition applies to all employees, including supervisory and management personnel. The District shall prohibit sexual harassment of unit members. The timelines for the regular grievance procedure are tolled if a unit member chooses to pursue a complaint through the sexual harassment complaint procedure established by the District under Education Code Sections 212.5 and 212.6. All sexual harassment investigations and all discipline imposed pursuant to the District's sexual harassment policy shall be subject to the relevant provisions of this Agreement.

6.6 Complaint Procedure

- 6.6.1 The timelines for the regular grievance procedure are tolled if a unit member chooses to pursue a complaint through any internal complaint procedure the District has for dealing with complaints of sexual harassment.
- 6.6.2 The complainant, the accused, and employees interviewed about the complaint have a right to union representation during all meetings with management regarding the complaint. Management will inform all affected employees of this right and allow them sufficient time to secure union representation prior to being interviewed.
- 6.6.3 Two management persons (one man and one woman) shall be specially designated for receipt of sexual harassment complaints. These individuals will be trained in dealing with complaints of sexual harassment. All employees shall be informed of the persons designated to receive complaints.

- 6.6.4 The District will train its own staff to investigate and resolve complaints of sexual harassment rather than hire outside individuals to perform these services. Training shall ensure that thorough and fair investigations will be made of sexual harassment complaints.
- 6.6.5 Sexual harassment complaints shall be in writing and shall include descriptions of the conduct complained of (including date, time, location, etc.), and the names of the complainant and any witnesses. The complainant shall be allowed to request a particular remedy in the complaint.
- 6.6.6 When a complaint is filed, the District shall inform the complainant of her/his right to file a discrimination complaint with the Department of Fair Employment and Housing and/or the Equal Employment Opportunity Commission, and the procedures for filing.
- 6.6.7 The accused shall be given a copy of the written complaint. Otherwise, information regarding the complaint shall not be disclosed to anyone, except as necessary to conduct the investigation and to resolve the complaint.
- 6.6.8 The District shall engage in a prompt, thorough, and impartial investigation of the complaint. The accused shall be given the opportunity to consult with a representative in advance of any investigatory interview and given adequate opportunity to respond to each allegation. Investigations shall be limited to interviews with individuals who reasonably might be considered to have information relevant to the specific allegations in the complaint. All unit members, including the complainant, and the accused, shall be given release time to participate in the investigation.
- 6.6.9 The District shall inform the complainant and the accused in writing of the results of the investigation, including an analysis of relevant evidence with respect to each allegation in the complaint and a specific finding as to whether sexual harassment did or did not occur with respect to each allegation in the complaint.
- 6.6.10 If the complaint is found valid, the District shall take prompt corrective action, reasonably calculated to end the harassment. Prior to taking such action, the district shall provide notice of the proposed action to the complainant, the accused and the Association, and shall allow five (5) work days for a response. Any discipline imposed on a unit member under this section shall be consistent with principles of just cause and progressive discipline. The District shall inform the complainant in

writing of the action taken, if any, to ensure that the problem is corrected. Otherwise, all information regarding any proposed or actual disciplinary action shall be kept confidential by the District.

6.6.11 If the complaint is withdrawn or found invalid, the complaint or the investigation shall not be referred to in either the complainant's and/or accused personnel file or used for any purpose.

6.6.12 There shall be no retaliation against any individual for filing or providing information regarding a sexual harassment complaint.

6.6.13 The District recognizes that not all allegations of sexual harassment of pupils constitute reportable child abuse and shall exercise reasonable care in distinguishing between the two.

6.7 Training

6.7.1 The District shall provide an educational session for all staff on the subject of sexual harassment, including, among other things, recognizing sexual harassment, responding to harassment, documenting harassment, and legal rights. This session shall be provided once a year.

6.7.2 A copy of the District's sexual harassment policy shall be posted and provided to all employees at the start of each school year and to each employee hired mid-year.

6.8 This provision shall not be construed to limit any other unit member rights contained in this Agreement.

LEGAL REFERENCES

A. Education Code Sections Cited

44100-44105, 871100-87106 - Affirmative action
44830, 87427 - Discrimination
45023.5 - Sex discrimination in extra duty
212.5, 212.6 - Sexual harassment

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Act
3543 - Rights of employees
3543.5(a) and (d) - Unlawful practices - employer
3543.6(a) and (d) - Unlawful practices - employee organization

SAVINGS

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ARTICLE 7

SAVINGS

SAVINGS is placed in an Agreement to ensure that if any part of the Agreement or its application is tested in a court of competent jurisdiction and held by that court to be contrary to law, the parties must negotiate the provision ruled illegal in part or in whole while the rest of the Agreement remains in effect.

SAMPLE LANGUAGE

- 7.1 If any provision of this Agreement or any application of this Agreement to any unit member or group of unit members is held to be contrary to law by a court of competent jurisdiction, then such provision or application shall not be deemed valid and subsisting, except to the extent permitted by law; but all other provisions or applications shall continue in full force and effect.
- 7.2 It is further agreed that within ten (10) days of receipt of notification of the court's decision, negotiations shall commence regarding matters related to such provision.

LEGAL REFERENCES

A. Education Code Sections Cited

B. Government Code Sections Cited

Government Code, Chapter 10.7- Educational Employment Relations Act

354.1(h) - Meeting and negotiating

3543.2 - Scope of representation

3549 - Prohibition

STATUTORY CHANGES

ARTICLE 8

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ARTICLE 8

STATUTORY CHANGES

STATUTORY CHANGES are changes in the law, which may affect terms and conditions of employment included in an Agreement. This provision establishes the obligation of the parties to an Agreement to negotiate or automatically incorporate any changes in terms and conditions of employment due to changes in state or federal laws. It also allows the grievance machinery to be used instead of costly and more time consuming court litigation for those changes that are automatically incorporated in the Agreement.

SAMPLE LANGUAGE

- 8.1 Improvements in benefits included in this Agreement which are brought about by the amendment or addition of statutory guarantees now provided in California or federal law shall be incorporated into this Agreement.
- 8.2 Reduction or elimination of benefits which are brought about by the amendment or repeal of statutory guarantees incorporated into this Agreement shall obligate the parties within ten (10) days of such amendment or repeal to negotiate whether or not such amendments or repeals shall be incorporated into this Agreement. Absent an agreement, no reduction or elimination of statutory guarantees of benefits included in this Agreement shall apply.

LEGAL REFERENCES

A. Education Code Sections Cited

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Act
3543.2 - Scope of representation
3543.5(c) - Unlawful practices - employer

MANAGEMENT PROPOSALS

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ARTICLE 9

MANAGEMENT PROPOSALS

MANAGEMENT PROPOSALS frequently include MANAGEMENT RIGHTS, NO STRIKE, AND ZIPPER CLAUSES. CTA recommends that its Associations not propose such clauses. Further, CTA recommends that the exact terms of management proposals in these areas be carefully analyzed and bargained both to avoid waiving the rights of the union and bargaining unit members as well as to prevent such clauses from negating or contradicting other provisions of this Agreement.

TOPIC: MANAGEMENT RIGHTS

Management Rights clauses are unnecessary in collective bargaining agreements with public school districts. Certainly, a public school district may modify, abridge, and/or waive many, if not all, its rights to unilaterally direct, manage, and control a school district. Indeed, the Legislature enacted EERA to legitimate a system for sharing power and decision-making authority between public school districts and the exclusive representatives of their employees. However, once district and unions have engaged in power-sharing on the matters agreed to in a collective bargaining agreement, it is not legally necessary to expressly state that the district has not modified, abridged, and/or waived any other rights or authority it may lawfully exercise.

Nonetheless, many districts insist on such a statement. However, CTA's Associations should carefully analyze any Management Rights proposals to ensure that its terms do not conflict with other provisions of the collective bargaining agreement or that it does not permit management to unilaterally control, determine, or change any subject of importance to the Association or unit members.

SAMPLE LANGUAGE

(NOTE: CTA believes that the following general statement of the scope of management rights is preferable to a laundry list approach which attempts to itemize each and every right.)

- 9.1 All of the rights, powers, and/or authority which the District lawfully exercised prior to the execution of this Agreement shall be retained and remain in full force and effect, except as to those rights, powers and authority that are modified, abridged, and/or waived by this Agreement.

ALTERNATE ACCEPTABLE SAMPLE LANGUAGE

(NOTE: A more detailed approach must include a protection of rights clause.)

- 9.1 Management Rights
- 9.1.1 Except as modified, abridged, and/or waived by this Agreement, the District shall retain all of its powers and authority to direct, manage, and control to the full extent of the law.
- 9.1.2 The District's exercise of powers, rights, authority, duties and responsibilities, the adoption of policies, rules, regulations, and practices in the furtherance thereof, and the use of judgment and discretion in connection therewith, shall be consistent with and limited only by law and shall not be arbitrary or capricious.
- 9.1.3 Notwithstanding any other provisions, this Agreement shall not constitute a general or specific waiver of any right of the Association or unit members, nor shall it be applied to reduce or restrict any right or privilege of the Association or unit members derived from other provisions of this Agreement or from law.

TOPIC: NO STRIKE

(Concerted Activities)

Under appropriate circumstances, unions have a right to enforce their EERA rights through concerted activities. For example, a district's "unlawful practices" in violation of EERA Section 3543.5 may provoke a local Association to engage in concerted activities to protect and enforce its rights. The most common district "unlawful practices" involves violations of the collective bargaining agreement. As a last resort, a local Association may lawfully engage in an "unfair practice strike" to enforce the contract.

Management commonly attempts to impose a trade-off of a No Strike clause in exchange for an agreement to binding arbitration. Often the No Strike provisions proposed by management are far broader than an agreement not to enforce the contract through concerted activities. Since local Associations can enforce their contracts without binding arbitration, CTA strongly advises against this concession.

Certainly, an overly inclusive Concerted Activities clause which limits statutory and/or Constitutional rights is dangerous and should be vigorously opposed as a waiver of rights, a permissive subject of bargaining. Further, district insistence to impasse on a permissive subject of bargaining, like a waiver of rights, is an unlawful practice that violates EERA Section 3453.5. CTA advises that, whenever management proposes that a CTA Association waive its rights, the Association's bargaining team should respond as follows: "We believe your proposal is a permissive subject of bargaining. We refuse to waive the Association's rights, and that bargaining on this issue is at impasse. Thereafter, any further attempt by management to insist on agreement to their waiver proposal constitutes a violation of the district's Duty to Bargain in good faith."

Negotiations of No Lockout provisions are unnecessary in the collective bargaining agreements with public school districts. The Education Code requires California public school districts to deliver instructional services under the supervision of certificated employees for at least 180 days per year. The Education Code also prohibits the layoff or dismissal of "tenured" employees without statutory cause. Under California law, a labor dispute is not grounds for locking out school districts' certificated employees, even on a temporary basis.

Remember under the EERA, most provisions in a collective bargaining agreement continue by operation of law during the "hiatus" period between the expiration of an old contract and negotiations of a successor agreement. However, No Strike clauses are one of a small number of exceptions, provisions that "evaporate" upon the expiration of a collective bargaining agreement and, thereafter, have no force or effect.

SAMPLE LANGUAGE

9.2 No Strike

- 9.2.1 During the term of this Agreement, the Association shall not engage in and/or sanction any strike, work stoppage, or any other concerted refusal to perform mandatory work duties in order to enforce this Agreement.

TOPIC: ZIPPER CLAUSE

(Effect of Agreement, Full Understanding)

Under EERA, districts and unions have a continuing Duty to Bargain in good faith, in order to share power and decision making authority on all matters within the scope of representation. However, this duty can be waived by agreement to a "zipper" clause. The purpose of a zipper clause is to foreclose further requests to negotiate regarding negotiable matters. It does not however, cede to the district the power to make unilateral changes in the status quo. Thus, a district can use a zipper clause as a shield to protect it from a demand to bargain and thus preserve the status quo. Conversely, a union can use a properly formulated zipper clause as a sword to prevent the district from unilaterally changing the terms and conditions of employment.

Therefore, a CTA Association's decision to agree to a properly formulated zipper clause entails a calculus of the risk that the Association has obtained favorable agreements on all essential matters and that no critically important conditions will change which would otherwise necessitate additional bargaining to preserve the interests of the union or bargaining unit members. If the Association has bargained everything that is important and nothing critical will change, a zipper clause presents only modest risk. If the Association's interests and objectives have not been completely satisfied, or a significant likelihood exists that conditions or assumptions on which agreement was based will become more favorable to the union, then agreement to a zipper clause presents a significant, unjustified risk. But remember, these risks cut both ways: the continuing Duty to Bargain may also benefit the district as well as the union.

SAMPLE LANGUAGE

9.3 Zipper (Complete Negotiations)

- 9.3.1 By this Agreement, the parties resolve all outstanding bargaining issues. Except as provided in Section 9.3.2, this Agreement excludes all matters

expressly provided herein from further negotiations for the duration of this Agreement. The provisions of this Agreement shall not be amended, modified, abridged, waived, or changed in any way without the written, signed agreement of the parties to this Agreement.

9.3.2 The parties to this Agreement retain the right to bargain the impact of decisions or events changing the status quo, which may affect the wages, hours and/or terms and conditions of employment of unit members within the scope of representation.

LEGAL REFERENCES

A. Education Code Sections Cited

52010-52179 - School improvement plans

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Act

3540.1(h) - Meeting and negotiating

3543 - Rights of employees

3543.1(a) - Rights of employee organizations

3543.2 - Scope of representation

3543.5 - Unlawful practices

3543.5(b) - Denying employee organization's rights

3543.5(c) - Refusal to bargain

GRIEVANCE PROCEDURE

ARTICLE 10

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ARTICLE 10

GRIEVANCE PROCEDURE

GRIEVANCE PROCEDURE is the heart of the Agreement. It is the Article that provides the enforcement mechanism for all other Articles of the Agreement. The usual mechanism for resolution of grievances is a series of management-labor meetings in order to try to resolve the grievance at the lowest possible level. As a final step, if the parties cannot resolve their differences, the dispute is submitted to binding arbitration. Individual unit members or the Association may grieve actions of the district.

It is recommended that the definition of a grievance be as broad as possible, but should at least include all sections of the contract. Some Districts try to exclude certain Articles from the grievance procedure, this should be avoided.

If the Association does not have binding arbitration of grievances in its contract, it is usually because of reluctance of the school board to give up authority. Binding arbitration of grievances merely provides that a neutral will decide disputes over a contract that is already agreed to by the Association and District.

Binding arbitration is the *quid pro quo* for a no strike clause.

Local Associations should also be aware that CTA has an Arbitration Participation Fund as part of its crisis assistance program whereby CTA will pay part of the cost of binding arbitration proceedings for Associations that meet certain qualifications. Contact your local CTA staff person for more information.

SAMPLE LANGUAGE

10.1 Definitions

- 10.1.1 A "grievance" is a claim by one or more unit members or the Association that there has been a violation, misinterpretation or misapplication of a provision of this Agreement, a violation of the right to fair treatment, or a violation, misapplication, or misinterpretation of any law, Board policy, or regulation.
- 10.1.2 The "grievant" is the unit member, unit members, or the Association making the claim.
- 10.1.3 A "party in interest" is any person who might be required to take action or against whom action might be taken in order to resolve the grievance.
- 10.1.4 A "day" is any duty day in which the grievant is required by contract to render service.

(NOTE: Add any other definitions as may be necessary for the administration of this Article such as immediate supervisor, other definitions of day, and Association representative. Also see Article 3, Definitions. The definition of "day" in Section 10.1.4 provides a better timeline for the grievant than the definition of day "when the District's office is open for business".)

10.2 Purpose

The purpose of this procedure is to secure, at the lowest possible administrative level, equitable solutions to the problems that may from time to time arise affecting the welfare or working conditions of unit members and the Association. Both parties agree that these proceedings will be kept as informal and confidential as may be appropriate at any level of the procedure.

10.3 Procedure

10.3.1 Level One Immediate Supervisor

- 10.3.1.1 A grievance shall be presented in writing to the immediate supervisor using the grievance form, with a copy simultaneously provided to the Association. The immediate supervisor shall meet within three (3) days of receipt of the grievance. The immediate supervisor shall provide a written disposition of the grievance, including the reasons therefore, to all parties of interest within two (2) days of such meeting.

10.3.1.2 If the grievant and/or the Association is not satisfied with the disposition of the grievance, or if no disposition has occurred within two (2) days of such meeting or five (5) days from the date of presentation of the grievance, the grievance may be appealed to Level Two, with a copy simultaneously provided to the Association.

10.3.2 Level Two Superintendent

10.3.2.1 The Superintendent or her/his designee shall meet with the grievant and/or designated Association representative within seven (7) days of receipt of the grievance appeal and shall provide a written disposition of the grievance, including the reasons therefore, to all parties of interest within three (3) days of such meeting.

10.3.2.2 If the grievant and/or the Association is not satisfied with the disposition of the grievance or if no disposition has occurred within five (5) days of such meeting or eight (8) days from the date of the receipt of the grievance at Level Two, the grievant may request the Association to submit the grievance to arbitration.

(NOTE: The parties may insert a mediation step in the procedure, which is provided as an option. Most contracts do not contain this step, but parties that have used this step often find it helpful. This mediation step may be inserted at an earlier level if desired.)

10.3.3 Level Three Mediation

10.3.3.1 If the grievant and/or the Association is not satisfied with the disposition of the grievance, or if no disposition has occurred pursuant to the provisions of Level Two, the grievance shall be referred to grievance mediation.

10.3.3.2 The Association shall request that a conciliator/mediator from the California State Mediation/Conciliation Service, or from any other mutually agreeable recognized dispute resolution center, be assigned to assist the parties in the resolution of the grievance.

10.3.3.3 The mediator, within ten (10) days of the request shall meet with the grievant, the Association and the District for the purpose of resolving the grievance.

10.3.3.4 If an agreement is reached, the agreement shall be reduced to writing and shall be signed by the grievant, the Association and the District. This agreement shall be nonprecedential and shall constitute a settlement of the grievance.

10.3.3.5 In the event that the grievant, the Association and the Superintendent or her/his designee have not resolved the grievance with the assistance of the conciliator/mediator within ten (10) days from the first meeting held by the conciliator/mediator, the Association may terminate Level Three and the grievance may proceed to Level Four.

10.3.3 Level Three (or Four) Binding Arbitration

10.3.3.1 If the Association proceeds to arbitration, it shall notify the District in writing. Within ten (10) days of such notification, representatives of the District and the Association shall attempt to agree upon a mutually acceptable arbitrator and obtain a commitment from said arbitrator to serve. If the parties are unable to agree upon an arbitrator within the specified period, the Association shall file a Demand to Arbitrate with the American Arbitration Association. The selection of the arbitrator and the arbitration proceedings shall be conducted under the Voluntary Labor Arbitration Rules of the American Arbitration Association. The Association and District shall each pay one half (1/2) of any charges required by the American Arbitration Association for services rendered.

10.3.3.2 The arbitrator's decision shall be in writing and shall set forth the findings of fact, reasoning, and conclusions of the issues submitted. The arbitrator shall be without power or authority to make any decision that requires the commission of an act prohibited by law or which is violative of the terms of this Agreement. However, it is agreed that the arbitrator is empowered to include in any award such financial reimbursement or other remedies as she/he judges to be proper. The decision of the arbitrator shall be submitted to the Association and the District and will be final and binding upon the parties. If any question arises as to the arbitrability of the grievance, such question will be ruled upon by the arbitrator only after

she/he has had an opportunity to hear the merits of the grievance.

10.3.3.3 All costs for the services of the arbitrator, including but not limited to, per diem expenses, travel and subsistence expenses, and the cost, if any, of a hearing room, shall be borne equally by the District and the Association. All other costs, except for released-time for the grievant(s), Association representative(s), and witnesses, shall be borne by the party incurring them.

10.4 Time Limits

10.4.1 Time limits provided for at each level shall begin the day following receipt of the grievance appeal or written decision.

10.4.2 Since it is important that grievances be processed as rapidly as possible, the time limits specified at each level should be considered the maximum and every effort should be made to expedite the process. The time limits may, however, be extended in writing by mutual agreement.

10.4.3 In the event a grievance is filed at such a time that it cannot be processed through all the steps by the end of the school year, and if left unresolved harms a grievant, the time limits set forth herein shall be reduced so that the procedure may be exhausted prior to the end of the school year or as soon as is practicable.

10.4.4 Grievances related to safety shall commence at the Superintendent's Level.

10.5 Rights of Representation

10.5.1 A grievant may be represented at all stages of the grievance by an Association representative(s).

10.6 No Reprisals

10.6.1 No reprisals of any kind will be taken by the District or by any member or representative of the administration or the Board against any grievant, any party in interest, any bargaining unit member, the Association, or any other participant in the grievance procedure by reason of such participation.

10.7 Miscellaneous

- 10.7.1 The Association, either in its own behalf or in behalf of more than one affected unit member, may initiate a grievance at Level Two.
- 10.7.2 If a grievance arises from action or inaction of the District at a level above the principal or immediate supervisor, the grievant shall submit such grievance in writing directly to the Superintendent and the Association with the processing of such grievance to commence at Level Two.
- 10.7.3 When it is necessary for a representative designated by the Association to investigate a grievance or attend a grievance meeting or hearing during the day, she/he shall be released without loss of pay in order to permit participation in the foregoing activities. Any unit member who is requested to appear in such investigations, meetings, or hearings as a witness will be accorded the same right.
- 10.7.4 All documents, communications and records dealing with the processing of a grievance shall be filed in a separate grievance file and will not be kept in the personnel file of any unit member.
- 10.7.5 Forms for filing grievances, serving notices, taking appeals, making reports and recommendations, and other necessary documents shall be prepared jointly by the District and Association and given appropriate distribution so as to facilitate operation of the grievance procedure.
- 10.7.6 Upon mutual agreement of the Association and the District, a grievance may be taken directly to arbitration.
- 10.7.7 A unit member may at any time present grievances to the District, and have such grievances adjusted, without the intervention of the Association, as long as the adjustment is reached prior to arbitration and such adjustment is not inconsistent with terms of the written agreement. If any employee presents a grievance on her/his own behalf, the Association shall have the right to be present and state its views at all grievance meetings. The District shall not agree to a resolution of the grievance until the Association has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.
- 10.8 Expedited Arbitration
- 10.8.1 At the option of the Association, the arbitration may be held under the Expedited Rules of the American Arbitration Association. Notice of such option shall accompany the Demand for Arbitration.

LEGAL REFERENCES

A. Education Code Sections Cited

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Act

3543 - Rights of employees

3543.1 - Rights of employee organizations

3544.1 - Representation elections

3544.7 - Representation hearings- Duty of fair representation

ORGANIZATIONAL SECURITY

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ARTICLE 11

ORGANIZATIONAL SECURITY

ORGANIZATIONAL SECURITY clauses provide for payroll deduction, and agency fee. Organizational security is an important factor in maintaining the Association's ability to represent members and enforce the Agreement. It ensures that the Association has the resources to fulfill its legal obligation to provide services to all bargaining unit members.

This Article is closely tied in the bargaining process to discipline, binding arbitration and term of the Agreement. If the Association agrees to some type of employee discipline in the contract, it should be linked to binding arbitration and agency fee to administer the discipline clause. Agency fee, however, is needed to enforce all contract provisions. If the Association does not have maintenance of membership and agency fee during a multiple-year Agreement, there is danger of membership erosion when the Association is not actively bargaining a contract, and thus, danger of losing the ability to enforce the contract.

Many Associations have agency fee in their contracts.

CTA recommends that Associations bargain the topics listed below. Dues deductions and agency fee work together to form a sound financial base for the representation of bargaining unit members.

TOPIC: DUES DEDUCTION

A provision which establishes systematic payroll deduction and transmission of membership dues, fees, and assessments by the district to the Association. Although technically not part of the EERA definition of "organizational security," which refers to maintenance of membership and agency fee, dues deduction is extremely important to keep the flow of dues moneys from members to the Association regular and systematic with supporting documentation.

SAMPLE LANGUAGE

11.1 Dues Deduction

- 11.1.1 The right of payroll deduction for payment of membership dues, initiation fees, and general assessments shall be accorded exclusively to the Association. The District shall deduct other voluntary payments as authorized by unit members and the Association. Association members who currently have authorization cards on file for the above purposes need not be resolicited. Membership dues, initiation fees, and general assessments, upon formal written request from the Association to the District, shall be increased or decreased without resolicitation and authorization from unit members.
- 11.1.2 Any unit member who is a member of the Association or who has applied for membership, may sign and deliver to the District an assignment authorizing deduction of membership dues, initiation fees, and general assessments of the Association. Pursuant to such authorization, the District shall deduct one-tenth (1/10) of such dues from the regular salary check of the unit member each month for ten (10) months. Deductions for unit members who sign such authorization after the commencement of the school year shall be appropriately prorated to complete payments by the end of the school year.
- 11.1.3 With respect to all sums deducted by the District pursuant to Section 11.1.1 above, the District agrees to remit such moneys promptly to the Association accompanied by an alphabetical list of unit members, including their names, addresses, and work locations for whom such deductions have been made, and indicating any changes in personnel from the list previously furnished.

TOPIC: MAINTENANCE OF MEMBERSHIP

Maintenance of membership provisions require that Association membership be retained for the duration of the collective bargaining Agreement as a condition of employment. Education Code Sections 45060 and 45061 provide for automatic payroll deduction. Maintenance of membership is one type of organizational security negotiable under EERA. It is a desirable means for maintaining some measure of economic security for the Association.

SAMPLE LANGUAGE

11.2 Maintenance of Membership

- 11.2.1 The Association and the District agree that any unit member who is a member of the Association at the time this Agreement becomes effective or who enrolls during the term of the Agreement shall maintain such membership for the duration of this Agreement. This provision shall not deprive any member of the right to terminate her or his membership within the 30 day period following expiration of the Agreement. If a member who is covered by the maintenance of membership requirement withdraws authorization for dues deduction and/or refuses to provide the Association with a lump sum cash payment of dues for the year, the District shall deduct membership dues as provided in Education Code Section 45601 and in the same manner as set forth in Sections 11.1.1 and 11.1.2 above.

TOPIC: AGENCY FEE

Agency fee is a provision that requires all unit members to either belong to the Association or pay a fee equal to dues for the costs of representation. Certain objectors are exempted and in such cases pay an equal amount of cash to a charity. Agency fee is the most stable source of funding for the Association to use in the representation of bargaining unit members. It allows the Association to meet its financial obligations in representing bargaining unit members. Education Code Sections 45060 and 45061 provide for automatic payroll deduction.

SAMPLE LANGUAGE

11.3 Agency Fee

11.3.1 Any unit member who is not a member of the Association, or who does not make application for membership within 30 days of the effective date of this Agreement, or within 30 days from the date of commencement of assigned duties within the bargaining unit, shall become a member of the Association or pay to the Association a fee in an amount equal to membership dues, initiation fees and general assessments, payable to the Association in one lump-sum cash payment in the same manner as required for the payment of membership dues. In the event that a unit member does not pay such fee directly to the Association, the Association shall so inform the District, and the District shall immediately begin automatic payroll deduction as provided in Education Code Section 45061 and in the same manner as set forth in this Article. There shall be no charge to the Association for such mandatory agency fee deductions.

11.3.2 Any unit member who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join or financially support the Association as a condition of employment; except that such unit member shall pay, in lieu of a service fee, sums equal to such service fee to one of the following non-religious, non-labor organization, charitable funds exempt from taxation under Section 501 (c)(3) of Title 26 of the Internal Revenue Code:

11.3.2.1 Foundation to Assist California Teachers

11.3.2.2 Christa McAuliffe Institute for Education Pioneering

11.3.2.3 Hilda Maehling Grants Program

11.3.2.4 Martin Luther King, Jr. Memorial Scholarship Fund

(NOTE: At least three non-religious, non-labor organizations that are charitable funds exempt from taxation under Section 501 (c)(3) of Title 26 of the Internal Revenue Code need to be listed in this section. Both NEA and CTA have independent foundations available for use in this section. They are listed.)

To receive a religious exemption, the unit member must submit a detailed written statement establishing the basis for the religious exemption. The Association executive board shall communicate in writing to the unit member its acceptance or rejection of the exemption. If accepted, the unit member shall make the payment to an appropriate charity as described above. Such payment shall be made on or before the due date for cash dues/fees for each school year.

11.3.3 Proof of payment shall be made on an annual basis to the Association and District as a condition of continued exemption from the payment of agency fee. Proof of payment shall be in the form of receipts and/or canceled checks indicating the amount paid, date of payment, and to whom payment in lieu of the service fee has been made. No in-kind services may be received for payments, nor may the payment be in a form other than money such as the donation of used items. Such proof shall be presented on or before the due date for cash dues/fees for each school year.

11.3.4 With respect to all sums deducted by the District pursuant to sections above, whether for membership dues or agency fee, the District agrees to remit such moneys promptly to the Association accompanied by an alphabetical list of unit members for whom such deductions have been made, categorizing them as to membership or non-membership in the Association, and indicating any changes in personnel from the list previously furnished.

11.3.5 The Association and District agree to furnish to each other any information needed to fulfill the provisions of this Article.

(NOTE: If the District proposes hold harmless language as a condition to agreement on agency fee language, the Association should immediately contact CTA STAFF in order to obtain approval from the CTA Legal Department. Also, do not agree to any language that would limit the amount of the fee based on constitutional requirements. These are internal union matters. If such language is proposed by the District, consult with CTA staff. Similarly, if the District proposes to include "Hudson" procedures in the contract [procedures for objecting to political expenditures of agency and receiving a rebate or reduced fee], contact CTA STAFF. Below is the only hold harmless language that CTA will agree to without CTA Legal Department approval. If it is used, it must be exact.)

11.4 The Association agrees to pay to the District all reasonable legal fees and legal costs incurred in defending against any court action and/or administrative action challenging the legality or constitutionality of the agency fee provisions of this Agreement or their implementation. The Association shall have the exclusive right to decide and determine whether any such action or proceeding referred to above shall or shall not be compromised, resisted, defended, tried or appealed.

LEGAL REFERENCES

A. Education Code Sections

45060-45061, 87833-87834 - Dues deduction

B. Government Code Sections

Government Code, Chapter 10.7 - Educational Employment Relations Act

3540.1(i)(1) and (2) - Definition - Organizational security

3543.1(d) - Right of employee organizations to have membership dues deducted

3543.2 - Scope of representation

3546 - Organizational security vote

3546.3 - Religious objections

3546.5 - Record of financial transaction

ASSOCIATION RIGHTS

ARTICLE 12

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ARTICLE 12

ASSOCIATION RIGHTS

ASSOCIATION RIGHTS is a fundamental part of every negotiated Agreement. It is the vehicle that facilitates the administration of the contract. The rights granted under this Article come from the statutory obligation of every Association to represent all members of the bargaining unit.

TOPIC: REPRESENTATION

This provision guarantees to the Association the right to represent all bargaining unit members in their employment relations with the district. It is a higher standard than *Weingarten* rights used in cases of employee discipline, and is afforded to the Association as the exclusive representative in the EERA in Section 3543.1.

SAMPLE LANGUAGE

- 12.1 The Association has the right under the Educational Employment Relations Act to represent bargaining unit members in their employment relations with the District. Nothing in this Agreement shall be construed as a waiver of such rights.

TOPIC: DISTRICT SERVICES

This provision guarantees to the Association the right to use inter-site and intra-site electronic and regular mail facilities. For the purposes of this section, electronic mail shall be called "E-mail." The right to use the District electronic and regular mail system is critical to effective communications between the Association and its members. This right is also guaranteed to the Association by the EERA Section 3543.1(b).

SAMPLE LANGUAGE

12.2 District Service

12.2.1 The Association shall have the right to use the District mail service and unit member mailboxes for communications to unit members without interference, censorship, or examination of such communications by the District.

12.2.1.1 The Association office shall be a daily pick-up and delivery point.

12.2.2 The Association shall have the right to use the District electronic mail service and unit member electronic mailboxes for communications to unit members without interference, censorship, or examination of such communications by the District.

12.2.2.1 The Association shall have an electronic mailbox in the District's electronic mail system.

TOPIC: BULLETIN BOARDS

This provision guarantees the Association use of standard and electronic bulletin boards for dissemination of Association materials and information. The Association is entitled to utilize devices which facilitate informing members about Association activities.

SAMPLE LANGUAGE

12.3 Bulletin Boards

- 12.3.1 The Association shall have the right to post notices of activities and matters of Association concern on Association bulletin boards, at least one of which shall be provided in each building in areas frequented by unit members.
- 12.3.2 The Association shall have the right to post notices of activities and matters of Association concern on electronic bulletin boards maintained by the District. Unit members shall have access to the District bulletin boards at each unit member's workstation or classroom.

TOPIC: USE OF BUILDINGS AND EQUIPMENT

This provision guarantees to the Association the right to use the district's buildings and school equipment for Association activities. The bargaining agent needs to be able to communicate with members of the bargaining unit. Ensuring access to the district's buildings reduces the Association's operating costs. Most equipment is expensive as the result of initial cost and maintenance and is beyond the means of most Associations. With the right to use such equipment, the Association can maintain more economical and more efficient internal communications.

SAMPLE LANGUAGE

- 12.4 Use of Buildings and Equipment
 - 12.4.1 The Association shall have the right to use District buildings, sites, and equipment during all reasonable hours for meetings and other Association activities.
 - 12.4.2 The Association shall have the right to use District educational technology equipment and/or studios so long as such use does not interfere with the District's regular instructional program. In the event any cost accrues to the District under this provision the Association shall reimburse the District that cost.

TOPIC: ACCESS TO WORKSITE

An access to worksite provision permits the officers, representatives, and staff of the Association to have access to the members during the workday. Access clauses increase the potential for effective and efficient operation of the Association by allowing members to have their problems and Association business attended to during the workday. It gives the officers, representatives, and staff access to the members at their place of work.

SAMPLE LANGUAGE

12.5 Access to Worksite

- 12.5.1 Authorized representatives of the Association shall have the right to transact official Association business on school property and utilize District facilities at all reasonable times provided that such activities or use do not interfere with classroom instruction.

TOPIC: ACCESS TO INFORMATION

This provision guarantees that all available information, economic and educational in nature, will be provided upon request to the Association in order to adequately represent its members. The Association should have easy access to information in order to guide decision-making. It is needed in the bargaining process as well as the grievance process.

SAMPLE LANGUAGE

12.6 Access to Information

- 12.6.1 The District, upon request by the Association, agrees to furnish to the Association, within five (5) days, all available information concerning the financial resources and certificated and classified staffing of the District. Such information shall include, but not be limited to: annual financial reports and audits, budgets, interim reports, J-90s, assignment location of certificated personnel, tentative budgetary requirements and allocations, agendas and minutes of all Board meetings and all attachments thereto at the time of distribution to the Board, census and membership data, names, addresses and phone numbers of all unit members, salaries, benefits, and stipends paid thereto, educational

background, longevity, and other employee information that may be used in representing unit members. In addition, the District, upon request, agrees to provide any other information the Association deems necessary to fulfill its role as exclusive representative. In addition, such information, by request of the Association, shall be supplied via electronic means if the District keeps such data in electronic format.

TOPIC: APPOINTMENTS TO DISTRICT COMMITTEES

Appointment to district committees clauses establish the Association's right to appoint all unit members to district and joint committees. Association selection for such committees is necessary to guarantee employee rights and provide accountability for decisions made by unit members of district committees.

SAMPLE LANGUAGE

- 12.7 Appointment to District and Joint Committees
 - 12.7.1 The Association shall select unit member representatives to all District committees.
 - 12.7.2 The Association shall select unit member representatives to all Association/District joint committees.

TOPIC: ASSOCIATION BUSINESS

An Association business provision guarantees paid leave for use by Association representatives in order that Association business and activities can be conducted on a day-to-day basis. Reducing Association expenses in one area of the Association budget allows greater expenditure in other areas, such as workshops, and arbitrations. More time becomes available for Association leadership to directly service member concerns.

SAMPLE LANGUAGE

- 12.8 Release Time

- 12.8.1 The Association President or designee shall be provided release time at no loss of salary or other benefits.
- 12.8.2 Bargaining Team members shall be provided release time for negotiations at no loss of salary or other benefits.
- 12.8.3 Grievants, witnesses, and Association representatives shall be provided release time for grievance processing at no loss of salary or other benefits.
- 12.8.4 Unit members working in year-round schools shall be provided release time to attend Association (including CTA and NEA) meetings and training sessions at no loss of salary or other benefits.

TOPIC: WAIVERS

From time to time, it may become necessary to consider waiving a portion of law, regulations, or school board policy. Such changes should be considered in light of school improvement. This section would create a vehicle for such action if it becomes necessary while affording the maximum involvement of the association in the protection of unit member rights. This provision provides a mechanism to waive law, regulation, or policy. See Article 4, Negotiations Procedure for contract amendments and site specific contract amendments. See also Article 28, School Improvement, for suggested association bylaws language concerning waivers of contract provisions.

SAMPLE LANGUAGE

- 12.9 Waivers of Law, Regulation, and Policy
 - 12.9.1 Before seeking any waiver of state or federal law, regulations, or school board policy for the District or a particular worksite, the District shall make available such request for waiver to the Association and seek approval of the Association. Baring such approval, the District shall not seek the waiver.

LEGAL REFERENCES

A. Education Code Sections Cited

35291.5 - School discipline committee
35294 through 35294.5 - School safety plans
44666 through 44669 - School-based management and advanced career opportunities programs (SBDM)
44670.1 through 44671.5 - Local staff development programs
44680 through 44680.8 - Resource agency or consortium
51215 - Proficiency standards in basic skills
52012 - Establishment of school site council
52019 - School improvement program - staff development program
52800 - School based program - legislative intent
52820 - Waiver approval and exceptions
52850 - School plans - qualifying districts
52870 - Advisory committees - consolidation of committees

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Act
3543.1 - Rights of Employee Organizations
3543.1(b) -Use of Facilities
3543.1(c) - Released Time for Negotiations and Processing Grievances
3543.1(d) - Membership Dues Deduction

ASSIGNMENT, TRANSFER AND REASSIGNMENT

ARTICLE 13

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ARTICLE 13

ASSIGNMENT, TRANSFER AND REASSIGNMENT

TRANSFER AND REASSIGNMENT is one of the most commonly grieved Articles. Although CTA recommends that strict seniority and credentialing be used in filling assignments, many Associations, through the give and take of the bargaining process, add other criteria. Some contracts give a great deal of latitude to management in establishing where unit members work. In some cases the contract is strong on transfers between schools but not between assignments within a school.

The best strategy that an Association can use if criteria other than seniority and credentialing are used is to limit management discretion in transfers and reassignments. Establish criteria that seem fair to all applicants without giving management the right to pick and choose. This eliminates management playing favorites and gives everyone a fair chance at openings.

Most transfer and reassignment provisions offer some type of definition for transfer and reassignment. Check the definition carefully. Be sure that the definitions cover all possibilities for transfers and reassignments. Some definitions are so narrow in scope that management is given extreme latitude because what they are doing is outside the definition of a transfer or reassignment.

TOPIC: VOLUNTARY TRANSFER/REASSIGNMENT

Voluntary transfers and reassignment rights give an employee the ability to apply for vacant positions. These may be within a worksite or between worksites.

SAMPLE LANGUAGE

13.1 Voluntary Transfer/Reassignment

- 13.1.1 A transfer is the movement of a unit member from one work location to another work location, or from one program to another program such as year-round education, restructured schools, or reconfiguration. The transfer may include a change in grades or subject area as long as the move involves changing worksites.
- 13.1.2 A reassignment is the movement of a unit member from one subject area to another subject area, one grade level to another grade level, or from one configuration to another such as team teacher, restructuring, or other reconfiguration within the same worksite.
- 13.1.3 A unit member may submit a request for transfer to the District at any time, whether or not a vacancy exists. A unit member may also submit a request for a transfer subsequent to the posting of a vacancy notice pursuant to the posting procedure of this Article.
- 13.1.4 If two (2) or more unit members with state required credentials for the position apply for a vacancy, the unit member with the greatest seniority shall receive the transfer.
- 13.1.5 A transfer request shall not be denied arbitrarily, capriciously, or without basis in fact.
- 13.1.6 If a unit member's request for a voluntary transfer is denied, the unit member, upon request, shall be granted a meeting with the administrator who denied the request to discuss the reasons for the denial. Following the meeting the unit member may request and shall receive written reasons for the denial.
- 13.1.7 If the unit member requests that her/his application for transfer be kept confidential, the supervisor at her/his worksite shall not be notified by the District of the application.
- 13.1.8 Unit members returning from leave shall be afforded all rights provided under this section.

TOPIC: INVOLUNTARY TRANSFER/REASSIGNMENT

This provision limits the district's ability to make unilateral changes in transfers and reassignments. Unit members should not be penalized because of bad planning or malicious intent on the part of the District.

SAMPLE LANGUAGE

13.2 Involuntary Transfer/Reassignment

- 13.2.1 Involuntary transfer/reassignment shall be made only for the following reasons: A decrease in the number of pupils which requires a decrease in the number of unit members pursuant to Article 27, Class Size; elimination of program(s) and/or funding; or worksite closings.
- 13.2.2 If a decrease in the number of pupils or the elimination of program(s) and/or funding occurs, the District shall seek volunteers prior to making any involuntary transfer/reassignment. If an involuntary transfer/reassignment becomes necessary, the unit member with the least seniority with the appropriate credential shall be transferred or reassigned.
- 13.2.3 If a particular site is to be closed, unit members at that site shall be accorded first priority for filling any new or vacant positions at the site or sites to which the pupils at the closing site are being placed.
- 13.2.4 Unit members from the closed site shall also be accorded first priority in filling all vacancies that arise for which they have an appropriate credential. When two (2) or more unit members apply for the same vacancy, the position shall be given to the unit member with the greatest seniority.
- 13.2.5 Unit members returning from leave shall be afforded all rights provided under this section.
- 13.2.6 Unit members who are transferred/reassigned during the work year shall be allowed _____ days of paid release time for preparation prior to the effective date of the transfer/reassignment. The District shall provide assistance in moving a unit member's material whenever a unit member is transferred/reassigned.

TOPIC: NOTIFICATION OF ASSIGNMENT

This section of the Article gives a unit member time to prepare for any possible changes in assignments.

SAMPLE LANGUAGE

13.3 Notification of Assignment

Each unit member shall be given written notice not later than _____ of the next year's assignment. Such notice shall specify the building, grade, grade level, subject area and position to which the unit member will be assigned. In addition, such notice shall explain the nature of special problems, which may be experienced by pupils assigned to the unit member.

13.3.1 Assignment Limitations

13.3.1.1 Unit members shall be assigned only to positions for which they hold a valid California credential, and for which they are qualified.

13.3.1.2 At a unit member's sole discretion, the unit member may agree to an assignment outside the unit member's credential authorization(s), providing that the District shall secure all the necessary waivers, emergency credentials, and district Committee on Assignments approval.

13.3.1.3 At the end of a school year, the unit member, at her/his sole discretion, may withdraw from the voluntary assignment referred to in Section 13.3.1.2 above. Subsequently, the unit member shall be assigned in accordance with Section 13.3.1.1 above.

(NOTE: See also Section 13.6 for more detailed assignment language.)

TOPIC: VACANCIES

Some contract definitions are very narrow and limit opportunities for unit members to change assignment. This happens particularly for mid-year vacancies and reassignments. Posting of vacancies throughout the year will allow unit members greater opportunities to transfer whenever vacancies occur.

SAMPLE LANGUAGE

(NOTE: See Article 33, Year-Round Education, for additional information and recommendations.)

13.4 Vacancies

13.4.1 A vacancy is any position that does not have a unit member assigned to it. This includes any vacated, promotional, or newly created position, including positions created by reconfiguration or restructuring and any supplemental instructional programs offered by the District.

13.4.2 Upon knowledge of vacancies, the District shall deliver to the Association and post in all worksites a list of all vacancies which occur during the work year and for the following work year. The list shall contain the following:

13.4.2.1 A closing date which is at least ten (10) working days following the posting date.

13.4.2.2 A job description.

13.4.2.3 Credentials and qualifications necessary to meet the requirements of the position.

13.4.3 No assignment to fill the vacancy shall be made until after the closing date.

13.4.4 The District shall, upon request by a unit member, notify that unit member by mail of any posted openings which may arise during the summer recess, intersession or a period of leave. The unit member's request must be in writing and must include a mailing address.

13.4.5 If a unit member already has a transfer application on file, it is not necessary to make a further application in order to be considered for any vacancies.

- 13.4.6 The District shall, upon request of the unit member, deliver in writing, the reasons for the unit member not receiving the vacancy.
- 13.4.7 No outside applicant shall be selected to fill a vacancy if there is a qualified unit member applicant.

TOPIC: SENIORITY

Seniority defines a unit member's initial date of service in the bargaining unit. Length of service should be a factor which contributes to the employee's advancement and job security.

SAMPLE LANGUAGE

- 13.5 Seniority
 - 13.5.1 Seniority is defined as the unit member's initial date of service in the bargaining unit.
 - 13.5.1.1 Unit members with the same initial date of service shall have their seniority number determined by lot.
 - 13.5.1.2 The lottery shall be conducted in the presence of at least two (2) Association representatives. Once the lottery is used to determine a unit member's seniority, that seniority shall remain in effect while in the service of the District.
 - 13.5.1.3 If a unit member is assigned by the District to a non-bargaining unit position, that unit member does not accrue seniority for the purposes of this Article while working on such an assignment.
 - 13.5.1.4 A unit member on a District approved leave of absence other than to a non-bargaining unit position shall continue to earn seniority while on leave.
 - 13.5.2 A unit member's seniority shall accrue during layoff.
 - 13.5.3 Seniority shall be the determining factor in granting all transfers, assignments and reassignments.

TOPIC: MISASSIGNMENT/TEACHER CERTIFICATION

This section clarifies teacher rights when they are assigned outside their certification. When teachers are assigned outside of their credentialed area, they need to know what to do about it.

The language proposed here is for special and sometimes temporary teaching authorizations where the District, through action of its governing board, has discretion. Legislation provides for additional latitude in certification for which the District has no discretion and, as a consequence, has been omitted from these provisions since the sample language includes all appropriate code sections by reference. Of course, if the references are removed from the language in bargaining, these sections need to be placed in the contract.

Section 13.6.4 provides for the contractual responsibility of the District to enter the procedure of advising the County Superintendent of potential misassignment on or after July 1, 1989. This makes the District potentially liable through the application of paragraph 13.6.3. However, this does not prevent the local Association or unit member from submitting their own notice. If the language in Section 13.6.3 is modified, the Association should include a notice form in the contract.

Except in the save harmless language in Section 13.6.3, the language does not contain any provision where an individual seeking additional teaching authorization who is more senior to another individual with traditional authorization might bump such an individual into layoff jeopardy. Inasmuch as most of these provisions have application to secondary schools where there remains some residual jeopardy to layoff, the Association may want to add or amend the language.

SAMPLE LANGUAGE

13.6 The provisions of Education Code Sections 44256, 44258.5 and 46300, 44258.1, 44258.2, 44258.7 and by reference Section 44258.9, as they relate to bargaining unit members, are incorporated into this section by the District and the Association as though fully set forth. In furtherance of this provision:

13.6.1 Members of the bargaining unit shall be assigned or reassigned to classes consistent with their credentials and major and/or minor subjects of study except as may be hereinafter provided. Where such exceptions are permitted, they shall occur only by mutual agreement among the bargaining unit members affected, the Association, and the District.

13.6.1.1 A bargaining unit member who qualifies under the provisions of Education Code Section 44256(b) to teach departmentalized classes or groups of pupils below grade 9, and who applies for authorization from the District, shall not be denied such authorization.

- 13.6.1.2 A bargaining unit member who qualifies under the provisions of Education Code Section 44258.2 to teach classes in grades 5 to 8, inclusive, in a middle school and who applies for authorization from the District, shall not be denied such authorization.
- 13.6.1.3 A bargaining unit member who qualifies under the provisions of Education Code Section 44258.5(a) to teach any single subject classes and who applies for authorization from the District, shall not be denied such authorization.
- 13.6.1.4 A bargaining unit member who qualifies under the provisions of Education Code Section 44258.7(b) to coach competitive sports for which pupils receive physical education credit and who applies for authorization from the District, shall not be denied such authorization.
- 13.6.2 Upon employment, assignment, or reassignment, a bargaining unit member shall be advised by the District, both orally and in writing, of the provisions of Education Code Sections 44256, 44258.5 and 46300, 44258.1, 44258.2, 44258.7 and 44258.9. Such notice, however, shall not relieve the District of responsibility to safeguard the rights and benefits of proper assignment or reassignment provided to the bargaining unit member under the Education Code and this Agreement.
- 13.6.3 Bargaining unit members shall be held harmless from the effects of any misassignment, whether voluntary or not, in any matter including, but not limited to, evaluation, transfer, salary, including extra duty salary, discipline, and layoff.
- 13.6.4 Any bargaining unit member who may have been inadvertently misassigned shall be provided with a notice of possible misassignment addressed to the County Superintendent. Such notice shall be signed by the bargaining unit member and transmitted forthwith by the District to the County Superintendent. A time-dated copy of this notice shall be provided to the bargaining unit member and the Association.
- 13.6.5 All reports, notifications, certifications, or verifications whose submission is required by Education Code Sections 44256, 44258.5 and 46300, 44258.1, 44258.2, 44258.7 and 44258.9 from the District to the County Superintendent or from the District to any other agency shall be provided to the Association.

- 13.6.6 A Committee on Assignments shall be established to evaluate and approve applications from bargaining unit members to teach for up to 40% of a full-time teaching assignment outside of the bargaining unit member's credential authorization. This committee shall be comprised of an equal number of teachers who are members of the bargaining unit and site administrators. Teachers shall be selected in a manner determined by the Association. Paid release time shall be provided to bargaining unit members in order for them to perform whatever duties and attend whatever meetings are necessary from time to time in the performance of their duties on the committee.

TOPIC: SCHOOL/SITE RECONSTITUTION

In the last few years, the concept of "reconstituting" under-achieving schools has drawn national attention. Reconstitution may involve replacing all of the staff at a school, as well as other drastic measures. In addition, the enactment of SB 1X (Public School Accountability Act of 1999) has added more fuel to the reconstitution idea. Under this legislation, a school which continually under-performs for two or more years could be subject to several penalties, including the reassignment of certificated employees at the school. Locals should bargain as much unit member protection as possible in the event of reconstitution of a school/site.

SAMPLE LANGUAGE

- 13.7 Unit members who are to be involuntarily transferred from a reconstituted school/site shall be placed in another District position for which they are credentialed and qualified.
- 13.7.1 Unit members involuntarily transferred from a reconstituted school/site shall be accorded the same rights as unit members leaving a closed school, as referenced in Section 13.2.4.
- 13.7.1.1 The "first priority" to fill vacancies given to reconstituted and closed school unit members shall mean that such unit members shall be placed in vacancies prior to placing voluntary transfers, new hires, and/or returning temporary and leave of absence unit members into vacancies.
- 13.7.1.2 Unit members involuntarily transferred from a reconstituted school site shall be given _____ days (*locals should include a reasonable number of days acceptable to members*) of release time or paid time at the unit members' pro-rata daily rate of pay for the purposes of moving to their new assignment. In addition, the District shall provide packing and moving assistance of unit members' materials to the new assignment location.

LEGAL REFERENCES

A. Education Code Sections

- 35035 - Transfer/assignment (additional powers & duties of superintendent)
- 44824 - Transfer/assignment (weekend classes; assignment of certified employees)
- 72290 - Transfer/assignment (employment of Personnel; salaries & benefits)
- 72413 - Transfer/assignment (additional powers & duties of superintendent)
- 44857-44872, 44874, 44877, 44879-44880, 44882, 44887, 44890 - Vacancies
(qualifications to fill certified positions)
- 44846 - Seniority (general provisions concerning order of employment)
- 44847 - Seniority (date of employment when school transferred from one district to another)
- 44848 - Seniority (date of employment in case of resignation or dismissal & reemployment; date of employment in case of certain terminations)
- 52050 et seq. - Public School Accountability Act of 1999

B. Government Code Sections

- Government Code, Chapter 10.7 - Educational Employment Relations Board
- 3543 - Rights of Employees
- 3543.2 - Scope of Representation
- 3543.5 (a) - Discrimination/Reprisals

WORK PRESERVATION/ REDUCTION IN FORCE/ SUBCONTRACTING

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ARTICLE 14

WORK PRESERVATION/ REDUCTION IN FORCE/ SUBCONTRACTING

REDUCTION IN FORCE negotiations is something that Associations hope they never have to deal with. Along with the advent of collective bargaining and the damaging effects of Proposition 13, the then shrinking statewide ADA put great pressure on the Association to mitigate the impact of the layoff of certificated employees. Early in the history of the EERA it was determined that the Education Code gave school districts an uncontested right, subject to Education Code criteria, to make the decision whether or not to layoff. This right was most recently articulated by PERB in *Newman-Crows Landing Unified School District*.

The layoff of employees unquestionably impacts on their wages, hours, and other conditions of employment. It may concurrently impact on those employees who remain. Nevertheless, the determination that there is insufficient work to justify the existing number of employees or insufficient funds to support the work force is a matter of fundamental management concern which requires that such decisions be left to the district's prerogative.

Early attempts were made, through collective bargaining, to constrain and modify the implementation of the layoff procedures employed by school districts. Most of these attempts, such as the bargaining attempt to restore the lottery for certificated employees who held the same first day of paid service, fell to the California Supreme Court's principle of an inflexible Education Code standard preventing the erosion of the rights of one of the parties (in this case, the rights of the school district).

There remains, however, within the scope of representation, the right to negotiate the effects, or impact, of the school district's determination to layoff, both with respect to the bargaining unit members to be laid off and the bargaining unit members who remain. Additionally, procedures to be used, to the extent that they do not conflict with Education Code procedures, are negotiable.

With a growing shortage in the supply of credentialed teachers and a concomitant increase in pupil enrollment (particularly in the elementary schools), layoffs have decreased from a high in the early 1980's. Most layoffs today occur in geographic areas where the high cost of housing limits access to families with younger children, where high school programs are unaffected by the growing elementary population, and in reaction to military base closings. In addition to these sources of potential layoff, some school districts have sought to reduce the cost of programs through reduction in particular kinds of services. This final source of layoff and cost cutting could give Associations their greatest concern. Fortunately, current law relating to the impact of the decision to lay off on the remaining teachers in a school district gives the Association a method of controlling such practices.

A reduction in force provision guarantees that there shall be no layoffs or elimination of bargaining unit positions during the term of the Agreement or provides certain benefits for bargaining unit members who are laid off. A primary function of the Association is to win for its members as much job security as possible. In the event that job security cannot be maintained, providing rights and benefits to aid the laid off unit member's transition to a new job is important.

In recent years, discussions about privatization of public schools, and the alleged cost savings which may result from placing certain school district functions in private sector hands has made contracting out of bargaining unit work an important issue for local chapters to address. Typically, districts will attempt to place in the management's rights clause of a contract (see Article 9, Management Proposals) the district's right to contract out bargaining unit work whenever the district deems it necessary. The sample language provided here is designed to prohibit such contracting out and/or subcontracting of bargaining unit work.

Contracting out raises very complicated legal and organizational issues. Local chapters faced with contracting out problems should contact their local CTA staff for assistance.

SAMPLE LANGUAGE

(NOTE: Always maintain statutory rights as the floor of what may be bargained.)

PREFERRED PROVISION:

- 14.1 There shall be no reduction in force of bargaining unit members during the term of this Agreement.
- 14.2 There shall be no reduction in the number of bargaining unit positions during the term of this Agreement.
- 14.3. The District shall not contract or subcontract with any other individual or organization for services provided by members of the bargaining unit.

IN THE EVENT THE PREFERRED PROVISION CANNOT BE BARGAINED:

- 14.1 Prior to the issuance of any layoff notices to bargaining unit members, the District shall have done the following:
 - 14.1.1 At least fifteen (15) days, but no later than March 1, prior to the issuance of layoff notices, the District shall notify the Association of its intent to lay off bargaining unit members. Concurrent with such notification, the District shall provide the Association with all pertinent information relating to the contemplated layoffs, including, but not limited to the following:
 - 14.1.1.1 The names, addresses, and home phone numbers of unit members being laid off;
 - 14.1.1.2 The names of all certificated non-unit members being laid off;
 - 14.1.1.3 A list of all certificated employees ordered by seniority, identifying unit members, work location, assignment, and credentials held;
 - 14.1.1.4 A list of all temporary certificated employees, indicating credentials held;
 - 14.1.1.5 A list of all substitute, part-time, and other employees performing bargaining unit work, not identified above, indicating the number of hours per week worked by each employee;

- 14.1.1.6 A class size report comparing current, pre-layoff status with the projected class size impact resulting from contemplated layoffs; and
- 14.1.1.7 A list of assignment/reassignment and transfer changes contemplated as a result of anticipated layoffs.
- 14.1.2 Within five (5) days of the notification by the District of contemplated layoffs, the District shall meet with the Association to negotiate the impact of the District's potential determination to layoff unit members regarding any matters not covered by this Article.
- 14.1.3 Notwithstanding the District's determination to layoff members of the bargaining unit, no remaining member of the bargaining unit shall have her/his class size or work load increased as a direct result of such layoff.
- 14.1.4 In the event of layoff, the District shall not subcontract work formerly performed by laid off unit members to any outside entity.
- 14.1.5 In the event of layoff, the District shall not divert bargaining unit work formerly performed by laid off unit members to any other bargaining unit or member of such a bargaining unit.
- 14.1.6 In the event of layoff based upon a reduction or elimination of a particular kind of service, the work required in the delivery of such services shall not be reassigned to remaining members of the bargaining unit who have not, heretofore, performed such services in the regular exercise of their normal duties.
- 14.1.7 Members of the bargaining unit who are laid off, and whose layoff is thereafter found to be inconsistent with provisions of law, or regulations having the effect of law, shall be immediately restored to employment with no loss in salary or benefits.
- 14.2 Members of the bargaining unit who are laid off shall receive:
 - 14.2.1 Severance pay valued at the current rate of all accumulated sick leave or any additional compensated leave provided for in this Agreement;
 - 14.2.2 Up to five (5) days of paid leave to be used in seeking other employment; and
 - 14.2.3 The cost of tuition and textbooks for laid-off unit members who must take courses necessary to retrain and qualify for potentially vacant positions for this or another District.

- 14.2.4 Unit members who are laid-off shall be entitled, along with their dependents, to continue enrollment in any health and welfare plan offered by the District. The District shall pay the full cost of such plans for the laid off unit member and her/his dependents for six months following the date health and welfare benefits would otherwise expire. Thereafter, the laid off unit member may, if she/he chooses, continue to pay the necessary premiums on a monthly basis as provided by COBRA.
- 14.3 The provisions of the Education Code relating to the procedures for layoff are incorporated into this Agreement as though fully set forth.
- 14.4 During the term of this agreement, the District shall not contract or subcontract with any other individual or organization for services provided by members of the bargaining unit.

LEGAL REFERENCES

A. Education Code Sections Cited

44948-44960 - Dismissal
87740-87746 - Dismissal - community colleges

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Act
3543.2(c) - Scope of Representation - Layoffs

PROFESSIONAL RIGHTS

ARTICLE 15

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ARTICLE 15

PROFESSIONAL RIGHTS

EVALUATION is one of the key Articles in the establishment of due process. It provides procedures to protect unit members from arbitrary and capricious disciplinary actions which could have the effect of an arbitrary transfer, freezing on the salary schedule, entering derogatory or defamatory materials into personnel files, and other types of harassment which are not justified by the actions of the unit member.

TOPIC: EVALUATION PROCEDURE

This provision establishes a procedure of systematic appraisal of an employee's work performance on a regular basis. The primary purpose of any employee evaluation is to improve the educational process of the District and to develop the highest professional competence on the part of each employee.

SAMPLE LANGUAGE

15.1 Evaluation Procedure

- 15.1.1 It is recognized that a system of periodic evaluation is essential to assist teachers in developing competency and realizing their potential. It is further recognized that information gathered through such a system will enable Board of Education decisions, for which a unit member's competence is relevant, to be made in a just and equitable manner.

- 15.1.2 Probationary and temporary unit members shall be evaluated each school year. Permanent (tenured) unit members shall be evaluated every other school year. If a unit member is scheduled to be evaluated during a particular school year, but is granted a leave of absence for one (1) semester or longer, such evaluation shall take place during the first year of return to duty.
- 15.1.3 Unit members to be evaluated during a particular year shall be furnished a copy of the evaluation procedures, advised of the criteria upon which the evaluation is to be based, and notified of the identity of their evaluator no later than October 1 of the year in which the evaluation is to take place.
- 15.1.4 The unit member being evaluated and the evaluator shall meet no later than October 15 to discuss:
 - 15.1.4.1 Objectives and standards to be achieved during the evaluation period.
 - 15.1.4.2 A schedule of observations, conferences and final evaluation date. In the event of a disagreement over the objectives, standards and/or evaluation schedule, the unit member and the evaluator shall:
 - 15.1.4.2.1 Make a good faith effort to resolve the differences themselves.
 - 15.1.4.2.2 If the disagreement persists, the parties may invite a third party to assist in resolving the differences. The third party shall recommend alternatives to the unit member and evaluator.
 - 15.1.4.2.3 If either the unit member or evaluator reject the proposed alternatives, each shall have the opportunity to state their position on the matter(s) in dispute, and to have a written statement attached to the evaluation form.
 - 15.1.4.2.4 The unit member shall have the right to identify any constraints which the unit member believes may inhibit her/his ability to meet the objectives and standards established.

- 15.1.5 During the course of the evaluation period circumstances may change which require modification of the original objectives and standards. The unit member may initiate a change of these objectives and standards in a manner prescribed in Section 15.1.3 above.
- 15.1.6 The evaluation process shall include the following activities:
- 15.1.6.1 Classroom observations shall last at least thirty (30) minutes; shall be made known to the unit member at least two (2) days prior to their occurrence; shall be followed by a conference with written feedback within three (3) days of the observation; and shall ordinarily be three (3) in number. With agreement of both the unit member and the evaluator, the number of classroom observations may be reduced to two (2) or one (1) in case of obvious satisfactory performance by permanent unit members. A unit member who receives a negative evaluation shall, upon request, be entitled to additional classroom observations, evaluation conferences and written evaluations. Such entitlement includes a pre-observation conference.
- 15.1.6.2 The immediate supervisor shall meet with first-year probationary employees within 30 calendar days of the close of the first semester. At this meeting, the immediate supervisor shall review the teacher's performance in the first semester and inform the teacher whether any problems were noted that could result in the teacher being denied permanent status. If any such problems are identified, the immediate supervisor shall provide the unit member, at this meeting, with a written statement of those problems. In addition, the immediate supervisor shall provide the employee, at this meeting, with a written assistance plan (see Section 15.1.6.3) designed to allow the unit member to make the improvements necessary to attain permanent status. If any problems are identified following this meeting that could result in the teacher being denied permanent status, the teacher shall be informed of those problems in writing within ten (10) days and provided with a written assistance plan (see Section 15.1.6.3) designed to allow the unit member to make the improvements necessary to attain permanent status.

(NOTE: It is extremely important that local associations negotiate clear and specific language that defines an "unsatisfactory" evaluation based on the specific procedures and forms used in the Evaluation Article. Referral of a unit member to the Peer Assistance and Review (PAR) program depends on such a clear definition. See Article 29, Peer Assistance and Review.)

- 15.1.6.3 In the case of negative evaluation(s), or if any problems are noted as per Section 15.1.6, the evaluator shall take positive action to assist the unit member in correcting any cited deficiencies. The evaluator's role to assist the unit member shall include, but not be limited to, the following:
 - 15.1.6.3.1 Specific recommendations for improvement.
 - 15.1.6.3.2 District assistance to implement such recommendations.
 - 15.1.6.3.3 Provision of additional resources, without cost to the unit member, to be utilized to assist with improvements.
 - 15.1.6.3.4 Techniques to measure improvement.
 - 15.1.6.3.5 Time schedule to monitor progress.
- 15.1.6.4 In preparing the final evaluation form for placement in the unit member's personnel file, the evaluator shall rely primarily upon data collected through classroom observations and evaluation conferences. Any deficiencies that may have been brought to the attention of the unit member, and subsequently corrected, shall not be included in the final evaluation form. Unsubstantiated statements shall not be included in the evaluation.
- 15.1.7 A unit member shall not be evaluated on or held accountable for any aspect of the educational program over which the unit member has no authority or ability to correct deficiencies.
- 15.1.8 A final evaluation conference between the unit member and evaluator shall be held no later than 60 days prior to the end of the school year to discuss the content of the final evaluation form. In the event the unit member disputes the content, the unit member may prepare a written statement which shall be attached and incorporated into the final evaluation. The final evaluation form shall contain only ratings of "satisfactory" or "unsatisfactory."

- 15.1.9 Unit members shall not be required to participate in the evaluation(s) and/or observation(s) of other unit members, except as provided for in the Peer Assistance and Review (PAR) Article of this Agreement.
- 15.1.10 The evaluation of unit members, pursuant to this Article, shall not include or be based upon the following:
- 15.1.10.1 Standardized achievement test results, except as mandated in Education Code Section 44662 which may require the use of state adopted criterion referenced assessments related to statewide content standards.
 - 15.1.10.2 Results of any tests utilized for the purpose of a School Improvement Plan.
 - 15.1.10.3 Achievement of objectives stated in Individual Educational Programs (IEP's) of special education pupils.
 - 15.1.10.4 Utilization of any "clinical supervision" techniques unless specifically agreed to by the unit member being evaluated.
 - 15.1.10.5 Correlation of classroom curriculum to state or local curriculum frameworks, except as mandated in Education Code Section 44662 which may require classroom curriculum to conform to statewide content standards.
 - 15.1.10.6 The success, or lack thereof, of an instructional or clerical aide in the performance of tasks assigned by the unit member.
 - 15.1.10.7 The personal life or lifestyle of a unit member, their personal opinions, scholarly, literary, or artistic endeavor of a unit member.
 - 15.1.10.8 Intercoms and television cameras used for communications and monitoring safety conditions shall not be used for the purposes of evaluation, discipline, or discharge of unit members.

(NOTE: Cross reference Section 15.1.10.8 with Section 22.1.7 in Article 22, Safety.)

- 15.1.11 Association representative(s) may be present at meetings described in this Article.

TOPIC: AUTHENTIC ASSESSMENT AND PORTFOLIOS

Authentic Assessment is described as a form of pupil evaluation and teacher evaluation based upon a wide variety of sources placed in a real-life framework as much as possible. This Article encompasses the two components of Authentic Assessment that relate to teacher involvement in the process. The first is pupil evaluation, including design, training, preparation, evaluation of the pupil and program, and teacher accountability for the outcomes. The second is teacher evaluation, including design, training, preparation, evaluation of the program, teacher evaluation, and teacher remediation if necessary.

Authentic Assessment is a way of measuring performance or progress where the evaluatee is asked to perform specific behavior in a context like that encountered in real life. Authentic Assessment may include the use of portfolios.

Formative Evaluation is an ongoing assessment, the purpose of which is to improve instruction. It is elective, developmental and growth oriented, and intended for the exclusive use of teachers. By its very nature, the information in formative assessment is to be the property of the teacher being assessed.

Summative Evaluations are conducted by administrators for accountability purposes within the guidelines established by state legislation and the Collective Bargaining Agreement. In order to preserve the integrity of the two types of evaluation systems, information gathered during formative evaluation may not be used for summative evaluations; and vice versa.

A **pupil portfolio** is a systematic collection of annotated work, selected by the pupil and/or teacher, reflecting lessons, skills and evidence of educational growth and development. The portfolio process unfolds and extends over time, thus providing a time lapse view of the pupil's progress toward meeting expected learning outcomes.

A **teacher portfolio** is a systematic collection of annotated work, selected by the teacher and evaluator, reflecting teaching lessons, skills, and evidence of professional growth and development. The portfolio process unfolds and extends over time, thus providing a time lapse view of the teacher's pedagogical capacities.

These provisions, which should be part of the Professional Rights Article, reflect the use of Authentic Assessment as it relates to teacher duties and evaluation. It establishes the framework for such duties and evaluations to take place. **Do not propose this language unless it becomes necessary.**

SAMPLE LANGUAGE

- 15.2 Authentic Assessment and Portfolios
- 15.2.1 It is the intent of the parties to establish a jointly developed authentic assessment evaluation process for pupils and teachers of the District to further the ability of pupils to reach educational goals established by the District and state. The use of authentic assessment is intended to improve learning and pedagogical skills.
- 15.2.2 The District, in conjunction with the Department of Education shall establish expectations for pupils at the various grade levels and courses of study offered by the District. This District process shall require the involvement of the Association and teachers as equal partners in decision-making authority. It is the intent of the parties that parents, pupils and teachers clearly know what is expected for pupil outcomes. The District shall administer no tests or other evaluative instruments unless they conform to these mutually developed expectations. These expectations may also be known as clearly written objectives for the appropriate class.
- 15.2.3 The parties agree to form a joint District and Association committee to establish a system of authentic assessment for pupils and teachers of the District. The authority of the committee shall be to establish learner expectations and the general framework, philosophy, training and logistical establishment of such an assessment system. The committee has no authority to amend or operate outside provisions of this Agreement.
- (NOTE: Section 15.2.3 or 12.6.2 may need additional language to elaborate on the composition and general operating rules of the joint committee.)
- 15.2.4 The District shall provide release time or hourly rate of pay for unit members to develop training, receive mutually developed training in authentic assessment, receive inservice, manage pupil portfolios, and the establishment of common preparation time for appropriate groups of teachers such as by department or grade level.
- 15.2.5 Portfolios shall be used in the following ways:
- 15.2.5.1 Pupil portfolios are to be used with pupils and parents to help improve the learning of the pupil. They are intended to remain with the pupil throughout the pupil's attendance at the school, from grade to grade.

15.2.5.2 Teacher portfolios and other records of performance are to be used to improve pedagogical skills. They are the property of the teacher and the teacher maintains sole control of the materials contained in the portfolio.

(NOTE: This is the place to expand the use of the portfolio if necessary into the evaluation process. If this is necessary the following is suggested.)

15.2.6 If the portfolio and similar evidence of performance is to be used for formal written evaluations of a teacher, only materials mutually agreed to by the teacher and immediate supervisor may be placed in the portfolio. The portfolio, in this case, must be kept in a place available only to the teacher and immediate supervisor. No other person may have access to this material without the written consent of the teacher. The District shall provide secure storage space for portfolios.

(NOTE: If the Association cannot bargain the "only materials mutually agreed to" section thereby allowing the immediate supervisor to put things in the portfolio, limits on the types of materials and when they can be placed in the portfolio would be necessary to protect the teacher from undue criticism.)

15.2.7 The District shall provide necessary resources such as, but not limited to, materials, technical assistance, and logistical support for teachers to successfully implement an authentic assessment program.

15.2.8 The District guarantees to the teachers and Association that it will support and nurture an environment for teachers to experiment with new assessment programs without fear of reprimand or any other disciplinary action, including dismissal.

15.2.9 A unit member may terminate participation in an assessment program that is failing to meet expectations or disrupting the learning and/or working environment.

15.2.10 The unit member and/or Association have the right to eliminate untrue material from the assessment, including the portfolio. Derogatory material placed in the portfolio must be true and the teacher has the right of rebuttal to such material before it is placed in the portfolio. No derogatory material may be placed in the portfolio or otherwise recorded which is more than two weeks old or related to an event that happened more than two weeks earlier. Derogatory material is defined, as any material the teacher feels is derogatory.

TOPIC: PERSONNEL FILE

This provision guarantees employees the right to review the contents of their personnel file, to receive copies of materials contained therein, and to establish a record of who has had access to their file. Employees must have the opportunity to examine personnel files maintained by the District for materials concerning their work performance. This right protects the employee from unwarranted discipline or discharge based upon materials improperly placed in the file or materials that need to have statements attached to them explaining additional circumstances that documents properly placed in the file do not explain.

SAMPLE LANGUAGE

15.3 Personnel Files

15.3.1 There shall be a single personnel file for each unit member. Personnel files shall be kept in the central administrative office of the District. Information of a derogatory nature maintained by the District or District's Administrators, shall be destroyed at the end of each school year and shall not be used in any decision affecting the discipline, employment status or assignment of a unit member unless that information has been entered into the personnel file in accordance with the procedures in Section 15.2.3.

15.3.2 Materials in the personnel file of a unit member, except as noted below, shall be made available for inspection by the unit member involved. Unit members shall have the right to inspect and obtain a copy of personnel file materials, upon request. Upon authorization by the unit member, an Association representative may review the unit member's file or accompany the unit member in her/his review of the file. Material which may be excluded from inspection shall be limited to ratings, reports or records which:

15.3.2.1 Were obtained prior to the employment of the unit member involved.

15.3.2.2 Were prepared by identifiable examination committee members.

15.3.2.3 Were obtained in connection with a promotional examination.

- 15.3.3 Information of a derogatory nature, except material excluded in accordance with Section 15.3.2 above, shall not be entered or filed unless and until the unit member is given notice and an opportunity to review and comment thereon. A unit member shall have the right to enter, and have attached to any such derogatory statement, her/his own comments thereon. Such review, and any preparation of comments in response to the material and/or statement, shall take place during normal business hours, and the unit member shall be released from duty for this purpose without salary reduction. If the unit member alleges that the material is false and/or unsubstantiated, a grievance may be initiated to determine the validity of such material. The material shall not be entered or filed unless and until such grievance sustains the material. In the event the District fails to comply with the provisions of this section, such material shall not be allowed as evidence in any disciplinary or dismissal action against the unit member or used by the District in any grievance filed by the unit member.
- 15.3.4 All material placed in a unit member's personnel file shall be dated and signed by the person who caused the material to be prepared. Material shall be added in a timely fashion and in no circumstances shall material be added that is over one (1) month old. Documents created within this one (1) month time limitation shall not include references to other documents or events in excess of this one (1) month limitation.
- 15.3.5 The District is prohibited from basing decisions affecting the assignment, discipline, or status of employment of a unit member upon materials not contained in or events not referenced in the personnel file.
- 15.3.6 Access to a unit member's personnel file shall be limited to a "need to know" basis. Access authorization must be obtained from either the Superintendent or Superintendent's designee. The contents of all personnel files shall be kept in strictest confidence. The District shall keep a log indicating the persons who have requested to examine a personnel file, as well as the dates such requests were made. Such log shall be available for examination by the unit member or her/his authorized Association representative.

TOPIC: PUBLIC COMPLAINTS

This provision guarantees that employees will be notified in writing of all public complaints. This gives the employee a chance to respond to or eliminate the complaint from District's records if it is unjustified, or if improved performance has corrected the situation. Many times complaints received by the administration are used to intimidate and evaluate employees. Employees are entitled to receive written notice of such complaints, have the right to respond in writing and have such complaints eliminated from District records if they are unjustified.

SAMPLE LANGUAGE

15.4 Public Complaints

15.4.1 No negative and/or unsatisfactory evaluation, assignment, discipline, dismissal, or other adverse action shall be predicated upon complaints, information or material of a derogatory or critical nature which has been received by the District from pupils, parents, District, employees, public agency, and/or the public, unless the following procedures have been followed:

15.4.1.1 Any public complaint about a unit member shall be reported to the unit member by the administrator receiving the complaint, within five (5) days of receipt, if the complaint may be placed in the unit member's file or used against the unit member as described in Section 15.4.1.

15.4.1.2 Should the involved unit member believe the allegations in the public complaint warrant a meeting, the immediate supervisor shall attempt to schedule a meeting between the member and the complainant. At the request of the unit member, Association representative(s) may be present at the meeting. If the complainant refuses to attend the meeting, the complaint shall neither be placed in the unit member's personnel file nor utilized in any evaluation, assignment, or disciplinary or dismissal action against the unit member.

15.4.1.3 If the matter is not resolved at the meeting to the satisfaction of the complainant, complainant may reduce the complaint to writing and submit the original to the unit member, with a copy to the unit member's immediate supervisor. The unit member shall be given time during the duty day, without salary deduction, to review the complaint and prepare responsive comments. If the unit member believes the complaint is false and/or based on hearsay, a grievance may be initiated to determine the validity of such complaint. If no written complaint is received, the matter shall be dropped.

15.4.2 Complaints which are withdrawn, shown to be false, or are not sustained by the grievance procedure shall neither be placed in the unit member's personnel file nor utilized in any evaluation, assignment, or disciplinary or dismissal action against the unit member.

- 15.4.3 All information or proceedings regarding any complaint shall be kept confidential by the District.

TOPIC: PERSONAL AND ACADEMIC FREEDOM

This provision guarantees to employees, full freedom in the exchange of ideas and exempts from the district's area of control non-teaching, non-job-related private and personal actions and relationships. It protects employees from adverse actions based on disagreement regarding how professional obligations are met. Intimidation is greatly lessened when the district is prohibited from interfering with or controlling the employee's personal life.

SAMPLE LANGUAGE

15.5 Personal and Academic Freedom

15.5.1 It is the policy of the District that all instruction shall be fair, accurate, objective, and appropriate to the age and maturity of the pupil(s), and sensitive to the community needs and the needs and values of our diverse cultures and heritages. Academic freedom is essential to the fulfillment of this policy and the District acknowledges the fundamental need to protect unit members from any censorship or restraint which might interfere with the unit member's obligation to pursue truth in performance of their teaching functions.

15.5.1.1 A unit member shall have reasonable freedom in classroom presentations and discussions and may introduce political, religious or otherwise controversial material, provided that said material is relevant to the course content and within the scope of the law.

15.5.1.2 In performing teaching functions, unit members shall have reasonable freedom to express their opinions on all matters relevant to the course content in an objective manner. A unit member, however, shall not utilize her/his position to indoctrinate pupils with her/his own personal, political and/or religious views.

15.5.2 Unit members must be employed, promoted, or retained without discrimination or harassment regarding their personal opinions or their scholarly, literary or artistic endeavors.

- 15.5.3 The personal life of a unit member is not an appropriate concern of the District for purposes of evaluation or disciplinary action unless it prevents the unit member from performing her/his duties.
- 15.5.4 A unit member shall be entitled to full rights of citizenship, and no religious, political or personal activities, or lack thereof, of any unit member shall be used for purposes of evaluation, transfer, disciplinary or dismissal action.

TOPIC: CLASSROOM AIDES AND STUDENT TEACHERS

This provision protects the unit member from adverse evaluation due to a unit member's work with aides, volunteers, and/or student teachers. The importance of this section will depend upon the number of aides, volunteers, and student teachers working in a district and the problems that arise through a unit member's involvement with them. The basic thrust permits the unit member to be actively involved in all facets of her/his working relationships with student teachers and aides, and provides mechanisms for reassignment should the working relationship prove unsatisfactory.

SAMPLE LANGUAGE

Classroom Aides and Student Teachers

- 15.6.1 Unit members shall have the right to interview prospective classroom aides prior to assignment. No instructional or clerical classroom aide shall be assigned to a unit member without her/his consent.
- 15.6.2 The work of instructional and clerical aides shall be under the control and direct supervision of the unit member they are assigned to.
- 15.6.3 The unit member shall periodically discuss with the site administrator the performance of the instructional or clerical aide under her/his supervision. When an unsatisfactory working relationship can be demonstrated to exist between the unit member and an aide, the unit member shall initiate a request to the appropriate administrator that the aide be evaluated and, if necessary, reassigned or dismissed.
- 15.6.4 No instructional or clerical aide or any other classified personnel of the District shall participate in or provide information for the evaluation of a unit member.

- 15.6.5 The District shall work cooperatively with unit members on the assignment of student teachers from teacher training institutions. No student teacher shall be assigned to work with a unit member without the unit member's approval. Unit members accepting student teachers shall be paid the student teacher fee offered by the educational institution.

TOPIC: TEACHING CONDITIONS

This provision guarantees unit members will have the necessary equipment, materials and supplies to perform their duties. This includes access to advanced educational technology for pupils and teachers. Since employees are evaluated on their job performance, it is imperative that the district provide the necessary materials that enable the unit member to properly perform her/his job. The public and business have long supported the integration of educational technology in classrooms.

SAMPLE LANGUAGE

- 15.7 Teaching Conditions
- 15.7.1 A unit member shall not receive a negative evaluation of performance unless the unit member has been provided adequate textbooks, reference books, equipment, supplies, materials, storage space, educational technology, and classroom facilities to properly perform her/his assigned duties.
- 15.7.2 Repairs, setup, and programming of educational technology, equipment, and instructional devices shall be made as soon as possible by qualified personnel. If an item cannot be serviced within one (1) week, the District shall provide an adequate replacement for use during this period.
- 15.7.3 Except in emergencies, necessary repairs and maintenance of classrooms and District facilities shall be made at a time that will not interfere with the instructional program. Should the health, safety, or welfare of pupils or unit members be endangered, immediate action shall be taken by the District to correct the problem.
- 15.7.4 Unit members shall not be expected to use or purchase supplies or personal equipment for their assignment.

- 15.7.5 The District shall provide liability coverage for any personal materials and/or property of unit members while on District property.

(NOTE: Section 15.7.4 may need elaboration to include specific types of materials and/or property and procedures to ensure liability coverage. Is the language intended to include automobiles?)

TOPIC: VOLUNTARY CLINICAL SUPERVISION

The need for additional contract language in an evaluation Article to provide against abuse of any clinical supervision program will vary depending upon the current language in the evaluation Article. Clinical supervision is a formative system of evaluation and best fits into a voluntary system of improvement.

SAMPLE LANGUAGE

- 15.8 Voluntary Clinical Supervision
- 15.8.1 The purpose of clinical supervision is to provide unit members the opportunity to improve pedagogical skills.
- 15.8.2 Participation in clinical supervision shall be on a voluntary basis. No District administrator or other District official may interfere or be involved in the process except as may be requested by the unit member.
- 15.8.3 The Association shall approve all training for unit members participating in clinical supervision. Such training may be provided jointly by the Association and District or may be provided by the District.
- 15.8.4 Unit members involved in clinical supervision shall establish parameters for their evaluations which include such things as evaluative techniques to be used, areas to be evaluated, and a timeline for the accomplishment of evaluation. Unit members shall be provided reasonable release time to accomplish clinical supervision.
- 15.8.5 All material generated through the clinical supervision process is the property of the unit member being evaluated. Such evaluations may not be used by the District for the purposes of administrative evaluations, transfers, disciplinary actions or dismissal of unit members.
- 15.8.6 Unit members who participate in clinical supervision may terminate the process at their discretion.

TOPIC: CALIFORNIA STANDARDS FOR THE
TEACHING PROFESSION

The California Commission on Teacher Credentialing (CTC) has adopted professional standards that will guide teacher preparation programs and new teacher assessments. These standards are organized around six (6) interrelated categories of teaching practice, with several supporting elements under each standard. Contact your CTA staff for complete information about these standards.

1. Create and Maintain Effective Environments for Student Learning.
2. Engage and Support all Students in Learning.
3. Understand and Organize Subject Matter for Student Learning.
4. Plan Instruction and Design Learning Experiences for All Students.
5. Assess Student Learning.
6. Develop as Professional Educator.

The implementation of these standards is negotiable and represents significant modification of the evaluation program. Through the bargaining process, these six standards may be incorporated into the evaluation process. All of the sample language already outlined in the article should be maintained along with the following language specific to these standards. More information on these six (6) standards for the teaching profession and supporting elements can be found on the BTSA website, <http://www.come.to/sbtsa>, in "California Standards for the Teaching Profession" published by the California Commission on Teacher Credentialing and the California Department of Education, July, 1997, and in Danielson, Eharlotte, "Enhancing Professional Practice: A Framework for Teaching", (Association for Supervision and Curriculum Development, Alexandria, Va.) 1-800-933-2723.

SAMPLE LANGUAGE

15.9 California Standards for the Teaching Profession

- 15.9.1 The evaluation of first-year temporary and probationary unit members shall focus on two (2) standards only (as numbered above): 1. Create

and Maintain Effective Environments for Student Learning; 4. Plan Instruction and Design Learning Experiences for All Students.

- 15.9.2 The evaluation of second-year temporary and probationary unit members shall focus on three (3) new standards only (as numbered above): 2. Engage and Support all Students in Learning; 3. Understand and Organize Subject Matter for Student Learning. 5. Assess Student Learning.
- 15.9.3 The evaluation of permanent and continuing temporary (three [3] or more years in the district) unit members shall focus only on any three (3) of the six standards as agreed to in the meeting specified in Section 15.1.4.

TOPIC: EVALUATION OF SPECIAL EDUCATION BARGAINING UNIT MEMBERS

In addition to the evaluation procedures delineated in this Article, the following is additional sample contract language that is related to special education unit members.

SAMPLE LANGUAGE

- 15.10 Special Education Bargaining Unit Members
- 15.10.1 The evaluation of unit members assigned to special education positions shall not include any negative assessment of the instructional techniques, strategies and equipment used by special education unit members unless the evaluating administrator has had experience as a special education instructor or possesses a special education credential, and the unit member has had the appropriate training in utilization of such techniques, devices and equipment.
- 15.10.2 The evaluatee and evaluator, upon mutual agreement, may use student IEP goals and objectives as part of the evaluation process.
- 15.10.3 A unit member assigned to an itinerant special education position may select the site administrator who shall serve as the unit member's evaluator.

LEGAL REFERENCES

A. Education Code Sections Cited

44031, 87031 - Personnel file contents and inspection
44660-44665 - Evaluation and assessment of performance of certificated employees
45340-45346 - Instructional aides
51215-51217, 52010-52179 - School improvement plan

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Act
3543.2 - Scope of Representation

C. Miscellaneous

Administrative Code (Title 5) 16020-16027 - Personnel Files

UNIT MEMBER DISCIPLINE

ARTICLE 16

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ARTICLE 16

UNIT MEMBER DISCIPLINE

UNIT MEMBER DISCIPLINE may be a subject of bargaining if both parties can agree to a procedure. In 1981, Section 3543.2 of the EERA was amended as follows:

(b) Notwithstanding Section 44944 of the Education Code, the public school district and the exclusive representative shall, upon request of either party, meet and negotiate regarding causes and procedures for disciplinary action, other than dismissal, including a suspension of pay for up to 15 days, affecting certificated employees. If the public school district and the exclusive representative do not reach mutual agreement, then the provisions of Section 44944 of the Education Code shall apply.

The important part of this amendment is that if the parties do not reach agreement, the District cannot force the Association to carry this item to impasse. Consequently, the District cannot unilaterally adopt its version of discipline language. When no agreement is reached, the regular dismissal and suspension proceedings of the Education Code apply.

It is also important to note that the discipline proposed in Section 3543.2(b) is suspension for up to 15 days. Actions such as denial of leaves and transfers should not be used as discipline. Education Code Section 44944 sets forth the procedures for the conduct of dismissal hearings. Subparagraph (c) specifically states that the Commission on Professional Competence in deciding dismissal cases "shall not have the power to dispose of the charge of dismissal by imposing probation, suspension of a dismissal or a non-dismissal, or other alternative sanctions."

Agreement on contract language on discipline must be linked to agreements on binding arbitration and agency fee, as well as contain adequate employee and Association protections in the language itself. It is critical that Associations fully utilize the skilled services of CTA staff throughout the bargaining process on this topic.

Absent agreement on acceptable language in the discipline procedure, grievance procedure and organizational security, the Association should not agree to language on discipline, and therefore, Education Code Section 44944 will apply.

In addition to acceptable discipline language, binding arbitration must be part of an Agreement with unit member discipline. There is great likelihood of a grievance being filed if an administrator tries to impose discipline on a unit member. The likelihood is far greater than it is for other contractual provisions. Agency fee is also needed because of the additional cost of a discipline procedure and also because the Association has a duty of fair representation to non-members in the grievance procedure.

JUST CAUSE

The use of the term "just cause" in contract language on teacher discipline sets behavioral standards for management of fair and equitable treatment if their attempts to discipline a unit member are to be upheld by an arbitrator.

In labor relations, there exists a comprehensive body of contractual terms and the meaning of those terms in the areas of employee discipline or discharge by management. Most private sector contracts require cause or just cause for discipline or discharge. Just cause is not a precise term. It is a growing and living concept. Past decisions give guidance to its meaning, but each situation will have to be determined based upon its own circumstances.

Guidance as to whether just cause may have been lacking can be obtained by utilizing the following seven questions. If the answer to any one of the questions is "no," management probably did not act in a fair and equitable manner. *Do not include these questions or tests in the contract as that could have a limiting effect upon the meaning of just cause.*

1. Did the district give the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?
2. Was the district's rule or managerial order reasonably related to the orderly, efficient, and safe operation of the district's business?
3. Did the district, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
4. Was the district's investigation conducted fairly and objectively?
5. At the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?
6. Has the district applied its rules, orders, and penalties evenhandedly and without discrimination to all employees?
7. Was the degree of discipline administered by the district in a particular case reasonably related to the seriousness of the employee's proven offense, and the record of the employee and his service with the district?

Other important concepts are progressive discipline and due process. Progressive Discipline requires management begin the discipline of a unit member by the utilization of oral warnings, followed by written warnings and written reprimands. After these actions, the unit member could be suspended with or without pay. Each step of the process requires a separate act of the same or similar nature by the unit member before progressively more severe discipline can be imposed. Again, this is a growing and living concept that must be determined based upon its own circumstances.

As stated in “*Just Cause: The Seven Tests*” (Kevin and Smith) to which an employee who is accused of misconduct is entitled, include:

- the right to be informed of the charges;
- the right to confront accusers;
- the right to answer charges; and
- the right to counsel (i.e. union representation).

Management may propose a list of specific causes for which a unit member may be disciplined. Associations should not agree to the placement of any such list in the contract. Arbitrators have ruled that inclusion of specific causes for which an employee may be disciplined does not preclude the application of causes not expressly stated when the causes enumerated are merely illustrative and not exclusive. CTA's recommendation is the same if management proposes that "gross misconduct" or "certain misconduct" is such that it should be exempt from the just cause and progressive discipline requirements. Do not agree to such exceptions. Note that the Education Code requires a district to immediately suspend a unit member who is charged with certain felonies including possession or use of drugs and sex offenses involving minors.

SAMPLE LANGUAGE

16.1 Just Cause/Due Process

The District may discipline a unit member only for just cause. Discipline shall include warnings, reprimands, or suspensions without pay for less than fifteen (15) working days. Discipline shall not include dismissal or suspensions for more than fifteen (15) working days.

16.2 Progressive Discipline

16.2.1 The following progressive discipline procedures will be applied except where the serious nature of the offense may require the District to directly impose a written warning, written reprimand, or suspension without pay. Whether or not the serious nature of the offense required

bypassing progressive discipline steps may be submitted to arbitration under Article ____ (Grievance Procedure) of the Agreement.

16.2.1.1 Verbal Counseling/Warning

The district shall first issue a verbal counseling/warning before imposing further discipline. Verbal counseling/warning may result in a post-conference summary memorandum. Post-conference summary memorandum will not be placed in the unit member's personnel file.

16.2.1.2 Written Warning

Subject to 16.2.1 above, written warnings will not be used unless the unit member has been verbally warned about similar actions within the last twelve (12) months. Written warnings will not be placed in the unit member's file.

16.2.1.3 Written Reprimand

Subject to 16.2.1 above, written reprimands will not be used unless the unit member has received a written warning about similar actions within the last twelve (12) months. The unit member will sign the reprimand to acknowledge receipt and a copy may be placed in the unit member's personnel file.

16.2.1.4 Suspension Without Pay

Subject to 16.2.1 above, suspension will not be used unless the unit member has received a written reprimand about similar actions within the last twelve (12) months. No unit member will be suspended more than fifteen (15) working days during a school year. In all instances, however, the length of a suspension will relate to the severity of the action.

16.3 Notice

Notice of suspension will be made in writing and served in person or by certified mail upon the unit member by the superintendent or designee. A copy will be concurrently provided to the Association president. The notice of suspension will contain:

- 16.3.1 A statement of the specific acts or omissions upon which the action is based.
- 16.3.2 A statement of the cause(s) for which action is recommended;
- 16.3.3 Where applicable, the Education Code section, policy, rule regulation, or directive violated;
- 16.3.4 Penalty proposed and effective date;
- 16.3.5 Copies of the documentary evidence upon which the recommendation is based;
- 16.3.6 A statement of the unit member's right to challenge the proposed action by requesting a hearing pursuant to the arbitration procedures of Article ____ (Grievance Procedure) of this Agreement subject to 16.5.1 below.

16.4 Administrative Leave

In the event a unit member is placed on administrative leave without advance notice, a notice conforming to the specifications set forth above will be sent to the unit member by certified mail addressed to the unit member's last known address, within five (5) days of the unit member's removal from the position, with a copy concurrently provided to the Association president.

16.5 Arbitration

- 16.5.1 Only written reprimands and suspension without pay may be appealed to arbitration under the grievance procedure in Article ____ (Grievance Procedure) of the Agreement commencing with Section (Arbitration Level). If timely appealed, the penalty will not be applied until the arbitrator's decision is rendered, except for just cause necessitating the immediate removal of the unit member from the worksite. At arbitration, the just cause for earlier discipline, may be determined by the arbitrator.
- 16.5.2 The Association must request arbitration by delivering written notice of appeal to the superintendent within twenty (20) working days after receipt of the notice of suspension or written reprimand. If the Association does not demand arbitration within the above timeline, the suspension without pay or letter of reprimand may be imposed immediately by the superintendent or designee.

16.6 Confidentiality

All information or proceedings regarding any actions or proposed actions pursuant to the Article will be kept confidential by the parties to the extent permitted by law.

16.7 Education Code

This Article is intended, for the purpose of suspension, to replace the provisions of Education Code Section 44944, but will not apply to suspension pursuant to Education Code Sections 44939, 44940 or 44942. Nor is this Article intended to preclude the District's right to re-elect probationary unit members.

LEGAL REFERENCES

A. Education Code Sections Cited

44930-44949 - Causes for employee dismissal of certificated

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Board
3543.2(b) - Scope of Representation - Disciplinary Action

TEMPORARY UNIT MEMBERS

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TEMPORARY UNIT MEMBERS

TEMPORARY UNIT MEMBERS have reemployment rights that depend on whether the teacher has been "released." A temporary teacher may be released during the first 75% of the year "at the pleasure of the board" and thereafter if the teacher is "notified [of the release] before the end of the school year."

If a temporary unit member has not been released, she/he must be reemployed to fill any vacant position. The old requirement that a teacher must be "qualified" has been eliminated but an appropriate credential would no doubt be implied.

If a temporary teacher is notified of release in the last 25% of the school year and "has nevertheless been retained" as a temporary employee for two consecutive years and has served 75% of each of those years, that employee shall receive "first priority" if the district fills a vacant position in the same grade level (and, if departmentalized, same subject area) that the employee has taught during either of those two years.

Many Associations have bargained improvements in temporary teachers' reemployment rights by making the employment automatic when the vacancy is within the temporary teacher's credential and by creating seniority rights that give priority to the most senior temporary teachers. The need to bargain protections for temporary teachers is critical. Bargaining proposals should include restrictions on a district's ability to release temporary teachers and should create strong reemployment rights dependent on seniority and credential only.

SAMPLE LANGUAGE

- 17.1 The terms and conditions of this Article shall apply to all temporary unit members. This Article contains protections in addition to those contained in Education Code Sections 44909, 44916, 44918, 44919, 44920, 44921 and 44954 and shall be controlling on the issue of temporary unit member employment.
- 17.2 The parties recognize that temporary unit members require additional assistance during their temporary employment. The parties also intend that assistance to those temporary unit members who have been identified as needing improvement will be ongoing and every effort will be made by the District to assist the temporary unit member in becoming a successful employee.
- 17.3 The District shall limit the number of temporary unit members to the number of unit members on leave or filling assignments of undetermined length in categorical programs, excluding Special Education.
- 17.4 If a vacancy occurs, the most senior temporary unit member applying with the proper credential shall receive the position if the position cannot be filled by a regular or probationary unit member as provided in Article 13, Assignment, Transfers and Reassignments.
- 17.5 The District may release a temporary unit member prior to the end of her/his contract only for just cause. In the case of an excess of temporary unit members, the District shall release temporary unit members in reverse order of seniority taking into account proper credentialing.
- 17.6 The District shall supply the Association each semester with a list of all unit members in temporary assignments, including name, position, worksite, and length of contract.
- 17.7 The District shall give preferential hiring rights to temporary unit members for vacancies in temporary positions if no other unit members apply.

LEGAL REFERENCES

A. Education Code Sections Cited

- Education Code, Part 25, Chapter 4 (§§ 44852-44954)
- 44852 - Temporary employment
- 44909 - Employment to perform services under contract with public or private agencies or certain categorically funded projects; attainment of permanent status
- 44916 - Time of classification; written statement of employment status
- 44917 - Temporary employment deemed probationary employment
- 44918 - Substitute or temporary employee deemed probationary employee; reemployment rights
- 44919 - Temporary employees
- 44920 - Employment of certain temporary employees; reemployment in vacant position as probationary employee
- 44921 - Employment of temporary employees; reemployment rights
- 44954 - Release of temporary employees

B. Government Code Sections Cited

- Government Code, Title 2, Division 3, Chapter 5 (11500 et seq.)
- 11500 et seq. - Administrative Adjudication (Procedures regarding right to notice and a hearing)

PROBATIONARY UNIT MEMBERS

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ARTICLE 18

PROBATIONARY UNIT MEMBERS

PROBATIONARY UNIT MEMBERS may be given notice of non-renewal effective at the end of the school year at any time prior to March 15 for the second year without any required statement of cause or hearing. However, a District may not use non-renewal procedures if the real reason for the termination of employment is economic, such as a layoff. In addition, it is possible to challenge probationary teacher non-renewals as unlawful discrimination in retaliation for union activity where the unit member is a known union activist, or on the basis of discrimination on other prohibited grounds, such as age, race, sex, or physical handicap.

First- and second-year probationary unit members may be dismissed during the school year for unsatisfactory performance determined by evaluation or for cause pursuant to Education Code Section 44932, which also covers grounds for dismissal of permanent unit members.

Probationary unit members shall receive 30 days written notice, containing a statement of reasons and notice of the right to appeal. For second-year probationary employees, notice must be not later than March 15. In a dismissal for unsatisfactory performance, a copy of the evaluation shall be included.

The unit member has 15 days to request a hearing. An administrative law judge may conduct the hearing and make a recommended decision, but the board makes the final decision.

A probationary unit member laid off because of a decrease in student attendance or the reduction of a particular kind of service has, for 24 months, a preferred right to reappointment if the number of unit members is increased or the discontinued service is reestablished, and a right to substitute or temporary service, subject to the prior right to reappointment of permanent unit members. However, the employee must pass a subject matter competency test prior to reappointment to a position not previously taught and outside the unit member's credential or major. Reappointment is in order of seniority unless the district demonstrates a specific need for specific courses to be taught or for racial balance.

First- and second-year probationary unit members may be suspended without pay for a specified time period for unsatisfactory performance or for cause pursuant to Education Code Section 44932 unless otherwise bargained. The same hearing procedures and due process guarantees afforded such unit members facing mid-year dismissal apply.

For Districts with less than 250 Average Daily Attendance, probationary unit members who are non-renewed for cause must be given written notice of the reasons by March 15. Within seven (7) days, the unit member may request in writing a hearing to determine if there is cause for non-reemployment. If a hearing is requested, the unit member is served an accusation, and must file a notice of defense, if any, within five days. The hearing is conducted by a hearing officer, who prepares a proposed decision, but the board makes the final decision.

A notice that service is not required for the ensuing year must be given by May 15. If no notice is given, the employee is deemed reemployed. The board shall, within ten (10) days after receiving written request, give the unit member its reasons for non-reemployment.

Probationary employees may be dismissed during the school year for cause only, as in the case of permanent unit members. Causes and procedures for discipline of probationary unit members are the same as for permanent unit members.

The contract language recommended here would give additional help to probationary unit members facing a dismissal. Given the current state of the law, providing firm evaluation instruments that include safeguards for providing unit members with support in the case of evaluation deficiencies is a good strategy.

(NOTE: Recent court decisions have made it difficult to enforce several of the provisions of the sample language given below. Generally, court decisions have held that an arbitrator has no authority to require that a probationary unit member be re-hired by the district that terminated the probationary unit member. Even in the face of a completely satisfactory evaluation, the district may terminate a probationary employee without cause and without due process rights. When the district violates the contractual rights of a probationary unit member, such as failure to even perform an evaluation, an arbitrator has no authority to order the probationary unit member reinstated as a remedy for the district's failure. Other remedies may be sought from the arbitrator, such as severance pay and/or removal from the unit member's file any material so requested by the unit member. In summary, the following sample language is an ideal which in some parts may be subject to limited enforcement. Contact your CTA staff for more information.)

SAMPLE LANGUAGE

- 18.1 The terms and conditions of the Article shall apply to all probationary unit members. This Article contains protections in addition to those in the Education Code and shall be controlling on the issue of probationary dismissal. The parties recognize that probationary unit members require additional assistance during their probationary period. The parties also intend that assistance to those probationary unit members who have been identified as needing improvement will be ongoing and every effort will be made by the District to assist the probationary unit member in becoming successful. The parties also agree that this Article is intended to provide the probationary unit member with the principles of just cause and due process, and to limit the causes for termination to the teaching processes and duties related to pupils.
- 18.2 The site administrator or immediate supervisor shall meet with the first-year probationary unit member within ten (10) days of the first date of paid service. The site administrator or immediate supervisor shall meet with the second-year probationary unit member within 30 days following the first day of pupil attendance. At this meeting the site administrator or immediate supervisor shall advise the unit member of the District's performance expectations pursuant to the provisions of this Article and Article 15, Evaluation.
- 18.3 Assistance shall be provided as needed and as mutually determined between the site administrator or immediate supervisor and the probationary unit member. Before recommending an assistance program, the unit member and the site administrator or immediate supervisor shall meet and discuss the need for assistance. If requested by the probationary unit member, the site administrator or immediate supervisor shall place in writing the reasons for recommending assistance. A recommendation for assistance shall not be made until the probationary unit member has been formally evaluated pursuant to the terms of this Agreement. Release time shall be provided the probationary unit member to participate in assistance activities during the teaching day. Participation in any activities related to classroom teaching or pupil related matters shall be voluntary on the part of the probationary unit member at any time other than the regular workday. If upon subsequent formal evaluations it is found that the probationary unit member has improved to a satisfactory rating in those areas previously found deficient, any reference to the need for an assistance program and the unit member's participation in it will be deleted from all formal evaluation reports and removed from the unit member's personnel file.
- 18.4 The probationary unit member shall be entitled to have an Association Representative at each meeting described or called for in this Article.

- 18.5 A first-year probationary unit member who has received a satisfactory evaluation in teaching skills and related pupil matters shall be reemployed for a second year. No first-year probationary unit member shall be terminated until having been evaluated and provided the opportunity to participate in an assistance program as provided for by this Article. Based upon the fact that the second-year probationary unit member met District expectations during the first probationary year, it is recognized that the interpretation of the standard for termination for all-second year probationary employees shall support retention of the employee.
- 18.6 After completion of the assistance program, the site administrator or immediate supervisor may recommend to the superintendent that the unit member should be terminated, and specify the reasons for the recommendation. A copy shall be sent to the unit member. Upon receipt of this recommendation, the superintendent shall within ten (10) working days conduct a fair and impartial investigation to ascertain the facts. The unit member shall be consulted during this investigation. Following this investigation, the superintendent shall determine if the unit member shall be retained, transferred or receive a termination notice. This decision shall be in writing and provided to the unit member and the Association within fifteen (15) days from the date of the immediate supervisor's recommendation. The notice shall state the facts and reasons for the decision so that the unit member is able to prepare a reasonable defense.
- 18.7 Any probationary unit member who has been given a notice of termination may request that the Association submit the matter to a hearing pursuant to the grievance provisions of this Agreement. The hearing shall proceed at the level following the superintendent's level.
- 18.8 The hearing officer/arbitrator shall conduct the hearing pursuant to the normal rules of due process. With the agreement of the hearing officer/arbitrator and all parties, the hearing officer/arbitrator may mediate the dispute, providing that the resolution shall be in writing and shall be binding upon the parties. With agreement of the parties, the hearing officer/arbitrator may also conduct an expedited hearing. The hearing officer/arbitrator's decision shall state the facts, determine the sufficiency of the charges and recommend to the Board whether the teacher should be retained, transferred or terminated. The Board may accept the hearing officer's/arbitrator's recommendation.
- 18.9 Any probationary unit member who is terminated shall receive \$5,000 as severance pay.

LEGAL REFERENCES

A. Education Code Sections Cited

- 44908 - Complete school year for probationary employee
- 44915 - Probationary employees; classification
- 44917 - Temporary employment deemed probationary employment
- 44918 - Substitute or temporary employee deemed probationary employee; reemployment rights
- 44920 - Employment of certain temporary employees; reemployment in vacant position as probationary employee
- 44929.21 - Districts with daily attendance of 250 or more; permanent employee classification; notice of reelection
- 44932 - Grounds for dismissal of permanent employees; suspension of employees
- 44943 - Action of governing board after demand for hearing
- 44948 - Dismissal or suspension of probationary employees during school year; application of section
- 44948.2 - Districts with daily attendance less than 250; dismissal of probationary employees during school year under section 4498.3
- 44948.3 - Probationary employees; dismissal for unsatisfactory performance; procedure; suspension; application of section
- 44948.5 - Notice of non-reemployment; hearing; procedure; application of section
- 44955 - Reduction in number of employees
- 44957 - Rights of terminated probationary employee
- 44958 - Rights of terminated or dismissed probationary employees
- 44959.5 - Probationary certificated employee covered by collective agreement containing provisions for layoff and reassignment
- 44462-44465 - Discusses "leaves of absence"
- 44975 - Effect of leave of absence on probationary employee

b. Government code sections cited

- Government code, title 2, division 3, chapter 5 (§§ 11500 et seq.)
- 11500 et seq. - Administrative adjudication (procedures regarding right to notice and a hearing)

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ARTICLE 19

TEACHER INTERNS

TEACHER INTERNS are used in some school districts in California. They are subject to the Commission on Teacher Credentialing and have duties closely related to classroom teachers. CTA recommends that these professionals in training be afforded contract protections.

The Teacher Education Internship Act of 1967, which is still in the Education Code today, allows higher education institutions to develop internship programs which join theory and practice, in cooperation with school districts, subject to the regulations of the Commission on Teacher Credentialing (CTC). Such programs, developed for applicants who have a baccalaureate or higher degree, are generally geared for more mature and experienced credential aspirants who cannot take a year off to return to school as fifth-year pupils.

Internship programs generally combine an intensive summer program, a year of teaching as an intern combined with district level as well as higher education institution support, a continued program during the year at the higher education institution, and a follow-up summer program. The intern, therefore, is guaranteed a teacher preparation program which is equivalent in content to a regular program, and is provided a stronger support system during the first year in the classroom than occurs for most regular teachers and for those on emergency credentials.

The CTC issues district intern certificates for service in grades K-12 or bilingual education classes. Bilingual education certificates are valid for three years; all other certificates are valid for two years and all credentials may be extended for one year. Applicants must have a baccalaureate degree and must have passed the CBEST and appropriate subject matter examination. In addition, bilingual education interns must pass the oral language component of the assessment program. District interns teaching in K-8 or in bilingual classes must teach with the assistance and guidance of an experienced teacher or a consulting teacher as part of the PAR Program (see Article 29). After completion of two years of successful service as a district intern, and upon recommendation of a school board, the Commission shall award the applicant a clear credential.

The Title 5 regulations include the requirement that the proposed programs of any institution must be reviewed and approved by the Commission. Institutions must specifically verify that they have met requirements including, but not limited to, the following areas:

- Appropriate institutional resources must be allocated.
- An Internship Programs Council has reviewed and approved the program. Each constituency of the Council shall operate with parity and as co-equals in all decisions regarding the development, approval, implementation, and evaluation of each internship program. The Council shall be composed of representatives from three constituencies of the institute of higher education, District and certificated exclusive representative in the school district.
- Certificated employees of each District hosting an intern shall elect a representative through their certificated exclusive representative.
- There shall be an Advisory Committee to the Council consisting of community persons who are lay non-educators and interns.
- Specific professional competencies and field experiences must be included in the program.
- All candidates completing the program must be evaluated by the institution of higher education immediately preceding graduation and recommendation for the credential.
- Graduate follow-up is to be conducted as a regular and integral part of the evaluation of the program.

CTA policy states, "CTC-approved alternative full credentialing programs should be a part of the curriculum of all teacher training institutions. These programs should be equal in rigor and quality to existing credential programs."

Associations asked to participate in an internship program may request a copy of the CTC manual from the CTA Instructional and Professional Development Department. This will enable the Association to make sure that higher education institute and the district are following the requirements of the CTC.

SAMPLE LANGUAGE

- 19.1 If the District decides to implement Education Code Sections 33320-33354, 44321-44384, and 44450-44467, it shall inform the Association of its intention. The Association shall agree to, and sign-off on, any plan by the District to operate an internship program. Association representation shall be one-third of the Internship Programs Council (IPC). The selection process shall be conducted by the Association. The term of Association IPC members should be determined by the Association.

- 19.2 Interns shall be members of the bargaining unit. Wages, benefits, hours, and other terms and conditions of employment covered by this Agreement shall be provided to all interns.
- 19.3 No intern shall replace a currently employed bargaining unit member.
- 19.4 The program shall negatively impact no bargaining unit member.
- 19.5 Interns shall be encouraged to be voluntary participants in the Peer Assistance and Review Program delineated in Article 29 of this Agreement.

LEGAL REFERENCES

A. Education Code Sections Cited

Internship Act of 1967

Education Code, Part 20, Chapter 3 (§§ 33320-33354)

Education Code, Part 25, Chapter 2 (§§ 44321-44384)

Education Code, Part 25, Chapter 2 (§ 44323)

Education Code, Part 25, Chapter 3 (§§ 44450-44467)

Education Code, Part 42, Chapter 2 (§§ 69619, 69619.1)

33320-33354 - Discusses "Educational Programs" and "Funding"

44321 - Student internship courses

44325 - District intern certificates; issuance; period of validity; qualifications

44326 - Extent of authorization of district intern certificate; mentor teachers

44327 - Standards for quality of intern training, support, evaluation, and performance; credentials; awarding to interns; manner

44384 - Grant funding; operation pursuant to other articles

44450-44467 - Teacher education internship act of 1967

44500 et seq. - Peer Assistance and Peer Review Program for Teachers

SPECIALIZED JOB CLASSIFICATIONS

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SPECIALIZED JOB CLASSIFICATIONS

SPECIALIZED JOB CLASSIFICATIONS such as Teaching Assistants, Child Development and Pre-School Teachers, Regional Occupational Centers and Program (ROC/P) Teachers, Adult Education Teachers, Substitutes, and others are specialized certificated job categories which may require unique contract language because of hours of operation, credentialing, or funding. It is best, however, to cover these certificated positions with regular certificated contract language whenever possible because unique language for a specialized position is often inferior to standard language provided for regular certificated employees.

Issues for unique language usually include different salary schedules and rates of pay, hours, and transfer rights. CTA recommends that bargaining teams consider the unique circumstances existing in their districts and draft language which includes only exceptions to regular contract language for a particular job classification, leaving all other language applicable.

Examples of exceptions may include a transfer bar between job classifications such as ROP/C and regular certificated positions. Substitutes may not have transfer rights. Part-time Adult Education teachers may not have transfer rights to full-time positions. A different salary schedule may be bargained for Teaching Assistants than the regular salary schedule. Adult Education Teachers may work evening hours or completely different schedules from standard contract language.

Bargaining teams should study the job category and draft language that covers standard issues and alleviates unique problems that unit members face in these jobs.

For additional help in drafting unique language for job categories, consult with CTA staff.

TOPIC: CALIFORNIA SCHOOL PARAPROFESSIONAL TEACHER TRAINING PROGRAM

The California School Paraprofessional Teacher Training Program, established in 1991, provides grants to Districts through the CTC to encourage classified employees, particularly minority group members, who are enrolled in, who have been enrolled in, or who would be interested in enrolling in, a teacher training program leading to a teaching credential. The program provides assistance in applying for admission and financial aid. The legislature established the program to "enhance instructional competencies and to prepare school paraprofessionals to become teachers (that) would result in improved services in terms of their role in the instructional program in the classroom."

This is a pilot project involving up to twelve school districts and up to 600 paraprofessionals in the state. The program includes the following job classifications: teacher associate, teacher assistant, teacher aide, pupil service aide, and library aide.

The Association should not make proposals on this program unless the Association's District is participating in it.

SAMPLE LANGUAGE

- 20.1 If the District decides to implement the California School Paraprofessional Teacher Training Program, it shall inform the Association of its intention.
- 20.2 No trainee shall replace a currently employed bargaining unit member.
- 20.3 No bargaining unit member shall be negatively impacted by the program.
- 20.4 Trainees shall be members of the bargaining unit.
- 20.5 An experienced teacher at a similar grade level or subject matter area shall be provided to work with a trainee.
- 20.6 The District shall provide periodic release time for trainees and experienced teachers for arranged observations and meetings.

(NOTE: Trainees will need a compensation provision. A separate salary schedule and determination of fringe benefits eligibility need to be considered.)

LEGAL REFERENCES

A. Education Code Sections Cited

Paraprofessional Training Programs

Education Code, Part 25, Chapter 2 (§ 44323)

Education Code, Part 42, Chapter 2 (§§ 69619, 69619.1)

44323 - Paraprofessionals; temporary teacher-assistant certificate

69619 - California school paraprofessional teacher training program; legislative findings and declarations

69619.1 - Establishment of program; selection of school districts; recruitment of school paraprofessional employees; reports

HOURS AND ADJUNCT DUTIES

ARTICLE 21

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ARTICLE 21

HOURS AND ADJUNCT DUTIES

HOURS AND ADJUNCT DUTIES establishes the nature and amount of work employees may be required to do, including the length of the workday, how the workday is structured, adjunct duties, and length of the work year.

SB 813 in 1984-85 provided an economic incentive for districts to increase instructional minutes over a three year period. Education Code Section 46201 sets an annual minimum number of minutes as listed below assuming 180 days of instruction.

Kindergarten	36,000 minutes (200 daily average)
Grades 1-3	50,400 minutes (280 daily average)
Grades 4-8	54,000 minutes (300 daily average)
Grades 9-12	64,800 minutes (360 daily average)

The California Department of Education has issued various advisories instructing districts how to calculate time for this requirement.

TOPIC: WORKDAY

A provision which clearly defines the length of the workday. A clearly defined workday provides a daily framework within which employees work; it prevents unilateral changes of the workday and provides for day-to-day stability.

SAMPLE LANGUAGE

21.1 Length of Workday

- 21.1.1 The workday for unit members shall be _____ hours, inclusive of a _____ minute duty-free lunch period. The workday shall begin _____ minutes before the pupil instructional day and shall end _____ minutes following the end of the pupil instructional day.

(NOTE: If there is a different workday for specific employee classifications, the contract should include language to define the workday of such employees.)

- 21.1.2 On days when unit members are required to return for an evening meeting, i.e., Open House, Back-to-School Night, or similar event, the length of the pupil instructional day shall be _____ hours with unit members being permitted to leave school at the end of the pupil instructional day.
- 21.1.3 Unit members shall not be required to remain later than 9:30 p.m. for non-paid evening events, and shall not be required to work on weekends without pay.
- 21.1.4 One (1) day per week shall be a minimum day for pupils, consisting of 170 minutes of instruction for grades K-3 and 180 minutes of instruction for grades 4-12. Unit members shall utilize the remainder of the regular workday for faculty meetings, inservice meetings, IEP team meetings, meetings with parents and/or staff members, and/or planning and preparation for their assignment.

TOPIC: WORK LOAD/ADJUNCT DUTIES

A provision which clearly defines the nature and amount of work employees may be required to perform and which is designed to limit and provide compensation for non-instructional duties. An unlimited or ambiguous workload contributes to employee burnout and is counterproductive. Professional employees are entitled to a reasonable workload and recognition that instructional responsibilities are of greater importance than adjunct duties.

SAMPLE LANGUAGE

21.2 Work Load/Adjunct Duties

- 21.2.1 Elementary school unit members shall have no more than _____ hours of pupil contact per week.
- 21.2.2 Junior and senior high school unit members shall have no more than _____ hours of pupil contact time per week. Classroom unit members shall have no more than _____ teaching periods per week.
- 21.2.3 A junior or senior high school unit member shall not be assigned more than _____ different preparations within the _____ period teaching day without her/his consent.

(NOTE: Adjust Sections 21.2.1 through 21.2.3 to meet unique circumstances such as middle schools, self-contained classrooms, or unusual configurations. Special attention may need to be focused on Kindergartens.)

- 21.2.4 No unit member shall be required to be on duty more than two and one-half (2-1/2) hours without being provided a relief-break of at least ten (10) minutes.
- 21.2.5 The District may schedule up to (number) hours per week (or per month or per year) of each unit member's time in addition to the regular work time which may be used for:
 - 21.2.5.1 Faculty meetings.
 - 21.2.5.2 Professional growth/in-service training activities.
 - 21.2.5.3 Parent conferences.
 - 21.2.5.4 Administrative conferences.
 - 21.2.5.5 Sponsorship of pupil clubs.
 - 21.2.5.6 IEP meetings.
 - 21.2.5.7 Student Study Team meeting.
 - 21.2.5.8 Social Promotion Conferences. *(AB 1626, "Pupil Promotion and Retention" became effective on January 1, 1999. The legislation requires that parents be notified when a pupil is identified as being at risk of retention. The pupil's parent(s) or guardian has the opportunity to consult with the teacher or teachers responsible for the decision to promote or retain. Such consult meetings or conferences are to be covered by the work load/adjunct duties contained herein. Further, the Association should*

request to be involved with the District in the drafting of local policy implementing the Social Promotion provisions of AB 1626.)

- 21.2.5.9 Writing Social Promotion Reports as required under AB 1626.
- 21.2.5.10 Committee work related to curriculum creation and modification.
- 21.2.6 Unit member duties listed in Sections 21.2.5.1 through 21.2.5.10 above which exceed the number of hours specified in 21.2.5 above shall require that the unit member be compensated for such additional hours at the rate of pay delineated in Article 25, Section 25.5 of this Agreement.
- 21.2.7 Conferences and meetings with parents/guardians shall observe the following:
 - 21.2.7.1 Parents/guardians wishing to meet with their child's teacher must provide a written request to the teacher. Upon the teacher's agreement to the time and date, parents/guardians may meet with the teacher during the teacher's contracted workday. Any other time to meet must be with the approval of the teacher.
 - 21.2.7.2 The District shall provide a substitute for the child's teacher if the meeting is to occur during class time.
 - 21.2.7.3 A unit member who agrees to meet with parents/guardians before or after their regular workday shall be paid additional compensation equal to the unit member's pro rata hourly rate of pay.
 - 21.2.7.4 With respect to Social Promotion conferences, should the parent/guardian appeal a teacher's decision to retain or promote, all meetings related to the appeal process shall be held during the unit member's workday with a substitute provided, if necessary. Unit members shall be compensated at the unit member's pro-rata hourly rate of pay for all appeal meetings that occur after the unit member's regular workday.
- 21.2.8 All adjunct duties within the workday, which do not require full faculty participation, shall be equitably distributed among unit members.

- 21.2.9 Any services by a unit member beyond the contractually specified time, which involves non-classroom supervision of pupils, shall be on a voluntary basis and paid at the hourly rate of pay.
- 21.2.10 For purposes of this Article, pupil club and class advisement shall be considered part of instructional time and class load.

TOPIC: PREPARATION TIME

A provision which guarantees to employees time during the workday to prepare lesson plans, tests, grades, and perform other professional duties. Professionals need time free from other activities during their workday in order that they may be professionally and attitudinally prepared to provide sound educational experiences to their pupils.

SAMPLE LANGUAGE

- 21.3 Preparation Time
- 21.3.1 All junior and senior high school unit members shall be assigned a preparation period within the _____ period day. The preparation period shall be the same length as the regular class period.
- 21.3.2 Elementary school unit members shall have _____ hours or _____ unassigned periods per day for preparation and planning.
- 21.3.3 Unit members shall not be required to substitute during their preparation period.
- 21.3.4 If a unit member volunteers to substitute during the preparation period she/he shall be paid at the contract hourly rate.
- 21.3.5 Unit members who travel from one school to another on a regular basis shall have the same rights to a planning/preparation period, lunch period, and physical relief breaks as do other unit members. Adequate time to travel between sites shall be provided. Further, unit members shall be reimbursed for actual miles driven between sites at the current IRS mileage rate. In addition, unit members who serve more than one site shall be afforded the following conditions at each site served.
- 21.3.5.1 Adequate work space with appropriate lighting and ventilation.
- 21.3.5.2 Instructional materials and appropriate supplies to perform assigned duties.

21.3.5.3 Equipment, materials and supplies specific to special needs programs.

21.3.5.4 A desk, lockable filing cabinet and storage space.

TOPIC: PARTICIPATION ON COMMITTEES

A series of 1999 school reform legislation created the need for unit members to participate in new curriculum related committees including the adoption of new district curriculum standards to conform with State curriculum standards, the adoption of assessment methods to measure student performance related to new curriculum standards, and the modification of secondary school curriculum to be in line with the new high school exit exam. Local chapters should seek volunteers to serve on these committees, ensure a teacher majority on each committee, and provide the necessary release time and/or paid time for committee service.

This sample language sets forth released time or compensation payable to unit members who volunteer to attend and/or participate in committees and other educational meetings. Unit members who are required to take on additional assignments beyond the workday are entitled to additional compensation or release time.

SAMPLE LANGUAGE

21.4 Participation on Committees

(NOTE: Refer to Article 12, Association Rights, for selection of committee members.)

21.4.1 Unit member participation on all District committees shall be on a voluntary basis.

21.4.2 Unit members shall be appointed by the Association to participate on site or District committees including curriculum development committees. Unit members serving on such committees shall comprise a majority of the committee members. Unit members shall be granted release time during their workday at no loss of pay or benefits to fulfill the obligations of their appointment. If the committee meetings are held outside the workday, unit members shall be paid their hour pro-rata rate of pay.

21.4.3 Unit members who are appointed to school site councils pursuant to Education Code Section 52852 shall be granted released time during their workday at no loss of pay or benefits to fulfill the obligations of their appointment. When committee meetings are held outside the

workday, the unit members shall be paid their pro-rata hourly rate of pay.

- 21.4.4 A Professional Development Committee (PDC) shall design and implement an inservice education program to assist in the implementation of special educational programs and other inservices and training offered by the District. Unit members serving on the PDC shall be appointed by the Association and shall comprise the majority of the members of the PDC. Release time during the regular workday shall be provided at no loss of pay or benefits. When PDC meetings are held outside the regular workday, unit members serving on the PDC shall be paid their pro-rata hourly rate of pay.

TOPIC: PROFESSIONAL DEVELOPMENT

Professional Development is a critical ingredient in enhancing quality teaching resulting in improved student learning. Whatever the content and goals, there is consensus that professional development activities which have the following characteristics have been proven to be effective in improved teaching and student learning:

Professional development should be based on analyses of the differences between (a) actual student performance and (b) goals and standards for student learning. Goals for student learning provide a basis for defining what teachers need to learn and a yardstick for improving professional development.

Professional development should involve teachers in the identification of what they need to learn and in the development of the learning experiences in which they shall be involved. Adherence to this principle ensures that professional development is relevant. When teachers help design their own learning opportunities, they are likely to feel a greater sense of involvement. Teachers use what they learn when professional development is focused on solving problems in particular context.

Professional development should be primarily school-based and built into the day-to-day work of teaching. Teachers learn from their work. Learning how to teach more effectively on the basis of experience requires that such learning be planned and evaluated. Learning needs arise and should be met in the real contexts. Curriculum development, assessment, and decision-making processes are all occasions for learning. When built into these routine practices, professional development can powerfully address real needs.

Most professional development should be organized around collaborative problem solving. Without collaborative problem solving, individual change is possible, but school change is not.

Activities may include interdisciplinary teaming curriculum development and critique, collaborative action research and study groups.

Professional development should be continuous and on-going, involving follow-up and support for further learning--including support from sources external to the school that can provide necessary resources and new perspectives. Adoption and implementation of effective practices requires continued learning. Therefore, the design of professional development must provide time to explore and apply new ideas and, sometimes, must draw on outside expertise.

Professional development should incorporate evaluation of multiple sources of information on (a) outcomes for students and (b) the instruction and other processes that are involved in implementing the lessons learned through professional development. When done right, evaluation of professional development yields important lessons for refining professional development. Without such evaluation, future opportunities for teachers to learn may not be productive. Multiple sources of information should be used, including teacher portfolios, observations of teachers, peer evaluations and student performance. Lessons can become most clear when evaluators collect data throughout the process of professional development and change.

Professional development should provide opportunities to gain an understanding of the theory underlying the knowledge and skills being learned. Because beliefs filter knowledge and guide behavior, professional development must address teachers' beliefs, experiences, and habits. Furthermore, specific knowledge and skills that work in one setting, sometimes do not work in others. When teachers have a good understanding of the theory behind particular practices and programs, they can productively adapt the strategy they learned about to the circumstances in which the teacher is trying to use it.

Professional development should be connected to a comprehensive change process focused on improving student learning. Improving teacher capabilities without changing the conditions that influence the opportunities to use these capabilities is often counterproductive. These conditions include time and opportunities to try new practices, adequate funding, technical assistance, and sustained central office follow through. Thus, unless professional development is designed as part of a larger change process, it is not likely to be effective.

These guidelines are useful in assessing past, present and future professional development activities.

SAMPLE LANGUAGE

21.5 Professional Development Activities

- 21.5.1 All Professional Development activities shall be determined by, developed, and implemented through a Professional Development Committee (PDC).

- 21.5.2 There shall be ____ Professional Development days per year. Workshops or programs shall be scheduled by the PDC.
- 21.5.3 All Professional Development education meetings for unit members shall occur during the contractual workday.
- 21.5.4 Any costs relating to participation in Professional Development programs shall be borne by the District.
- 21.5.5 Should the Professional Development Committee (PDC) request training programs that are developed and sponsored by the California Teachers Association (CTA), such as the Classroom Management Program - I Can Do It!, the following expenses shall be borne by the District: released time for trainers who are unit members; printing and duplication; related travel and meal expenses; training facilities, and equipment.

TOPIC: INTENSIVE READING PROGRAM

AB 2X became law in March, 1999, and provides for the establishment of several elementary school reading programs. In addition to increased funding for intensive reading programs, and new teacher and school principal training programs, two programs authorized by this legislation will have an impact on current bargaining unit members: the "Reading Awards" program, and the "Reading Professional Development Program". The Governor's Reading Awards Program provides for annual awards of up to \$5,000 to K-8 schools whose pupils meet certain reading criteria. Generally, schools with significant numbers of students eligible for free and/or reduced-cost meals, and whose students complete reading goals of a certain number of age-appropriate books and pages, will be eligible for the annual award. The legislative intent is that at least 400 schools will receive awards each year. Locals should bargain language that involves unit members in the spending decisions should the school receive such an award.

SAMPLE LANGUAGE

- 21.6 Governor's Reading Awards Program
 - 21.6.1 Funds received by a school/site as an award under the provisions of the Governor's Reading Awards Program shall be given to the school site council, and spending decisions shall be in accordance with the site-based decision-making and site council provisions contained in Article 28, School Improvement, of this Agreement.

Also under AB 2X, California Reading Professional Development Institutes are established. These Institutes are to be developed in conjunction with the University of California, the State University System, and private, independent universities in California. It is expected that up to 6000 teachers will be able to participate in these Institutes. Participants must be teachers who provide direct instruction in reading to pupils in grades K through 3. Attendance at the Institute will be in the form of school teams, which must include both beginning and experienced teachers at the school/site, with the majority of the team made up of beginning teachers. Schools with the greatest chance of being selected for participation are those whose students' reading scores are at or below the 40th percentile on the Star 9 reading achievement test, schools with a high number of new, underprepared and non-credentialed teachers, and schools with a full complement of team members. Each Institute participant will receive a \$1,000 stipend. Institute participants are required to attend the Institute reading training program for no less than 40 hours during the summer or during an intersession break. In addition, during the following school year, the reading training is to be supplemented with no fewer than the equivalent of five (5) additional days of reading training and school/site meetings held on at least a monthly basis to focus on the reading progress of students. Locals should bargain language that deals with the selection of teachers at a school/site that elects to send a team to the Institute, and language that deals with compensation and/or release time for the five or more days of additional training.

SAMPLE LANGUAGE

21.7 California Reading Professional Development Institutes

- 21.7.1 Bargaining unit members at a qualifying school/site may elect to form a team, and make application to participate in a Reading Professional Development Institute as provided for under Education Code Section 99220 et seq.
 - 21.7.1.1 Participation in a school/site team shall be voluntary, and at the discretion of each unit member.
 - 21.7.1.2 School/site teams shall include both beginning and experienced teachers at the school/site who provide direct instruction in reading to students in grades K through 3. For purposes of this Section, a "beginning teacher" shall be defined as a teacher with three or less years of teaching experience. *(NOTE: This definition is consistent with the statute.)*
 - 21.7.1.3 A majority of a school/site team shall be beginning teachers.

(NOTE: This majority requirement is consistent with the statute.)

- 21.7.1.4 *(NOTE: Although the statute does not specify the size of a school/site team, locals should determine the appropriate size for their district.)* School/site teams shall be no larger than _____ *(specify a number or a range)* bargaining unit members at a school/site.
- 21.7.1.5 Should more unit members at a school/site than is permitted under Section 21.7.1.4 above wish to be members of a team, selection of team members shall be by lot, so long as the team composition required under Section 21.7.1.3 above is maintained.
- 21.7.2 Compensation for bargaining unit members who are part of a school/site team selected to participate in a Reading Professional Development Institute shall be as follows:
- 21.7.2.1 Each team member shall receive the stipend provided by the state (currently \$1000) for completing the 40 hour summer/intersession training period. In addition, the District shall supplement the stipend, as necessary, so that each unit member receives total compensation for the 40-hour training period equal to the unit member's pro-rata hourly rate of pay (based in the salary schedule in existence immediately prior to the summer/intersession period) times 40 hours. However, no team member shall receive less than the state provided stipend for the 40-hour training period.
- 21.7.2.1.1 The compensation described herein shall be paid to team members no later than thirty (30) days after completing the 40-hour training period.
- 21.7.2.2 Recognizing that team participation in a Reading Professional Development Institute requires follow-up training and school/site meetings during the following school year of no less than five (5) additional days, the District shall provide necessary regular work day release time to team members, without loss of compensation or benefits, in order to conduct the required follow-up training and school/site meetings.

TOPIC: INDIVIDUALIZED EDUCATIONAL PROGRAMS (IEPs)

This is a provision which sets forth compensation for employees required to write IEPs.

SAMPLE LANGUAGE

21.8 Individualized Educational Programs (IEPs)

21.8.1 Unit members who participate in the formulation of Individualized Educational Programs shall be granted release time from their regular duties to perform tasks related to formulating IEPs.

21.8.2 Unit members who work beyond the workday in developing IEPs shall be paid additional compensation equal to their pro rata hourly rate of pay for each hour or any part thereof of such work performed.

TOPIC: WORK YEAR

A clearly defined work year provides a calendar framework within which employees will work. Most calendars include instructional days, inservice days, minimum days, and parent-teacher conference days. Almost every school district in California has adopted the longer school year requirements of SB 813 which called for 180 instructional days.

The school calendars should include the following holidays, although they are not paid days of service, as provided by Education Code Section 37220:

- | | |
|-------------------------------------------------|------------------------|
| Independence Day | New Year's Day |
| Labor Day | Martin L. King Jr. Day |
| Veterans' Day (must be observed on November 11) | Lincoln Day |
| Thanksgiving | Washington Day |
| Christmas Day | Memorial Day |

AB 2457, which went into effect on January 1, 1995, requires that Veterans' Day be celebrated on November 11, and prohibits the waiver of this date to any other date. Years when November 11 will fall on a Saturday or Sunday, the Veterans' Day holiday can be celebrated on Friday or Monday, respectively.

Education Code Section 37220 also provides the following holidays:

Thanksgiving
Christmas Holidays (Winter Vacation)
Spring Vacation

Locals that represent County Office, Child Development Centers and/or Adult Education unit members who may be year-long employees (220-260 days) will need to add a section on paid vacation time. Contact your CTA staff for more information.

SAMPLE LANGUAGE

21.9 Work Year

(NOTE: Associations should provide for any inservice, conferencing, or preparation days as appropriate to their local situation, listing specifically how the days are to be used.)

21.9.1 Unit members' work year shall begin on _____ and end _____ .

21.9.2 The _____ school year calendar listing all instructional days, non-instructional days, vacations and holidays is incorporated into this Agreement and attached as Appendix _____ .

21.9.3 Any working days as provided in this Agreement that have been declared national days of holiday, thanksgiving, mourning, emergency, or other national observance by law or proclamation shall be paid days without service.

(NOTE: The following section is also contained in the Article 22, Safety.)

21.9.4 In the event of an emergency closure of District facilities, including but not limited to natural disaster, quarantine, or government order, unit members shall receive their daily rate of pay and benefits. If make-up days are required by law, the District shall negotiate said days with the Association.

TOPIC: STAFF DEVELOPMENT BUY-BACK DAYS

(AB 1579 in the 1997-98 state budget, and AB 1193 in the 1998-99 state budget combined to provide for up to three (3) additional days to unit member's work year calendar for purposes of providing professional development programs. Previously, staff development days (up to eight a year) were taken out of student instructional days, and allowed for non-student days in which

professional development activities could occur. Starting in 1999-2000, such non-student days are no longer permitted. Under the new "buy-back" days provisions, Associations may bargain up to an additional three (3) workdays during which professional development activities can now take place. The State provides funding to the District to help pay for these additional days.)

SAMPLE LANGUAGE

21.10 Additional Professional Development Days

- 21.10.1 The Association and District agree to add to the regular work year of unit members, as defined in Article 21 (Hours/Work Year), ____ days (*locals can bargain an additional one (1), two (2) or three (3) days*) which shall increase the regular work year of unit members to ____ days. (*Put in the new total number of workdays.*)
- 21.10.2 For each one day increase to the work year, the regular certificated salary schedules shall be increased by 0.5% at the beginning of the work year in which the day is added. (*NOTE: Therefore, if you add all three (3) days in the same year, total of 1.50% should be added to the salary schedules. Generally, the state funding should be sufficient to cover the cost of this increased compensation. Contact your staff person for an analysis of the cost.*)
- 21.10.3 The increases to the work year and salary schedules specified herein shall be permanent and on-going.
- 21.10.4 The additional workday(s) specified herein shall be for the sole purpose of professional development as provided for in SB 1193 and Education Code Section 44579.
- 21.10.5 A similar number of days shall be added to the work year calendars of year-round unit members so that they shall participate in professional development programs, and receive the same increase in compensation.

(NOTE: The additional required days do not have to be taken in whole-day increments. The additional required time may be divided up into hourly increments required after the regular workday or on non-workdays as long as the total hours add up to that of a required workday(s).

As an alternative, if members of the bargaining unit do not want to add additional mandatory days to their work year calendars, up to three (3) voluntary professional development days can be negotiated. However, because such days are voluntary, compensation for those days would have to be in the form of an off-schedule, one-time payment for attending each day.

The level of compensation for each voluntary day should be each member's pro-rata daily rate of pay.)

LEGAL REFERENCES

A. Education Code Sections Cited

- 37220 - School Holidays
- 44579 - Instructional Time and Staff Development Reform Program
- 46112 - Minimum school day for grades 1-3
- 46113 - Minimum School Day for Grades 4-8
- 46114 - Alternative computation of minimum school day for elementary grades
- 46141 - Minimum school day
- 46142 - Alternative method of computing minimum school day
- 48070.5 - Promotion and Retention of Pupils; Creation of Policy
- 51215 - Proficiency standards in basic skills
- 52012 - Establishment of school site council; composition; function; utilization of existing school-wide advisory groups; term and method of selection and replacement of council members
- 52019 - School improvement program to include local staff development program; consolidation of existing school-level staff development programs with local staff development programs; components of programs
- 52022 - Schools to request provision of time during regular school year to advise pupils or conduct staff development programs; full average daily attendance reimbursement
- 52852 - School Site Council; Composition
- 53025 et seq. - Elementary School Intensive Reading Program
- 56001.f - Provisions of the special education programs
- 56192 - Composition of community advisory committee
- 56241 - Content of staff development programs
- 56242 - A.D.A. apportionment
- 56243 - Training of regular classroom teachers
- 99220 - Reading Professional Development Institutes

B. Government Code Sections Cited

- Government Code, Chapter 10.7- Educational Employment Relations Act
- 3543.2 - Scope of Representation

SAFETY
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ARTICLE 22

SAFETY

SAFETY is an important issue in all of California's schools. Each year, Associations spend more and more time developing ways to protect pupils and employees from conditions which often cannot be predicted. Safety problems generally fall into categories of human carelessness, lack of training, discipline problems, crime, facility hazards, and natural phenomenon. CTA's recommended contract language is intended to help Associations explore the possibilities of improving the workplace for students and our members.

Each of the ideas presented here needs to be framed to fit local needs and situations. It is important to have unit member involvement on safety committees, but Associations are cautioned about the expenditure of unit member time in participation on these committees. Design approaches that are meaningful and can be accomplished with a minimum of time. With all the commitments our members have to their regular duties, it is important to spend short amounts of quality time. In some cases, site-based decision-making committees might best oversee the functioning of site safety.

In 1989, 1991, and 1993, California enacted a series of Labor Code provisions, which require every district in the state to provide a safety program for employees. The most frequently used section of the statutes is Labor Code 6401.7, which sets forth requirements for all districts to have an injury prevention program. The CTA recommended language calls for a district committee and some type of site committee. The district committee would oversee general guidelines, reporting, training and other requirements of the law. Local site committees would take the broad district committee recommendations and make sure that they fit the needs of the local site. Factors to be considered would be neighborhoods and community programs already in existence, police and fire protection, the condition, size and physical structure of the school building or worksite, and other factors unique to the work location.

Associations can expect to have parental involvement in safety committees. Parental relationships with the Association are the subject of bargaining when it comes to the composition of safety committees. It may be advisable to contact parent leadership in the area to see what they expect their involvement to be before developing bargaining proposals. Both parents and teachers have the same objective in developing safety programs - safe schools.

TOPIC: SAFE WORKING CONDITIONS

SAMPLE LANGUAGE

- 22.1 Safe Working Conditions
 - 22.1.1 Bargaining unit members shall not be required to work in unsafe conditions or to perform tasks that endanger their health, safety or well-being.
 - 22.1.2 Upon notification, the District shall eliminate or correct any unsafe or hazardous condition.
 - 22.1.3 The District shall comply with provisions of the California Occupational Safety and Health Act (CAL-OSHA), as amended (California Labor Code 6300, et seq.) regulations relating thereto (8 California Administrative Code Section 330, et seq.), and Chapter 2 of Part 19 of the Education Code relating to School Safety Article 3.6 (commencing with Sections 32228) and Article 3.8 (commencing with Section 32239.5.)
 - 22.1.3.1 The Association shall be immediately contacted and an Association designee shall be released with pay to participate in any opening conference between the District's representative(s) and a CAL-OSHA Compliance Inspection Engineer.
 - 22.1.3.2 The Association designee shall be afforded release time with pay to accompany the District representative(s), if any, and the CAL-OSHA Compliance Inspection Engineer as the engineer conducts her/his walk-around inspection.
 - 22.1.3.3 The Association on-site building representative shall also be provided all rights provided in Sections 22.8.3.1 and 22.8.3.2.
 - 22.1.3.4 The Association designee shall be provided release time with pay to be present at a closing conference between any District representative(s) and a CAL-OSHA Compliance Inspection Engineer.
 - 22.1.3.5 The District shall, within two (2) days of receipt, provide to the Association a copy of any correspondence between the District and CAL-OSHA.

- 22.1.3.6 The Association shall appoint _____ representatives to the District Safety Committee established to implement the provisions of Labor Code 6401.7. Association representatives shall receive release time or their hourly rate of pay for committee work. The District Safety Committee shall also formulate a plan for developing disaster preparedness.
 - 22.1.3.6.1 Copies of the plan will be distributed to each bargaining unit member and additional copies will be provided to the Association upon request.
 - 22.1.3.6.2 The District is responsible for coordinating contact with outside agencies, maintenance of Emergency Procedures Manuals, policy development and review (as recommended by the District Safety Committee), periodic training (as recommended by the District Safety Committee), equipment maintenance, coordination of emergency evacuation drills, maintenance of worksite safety supplies, and maintenance of worksite safety devices.
 - 22.1.3.6.3 In addition to and in compliance with the responsibilities as outlined in the above sections, the committee shall develop provisions that address:
 - 22.1.3.6.3.1 The utilization of State funds pursuant to Education Code Sections 32228.1 and 32228.2.
 - 22.1.3.6.3.2 The development of programs that will teach pupils and teachers techniques for identifying and resolving conflicts without violence.

- 22.1.3.6.3.3 The development and implementation of training programs for school staff and administrators to support and promote conflict resolution and mediation techniques for resolving conflicts between and among pupils.
- 22.1.3.6.3.4 Providing schools/sites with personnel, including, but not limited to, licensed or certified school counselors, social workers, nurses and psychologists who are trained in conflict resolution. Law enforcement personnel hired shall be sworn peace officers.
- 22.1.3.6.3.5 The purchase of communication devices, the distribution of said devices and instruction for their use to support any plans or programs pursuant to this article.
- 22.1.3.6.3.6 The development and implementation of staff development programs for school staff to learn to identify at-risk pupils, communicate effectively with such pupils and refer such pupils to appropriate school-community relationships.

22.1.3.6.3.7 The establishment of cooperative arrangements with local law enforcement agencies for appropriate school-community relationships.

22.1.3.6.3.8 Requesting from the District data and information that would contribute to the implementation of this article, and to meet the goal of providing for safe schools and the prevention of violence among pupils.

22.1.4 A bargaining unit member may refuse any directions that she/he feels could reasonably endanger anyone's life, safety and/or welfare. No bargaining unit member shall be required to perform duties that would or possibly could endanger one's life, safety or welfare unless a state of emergency has been declared by a government entity having the authority to do so and the bargaining unit member has been pressed into service as a "disaster service worker" under Government Code Section 3100 by a person having the authority to command citizens in the execution of her/his duties. Bargaining unit members may refuse any direction by person(s) until adequate proof of their authority is provided.

22.1.5 In the event of an emergency closure of District facilities, including but not limited to natural disaster, quarantine, or government order, unit members shall receive their daily rate of pay and benefits. If make-up days are required by law, the District shall negotiate said days with the Association.

22.1.6 The District shall provide each classroom and major work area with first aid kits containing rubber gloves, mouth-to-mouth breathers, first aid book, flashlight, basic first aid supplies, and other items which may be unique to a work location such as a portable ladder, bull horn, am/fm radio, 100 to 1000 feet of line (for use in smoke filled halls or dark buildings), blankets, water, and food packages.

22.1.7 Each classroom and major work area shall have a telephone with monitored central office intercom service and an outside line. The intercom shall be used only for emergency purposes or special announcements. Intercoms and television cameras used for

communications and monitoring safety conditions shall not be used for the purposes of evaluation, discipline, or discharge of unit members. Further, at the unit member's request, the unit member shall be provided a portable emergency alert device, such as a "panic button" for use during the workday.

(NOTE: Cross reference Section 22.1.7 with Section 15.1.10.8 in Article 15, Evaluation.)

22.1.8 All medical plans of the District shall provide, with no co-pay or deductible, Hepatitis B vaccine injections for unit members.

(NOTE: Hepatitis B vaccine may be added to the Health and Welfare Benefits Article.)

22.1.9 With unit member participation, as decided by unit members at the site, and District Safety Committee direction and guidance, each worksite shall have a Site Safety Committee which shall develop and annually review its site safety, health, and emergency preparedness plan for distribution to employees at the site. The committee shall also make the District aware of any unaddressed safety issues. Unit members serving on site safety committees shall receive release time or their hourly rate of pay for committee work. Site plans are expected to cover contingency plans for a wide variety of safety risks, including, but not limited to, suspicious or unwanted persons on the worksite, fire, earthquake, flood, evacuations, and emergency closings. The District Safety Committee shall provide each worksite with general procedures for safety with the site committee overseeing unique site issues. The District shall comply with all recommendations of the Site Safety Committee.

22.1.10 The District shall keep all school grounds and facilities free of unwanted rodents, pests, and insects such as ants, roaches, and fleas. If insecticides or poisons are used, the District shall notify unit members of the names of the chemicals used at least one week in advance of their use. The District shall apply them only at times when unit members and pupils are not present, allowing sufficient time for toxic effects to wear off before humans re-enter the affected area.

TOPIC: PUPIL SUSPENSION AND EXPULSION

SAMPLE LANGUAGE

22.2 Short Term Pupil Suspension

- 22.2.1 A bargaining unit member may suspend a pupil from her/his class for the day of the suspension and the following day for any act that disrupts or diminishes the education process, including, but not limited to, the following:
- 22.2.1.1 Causing, attempting to cause, or threatening to cause physical injury to another person.
 - 22.2.1.2 Possession, selling, or otherwise furnishing a firearm, knife, explosive, or other dangerous objects.
 - 22.2.1.3 Unlawfully possessing, using, selling, otherwise furnishing, or being under the influence of any controlled substance as defined under Health and Safety Code Section 11007, alcoholic beverage, or intoxicant.
 - 22.2.1.4 Committing robbery or extortion.
 - 22.2.1.5 Causing or attempting to cause damage of school or private property.
 - 22.2.1.6 Stealing or attempting to steal school or private property.
 - 22.2.1.7 Committing an obscene act or engaging in habitual profanity or vulgarity.
 - 22.2.1.8 Disrupting school activities or willfully defying authority of a bargaining unit member.
 - 22.2.1.9 Committed sexual harassment as defined in Education Code Section 212.5.
- 22.2.2 The actions stated above may occur at any time or place related to school attendance or school activity including, but not limited to, the following:
- 22.2.2.1 While on school grounds.
 - 22.2.2.2 While going to or from school.
 - 22.2.2.3 During lunch period either on or off campus.
 - 22.2.2.4 During, going to, or coming from school-sponsored activities.

- 22.2.3 The unit member shall immediately report the suspension to the site administrator (or her/his designee) and send the pupil to the administrator (or her/his designee) for appropriate action.
 - 22.2.4 The District shall facilitate carrying out any and all obligations required of the bargaining unit member by the Education Code including, but not limited to, the sending of notices to parents regarding required meetings and the scheduling of such meetings at mutually acceptable times.
 - 22.2.5 The pupil shall not be returned to the bargaining unit member's class during the period of suspension without the bargaining unit member's concurrence.
 - 22.2.6 The pupil shall not be placed in another regular class during the period of suspension. If the pupil is assigned to more than one class per day, this section shall apply only to classes scheduled during the same time as the class from which the pupil was suspended.
- 22.3 Longer Term Pupil Suspension
- 22.3.1 A bargaining unit member may also refer a pupil for suspension from school for up to five (5) days to the site administrator (or her/his designee) for any acts enumerated in Education Code Section 48900 including, but not limited to those set forth in Section 22.2.1 of this Article.
 - 22.3.2 In the event a pupil is so referred, the administrator (or her/his designee) shall immediately schedule a conference with the pupil, the bargaining unit member, and the administrator for purposes of carrying out obligations under Education Code Section 48910 unless this conference is bypassed under the "emergency situation" of Education Code Section 48911(c).
 - 22.3.3 Except for good and sufficient reason to the contrary established at the hearing, the referral of the bargaining unit member will result in the suspension requested.
 - 22.3.4 Any required notices regarding the suspension to the pupil's parents or guardians or to the governing board shall be performed by the District.
 - 22.3.5 The bargaining unit member may require the pupil to complete any assignment or test missed during the suspension.
- 22.4 Extended Pupil Suspension or Expulsion

- 22.4.1 A bargaining unit member may seek a longer period of suspension and/or expulsion for pupils as permitted by law including Education Code Sections 48910, 48915, and other related sections.
- 22.4.2 In the event a bargaining unit member seeks a longer period of suspension, she/he will be entitled to attend all hearings, conferences, or other such meetings scheduled in order to reach a decision in the matter. Bargaining unit members shall be entitled to representation in such meetings.

TOPIC: PARENT/GUARDIAN INVOLVEMENT AND INFORMATION

The adoption of the 1998-99 state budget included two new statutes, AB 1216 and AB 1665, which expanded the rights of parents/guardians to come on to a school campus to inspect instructional materials, review testing and assessment data, review student records, and observe classrooms. Although the Association should encourage such parent/guardian involvement in the schools, the following language is also designed to insure the safety and professional working conditions of unit members.

SAMPLE LANGUAGE

22.5 Parent/Guardian Involvement and Information

PREAMBLE: It is the belief of the Association and the District that student achievement is enhanced when parent/guardian involvement is increased. The Association and the District are committed to increasing parent/guardian participation in the education of students. With the active involvement of parents/guardians comes an increase in visitors to the school site. To that end, in order to support the needs and rights of the parents/guardians and unit members and to ensure the safety of students and unit members, the following procedures shall be followed.

22.5.1 Parents/guardians wishing to review materials for use in their student's classroom shall provide a written request to the student's teacher(s) at least two (2) work-days prior to the date the parent/guardian wishes to come to the school to review the materials.

22.5.1.1 Upon the unit member's agreement as to the date and time, the parent(s)/guardian(s) may come to the school to

review the materials. Should the time of the review be during the unit member's instructional day, a substitute shall be provided so that the unit member shall be available to meet with the parent(s)/guardian(s) during the review. Should the time of the review be before or after the regular workday, the unit member shall be compensated at the unit member's pro-rata hourly rate of pay for meeting with the parent(s)/guardian(s) during the review.

22.5.1.2 Such review shall not take place during the unit member's duty free lunch-time, or any other duty free break times during the workday.

22.5.2 Parent(s)/guardian(s) wishing to observe in a unit member's classroom shall provide a written request at least three (3) workdays prior to the day of the requested observation.

22.5.2.1 Upon the unit member's agreement as to the date of an observation, the parent(s)/guardian(s) may observe the classroom at any time during the student instructional day.

22.5.2.2 The observation shall last no longer than _____. (Locals should negotiate a reasonable time limit acceptable to unit members.)

22.5.2.3 Observations shall be no more frequent than once every _____ workdays. (Locals should negotiate a reasonable frequency acceptable to unit members.)

22.5.2.4 Upon mutual agreement among the unit member, parent(s)/guardian(s), and the site administrator, the time and frequency of observations may exceed the limits set forth above.

22.5.2.5 If, during the course of an observation, the parent(s)/guardian(s) presence becomes disruptive, the unit member shall have the authority to tell the parent(s)/guardian(s) to leave the classroom.

22.5.2.5.1 The unit member shall report any such incidents to the site administrator as soon after the incident as possible.

22.5.2.5.2 A disruptive parent/guardian shall not be allowed to observe the unit member's classroom again unless agreed to by the unit member and the site administrator.

22.5.3 Parent(s)/guardian(s) coming onto a worksite for any purpose shall check in at the main office prior to visiting any other location at the site. Personnel in the main office shall contact the unit member to be visited before the parent(s)/guardian(s) are allowed to leave the office to go to the unit member's work location at the site.

22.5.4 The District shall pursue appropriate legal action against any parent/guardian who demonstrates a pattern of disruptive behavior while visiting a worksite.

(NOTE: See also Article 21, Hours and Adjunct Duties, for more information on parent conferences and meetings.)

TOPIC: PUPIL TRANSPORTATION

SAMPLE LANGUAGE

22.6 Pupil Transportation

22.6.1 No bargaining unit members shall be requested or required to transport pupils in private vehicles.

22.6.2 Should the District request or require that a unit member transport a pupil or pupils in a vehicle owned by the District, the District shall provide full primary liability coverage for any liability which may occur during such assignment. Unit members shall be provided with documentation of primary liability coverage which shall be carried in the vehicle during such assignment.

TOPIC: SPECIALIZED HEALTH CARE PROCEDURES

SAMPLE LANGUAGE

22.7 Specialized Health Care Procedures

- 22.7.1 Qualified and trained nurses shall be the only bargaining unit members to provide and conduct necessary specialized health care procedures including, but not limited to, dispensing medication, catheterizations, crede', diapering, injections, ileostomies, colostomies, gastrostomies, tracheotomy, suction, oxygen administration, gavage feeding, draining, and head lice inspection.
- 22.7.2 No other bargaining unit members shall be requested or required to perform such specialized health care.
- 22.7.3 The District shall comply with all Education Code and Title V provisions so unit members may work and provide specialized health care in a safe appropriate environment.
- 22.7.4 The District shall provide rubber gloves, mouth-to-mouth breathers, and facilities to wash with hot water and antiseptic soap to any bargaining unit member who may come in contact or be expected to come in contact with bodily fluids.
- 22.7.5 The District shall indemnify and hold harmless from all liability any unit member who performs health care services.
- 22.7.6 The District shall provide malpractice liability insurance for bargaining unit members covering the rendering of or failure to render specialized health care services, medical treatment, or the furnishing or dispensing of drugs or medication.

TOPIC: ASBESTOS REMOVAL

SAMPLE LANGUAGE

22.8 Asbestos Removal

- 22.8.1 The District acknowledges that the presence of asbestos in District facilities poses a serious health hazard for all employees and pupils and agrees to eliminate this hazard where it is present as a matter of highest priority.

- 22.8.1.1 The District agrees to continue to comply or immediately comply with all Federal, State, and local requirements regarding asbestos, including, but not limited to, the Federal asbestos hazard emergency response act (AHERA), which are currently applicable and/or those which may become applicable or be enacted during the term of this Agreement.
- 22.8.1.2 The District shall notify the Association of any meeting regarding asbestos and a representative of the Association may attend and participate in any such meeting.
- 22.8.2 The District agrees that the following inspection and reinspection requirements of AHERA have and will continue to be met, or if not met, will be met immediately upon the ratification of this Agreement.
 - 22.8.2.1 All school buildings, either owned or leased by the District, will be inspected by a licensed and accredited inspector, including a visual inspection of all asbestos-containing building materials (ACBM), an assessment of all friable asbestos containing materials (ACM) and bulk sampling of all ACBM. A current copy of all licenses, registrations, and accreditation certificates of all personnel involved will be furnished the Association immediately upon request. Inspection shall cover all areas within the building including, but not limited to, ceilings and walls, hallways, gymnasiums, support beams and columns, cafeterias, shop areas, pipes, and boiler areas.
 - 22.8.2.2 All bulk samples will be submitted to a National Bureau of Standards accredited laboratory for analysis. The laboratory must validate the results in writing to the District within thirty (30) days of the sample submittal. The District shall provide the Association a copy of the laboratory results within five (5) days of receipt.
 - 22.8.2.3 An assessment of each inspection, reinspection, and sample analysis must be made by the inspector. Each assessment will be dated, signed, and include the inspector's accreditation number. The District shall provide the Association with a copy of the assessment within five (5) days of receipt.
 - 22.8.2.4 Surveillance will be performed and appropriately documented every six (6) months by trained personnel as

required by AHERA to locate and identify any changes in the condition of any asbestos and to recommend specific containment measures. The District shall provide the Association with a copy of all documentation and recommendations within five (5) days of receipt.

22.8.2.5 An annual reinspection shall be performed and documented as required by AHERA. The District shall provide the Association a copy of the documentation within five (5) days of receipt.

22.8.3 Bargaining unit members in each affected building shall be notified at least once each year of all inspections, corrective actions, planned, or ongoing surveillance activities. Documentation of this notification will be retained at both the worksite and the District's main office and a copy will be provided the Association at the same time it is disseminated to bargaining unit members.

22.8.4 The District shall adopt a "management plan" as required by AHERA and make it available to each worksite for inspection by worksite bargaining unit members.

22.8.4.1 A copy of each such plan will be delivered to the Association.

22.8.4.2 The District shall submit and implement the management plan as required by AHERA.

22.8.4.3 No bargaining unit member shall be required to serve in any capacity as compliance officers and/or inspectors, or perform abatement tasks.

22.8.4.4 The District shall take all necessary actions to immediately abate any and all friable asbestos hazards by the safest method to employees' health, safety and welfare.

22.8.4.5 No bargaining unit member shall be permitted in any area where the abatement process is occurring unless adequately protected.

22.8.5 Warning labels shall be affixed immediately adjacent to any and all friable and non-friable ACBM and ACM located in or around any school/site. The warning label shall include the following:

- 22.8.5.1 Warning that friable ACBM was not removed but only encapsulated.
- 22.8.5.2 Warning that ACBM exists but has been abated.
- 22.8.5.3 All warning labels shall continue to remain visible until the ACBM is removed.
- 22.8.6 If friable asbestos is found in any District facility, any current or past bargaining unit member shall be entitled to one (1) physical examination each year thereafter, for the purpose of testing for asbestos-related illness, to be performed by a doctor of the employee's choice.
- 22.8.7 Any sick leave taken in connection with asbestos-related illness shall be unlimited and not deducted from the bargaining unit member's accumulated sick leave.

TOPIC: SCHOOL AND PERSONAL PROPERTY

LIABILITY COVERAGE

SAMPLE LANGUAGE

(NOTE: Cross reference this language with Article 15, Evaluation, pertaining to teaching conditions.)

22.9 SCHOOL AND PERSONAL PROPERTY LIABILITY COVERAGE

- 22.9.1 The District shall protect bargaining unit members from loss of personal property while acting in the discharge of their duties. The District shall fully reimburse bargaining unit members for such losses resulting from any property being lost, stolen, damaged, soiled, or destroyed.
- 22.9.2 The District shall provide bargaining unit members written authority to take pupils on a field trip. Written authority shall mean that the trip is a school-sponsored activity with the District liable for any personal injuries, deaths, or damage to personal or real property arising during the course of such a trip.

TOPIC: ASSAULT

SAMPLE LANGUAGE

22.10 Assault

- 22.10.1 Unit members shall immediately report cases of assault suffered by them in connection with their employment to their site administrator or immediate supervisor, who shall immediately report the incident to the police. Such notification shall immediately be forwarded to the Superintendent. The Superintendent shall comply with any reasonable request from the unit member for information in the possession of the District relating to the incident or the persons involved, and shall act in appropriate ways as liaison between the unit member, police and courts.
- 22.10.2 The District shall provide inservice training on a voluntary basis to unit members wishing training on how to subdue assaultive pupils, break- up pupil fights, and use of conflict intervention skills.
- 22.10.3 The District shall reimburse unit members for any and all costs incurred as a result of assault, including repairing or replacing personal property which may have been damaged or destroyed, and for all related medical costs not covered under insurance benefits.
- 22.10.4 In the event that criminal or civil charges are brought against unit members in connection with an assault, the District shall either provide legal counsel to act in the unit member's defense or shall reimburse the unit member for legal fees incurred in securing their own defense.
- 22.10.5 The District shall provide full support, including legal and other assistance, to unit members who may be assaulted while in performance of their duties.
- 22.10.6 The District shall pursue legal action against a pupil or the pupil's parent or guardian if a unit member's person or property is injured or damaged by the willful misconduct of the pupil which occurs during the course and scope of employment.

(NOTE: Education Code Section 48905 provides for Section 22.10.6)

- 22.10.7 When absence or disability arises out of or from assault, unit members shall suffer no loss in wages, benefits or leaves.

- 22.10.8 The District shall notify unit members in accordance with Education Code Section 49079 of a record of conduct demonstrating that a student has caused, or attempted to cause serious bodily injury.

LEGAL REFERENCES

A. Education Code Sections Cited

- 32228.1 – School Safety and Violence Prevention Act
- 32228.2 – Minimum Allocation
- 48900 – Grounds for suspension or expulsion
- 48905 – Injury or damage to person or property of school district employee;
willful misconduct of pupil; request for legal action by school district
- 48910 – Suspension by teacher; reports; conferences; referrals
- 48911 – Suspension by principal, principal’s designee, or superintendent
- 48915 - Expulsion; particular circumstance
- 49079 – Notification to teacher of pupils whose actions are grounds
for suspension/expulsion
- 49091.10 – Parental right to inspect instructional materials and observe school activities

B. Government Code Sections Cited

- Government Code, Chapter 10.7 - Educational Employment Relations Act
- 3543.2 - Scope of Representation

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ARTICLE 23

LEAVES

LEAVES is designed to expand rights and benefits provided by law. Associations must be careful not to lose or restrict existing rights. Areas that need to be negotiated are the expansion of the minimum rights and the establishment of rules and regulations relating to the administration of leaves. The Agreement should clarify the status of unit members during and returning from leave, whether paid or unpaid.

TOPIC: LEAVE RIGHTS

This section provides the incorporation of the Education Code into the Agreement and clarifies unit member status while on leave.

SAMPLE LANGUAGE

23.1 Leave Rights

23.1.1 The benefits in this Article are benefits which are in addition to statutory leave benefits and it is understood and agreed that all statutory leave benefits are incorporated into this Agreement by reference as if fully set forth herein.

23.1.2 Unit members on a paid leave of absence shall continue to receive wages, health and welfare benefits, and retirement credit in the same amounts as if they were not on leave. Those unit members who go on an unpaid leave of absence during any pay period shall receive their health and welfare benefits for the balance of that pay period. Thereafter, they shall be allowed continued benefits at their own expense.

- 23.1.3 A unit member returning from any type of paid leave shall be entitled to return to the same position and assignment she/he had prior to the leave. A unit member returning from any type of unpaid leave shall be entitled to return to the same position and assignment she/he had prior to the leave unless that position was filled in her/his absence with a permanent or probationary unit member, and in such case the returning unit member shall be entitled to an equivalent position.

TOPIC: SICK LEAVE

For the purposes of this Article, maternity leave is treated like any other sick leave. Parental leave, which appeared as a separate section in previous CTA contract reference manuals, is incorporated into the Family Care and Medical Leave topic. Because much confusion has surrounded this issue, and some current Agreements define maternity and parental leaves as separate from sick leave, the following is provided as a brief overview of the these two types of leaves. Associations should bargain changes in current Agreements if they do not include maternity leave as part of sick leave and parental leave as part of Family Care and Medical Leave.

The Equal Employment Opportunity Commission (EEOC) has issued policy guidance on parental leave in an effort to clarify the confusion that has surrounded the issue. Consistent with a recent federal court decision, the EEOC has concluded that parental leave policies that treat male and female employees differently with regard to time off to care for a child, violate Title VII. Thus, a district who grants paid or unpaid leave for a newborn child, unrelated to the mother's childbirth-related disability, must provide the same benefits to male and female employees.

Critical to the EEOC's conclusion is its distinction between "maternity leave" and "parental leave." Maternity leave is essentially medical leave that is provided in connection with a pregnancy-related disability. In contrast, parental leave is leave to care for a newborn baby or child of any age. A District must provide sick leave to women for pregnancy-related disabilities. A District must provide equal child care leave benefits to male and female employees. Language should be able to accommodate a situation where a female unit member takes an unpaid leave before the birth of a child, is paid for the period of time she is actually disabled (which may, as an example, include three (3) weeks before the delivery and ten weeks after the delivery, as determined by the unit member's doctor), and then is able to take unpaid child care leave after sick leave. This would mean that the unit member would be entitled to pay for the period of time she was disabled, but would be on unpaid status before and after the disability. If the contract calls for five (5) days of paid leave for child care, she would be entitled to five (5) days' pay in addition to the disability pay.

SAMPLE LANGUAGE

23.2 Sick Leave

23.2.1 Unit members employed on a full-time basis shall be entitled to accumulate _____ days per school year of sick leave available to the unit member from the first work day of each year. Sick leave may be used by the unit member for illness, injury, or quarantine of the unit member or the unit member's immediate family. Sick leave that is not used shall accumulate from year-to-year without limit.

(NOTE: Ten days of sick leave is the statutory floor. Associations may bargain additional days.)

23.2.2 Unit members who work less than full-time and/or who work during summer session shall be entitled to accumulate and use sick leave for all such service at a rate that is in the same proportion to the full-time entitlement as their part-time employment bears to full-time employment.

(NOTE: See Article 32, Supplemental Instructional Programs, for additional language.)

23.2.3 In addition to all sick leave entitlement a unit member may accumulate with the District, she/he shall also be entitled to all unused sick leave which may have been accumulated while employed in a position requiring certification qualifications with another public school district.

23.2.4 The District shall provide each unit member with an accounting of the number of days of sick leave she/he has accumulated, plus the number of days to which the unit member is entitled for the current school year. The District shall provide an accounting of such days to unit members by November 1 of each school year.

23.2.5 Upon exhaustion of all accumulated sick leave, a unit member who would otherwise qualify for sick leave under the provisions of this Article shall receive, for up to one hundred (100) days, the difference between her/his pay and the amount actually paid a substitute, or, if no substitute has been employed, the amount that would have been paid a substitute, or fifty percent (50%) pay, whichever is greater. The one hundred (100) days specified herein shall be renewable at the beginning of each unit member's work year.

(NOTE: AB 1019, effective January 1, 1999, amended Education Code Section 44977 and added Section 44978.1. So called extended illness leave or differential pay leave was changed to begin

following the exhaustion of all accumulated sick leave. The sample language in Section 23.2.5 is, therefore, still valid. On the other hand, the 100 days of such leave is now limited to one-100 day period per illness, rather than renewable each work year as under the old law. The language in Section 23.2.5 above may be bargained to insure a benefit that exceeds the current statute. Another option would be to bargain a number of days greater than 100, rather than make the 100 days renewable each year. The law also provides for a reemployment list if the teacher is not able to return to work after the 100 days. Probationary teachers have 24 months and permanent teachers have 39 months after the expiration of extended leave during which they may return to work. Within that period, the teacher must be returned to employment in a position for which she/he is credentialed and qualified. You should attempt to obtain a longer period of reemployment rights than the statute specifies.)

- 23.2.6 Unit members may use accumulated sick leave as set forth in this Article for disabilities caused or contributed to by pregnancy, miscarriage, or childbirth, and recovery therefrom. The length of such sick leave, including the date on which the leave is to begin and the date on which the duties are to be resumed, shall be determined by the unit member and her physician.

TOPIC: FAMILY CARE AND MEDICAL LEAVE

The Federal Family and Medical Leave Act of 1993 (FMLA) and the California Family Rights Act provide employees with important leave rights. School districts are required to comply with both the federal and state family care and medical leave legislation and can be expected to propose narrow and strict rules and procedures for implementing it. The federal statute expressly encourages improvements in unit member leave rights via collective bargaining. Federal regulations also encourage expansion of rights by bargaining. The ideas here are intended to fill in the gaps which exist in the law and lend themselves to bargaining.

Enforce FMLA rights through the grievance and arbitration procedures in the Agreement. Grievances would certainly be cheaper and quicker than filing suit in federal court or a complaint with the U.S. Secretary of Labor or the California Department of Fair Employment and Housing.

Expand coverage to more persons by lifting FMLA restrictions on employees who are covered. Apply the benefits to *all bargaining unit employees*, not merely those who have been employed for a least twelve (12) months and who have worked 1250 hours in the twelve month period prior to the leave.

Improve the leave benefits for employees. Increase the 12 week period, perhaps to a year. Provide paid instead of unpaid leave. Expand the "family" for whom a unit member may obtain the leave to include at least persons for whom the employee gets bereavement leave. Expand the notion of a "serious health condition" to include any illness or injury.

Enhance district payment of employee health benefits during the period of the leave. Have district pay unit member's portion of the premiums for insurance and any deductible insurance benefits.

Improve the quality of benefit coverage during the period of the leave, for example, the district pays for all insurance benefits of unit member on leave for the duration of the leave. Note that it may even be less expensive for the district to do so rather than insure the unit member separately upon her/his return. FMLA makes it unlawful for a district insurance plan to refuse to reinstate unconditionally a unit member who returns from FMLA leave, even though most district plans do not provide for such reinstatement. To assure that it can meet the FMLA requirements, a district may have to continue the unit member's coverage during the period of the leave.

Assure that employees continue to earn seniority during the period of the leave.

If bargaining District payment of all benefit costs during the leave is not possible, at least provide a simple and clear method of paying for unit member premiums on health care and other benefits during the leave, to assure no lapse of coverage. The simplest way is for the district to advance the funds on the unit member's behalf, subject to unit member repayment over time upon return from leave.

Improve the rules for substituting accrued paid leave for FMLA leave. Limit or eliminate the right of the District to require a unit member to substitute accrued sick or personal necessity leave for FMLA leave. Extend the right of a unit member to choose to use any accrued, paid leave in lieu of FMLA leave. Establish a leave bank for FMLA purposes against which a unit member may borrow and replenish from future leave accruals.

Expand use of intermittent or reduced schedule leave to any purpose for which FMLA leave may be used, not merely instances when intermittent leave is "medically necessary."

Limit the District's discretion to demand medical certification, or to demand a second or third opinion.

Limit the District's discretion to demand fitness-for-duty certifications at the conclusion of the leave.

Establish on a per-unit member basis the most appropriate 12 month period for calculating leave use under FMLA. For example, a rolling 12 months preceding the unit member's current leave use might be best for one unit member, while a calendar year might benefit another unit member. Permit a unit member to choose the calculation method most advantageous to her/him.

Assure that spouses working for the District receive separate entitlement for leave, including FMLA leave for child birth and child placement leave.

Improve reinstatement rights by establishing assurance of restoration to the same position held prior to the leave.

Assure replacement employees fair assignment procedures upon return of the unit member who was on the FMLA leave.

Improve procedures by changing notice requirements. Reduce the time lines for unit member notification of the district or for requesting leave. Limit the district to one notice per 60 or 90 days, instead of a monthly certification of illness. Streamline provider certification requirements.

Bargain District-paid income replacement policies for unpaid or partially unpaid leave under FMLA.

SAMPLE LANGUAGE

23.3 The District shall provide a unit member, upon request, Family Care and Medical Leave in accordance with this Article.

23.3.1 Eligibility

23.3.1.1 All unit members are eligible for leave under this Article.

23.3.1.2 Leave under this Article shall be granted upon request of a unit member, whenever in the judgment of the unit member she/he needs leave because of the unit member's serious health condition, the serious health condition of a member of the unit member's family, the birth of a child of the unit member, or placement of a child with a unit member in connection with adoption or foster care of the child by the unit member.

23.3.1.3 As used in this Article, "family" includes all persons listed in Article 3 of the Agreement Definitions (*refer to and incorporate most generous definition of family in existing Agreement*), and "serious health condition" is any illness, injury, impairment, or physical or mental condition that either involves inpatient care in a hospital, hospice or residential health care facility, or involves continuing treatment or supervision by a health care provider.

23.3.1.4 A unit member's eligibility for leave under this Article shall not be affected by entitlement, or lack thereof, of another member of the unit member's family to any leave benefit under any statute or any employment.

- 23.3.1.5 A unit member eligible for leave under this Article may substitute therefor any accrued leave, paid or unpaid, under this Agreement.
- 23.3.2 Duration
 - 23.3.2.1 Leave under this Article may be as long as an entire work year.
 - 23.3.2.2 Leave under this Article may be as short as half a workday.
- 23.3.3 Benefits
 - 23.3.3.1 Leave under this Article shall entitle the unit member to all economic benefits of employment, except for salary, on the same basis as if the unit member were not on leave.
 - 23.3.3.2 Leave under this Article shall entitle the unit member to continued accrual of all "service related" rights of employment, including, without limitation, seniority, salary advancement, reemployment, and participation in optional benefit programs such as early retirement.
 - 23.3.3.3 Leave under this Article shall run consecutive to, not concurrent with, other leave available to the unit member.
- 23.3.4 Return to Work
 - 23.3.4.1 Leave under this Article shall terminate whenever the unit member returns to continuous active service following notice as provided below.
 - 23.3.4.2 A unit member returning from leave under this Article shall be reinstated immediately to the position held by the unit member at the commencement of the leave.
 - 23.3.4.3 A unit member who while on leave under this Article gives notice of resignation or retirement, shall be deemed to have resigned or retired, as appropriate, on the next work day following expiration of the leave.

(NOTE: If the current Agreement has parental leave days on a paid basis, the Association may wish to add paid days in Section 23.3.3.1. With the incorporation of Family Care and Medical Leave, parental leave does not need to be treated as a separate section.)

23.3.5 Procedures

- 23.3.5.1 Leave under this Article shall commence on the date indicated by the unit member in the leave notice provided by the unit member to her/his supervisor.
- 23.3.5.2 The leave notice shall specify: Leave will be taken pursuant to this Article, the date the leave commences, the anticipated pattern of leave use if the unit member will not be absent continuously, whether the unit member will substitute other paid leave for leave under this Article and if so how much paid leave, and the anticipated date of return to continuous active service, if known to the unit member.
- 23.3.5.3 Leave under this Article shall terminate on the next working day following the date indicated by the unit member in the return notice provided by the unit member to her/his supervisor.
- 23.3.5.4 The return notice shall specify: That the unit member is on leave pursuant to this Article, that the unit member will return to continuous active service, and the date upon which the unit member will return to continuous active service.
- 23.3.5.5 Delivery of a leave or return notice shall be by any means reasonably likely to inform the supervisor of the unit member's absence from or return to continuous active service.
- 23.3.5.6 If a unit member on leave under this Article determines to resign or retire without returning to continuous active service, the unit member shall provide written notice of such determination to the District, designating the last day of employment. Leave under this Article shall terminate without further notice to the District on the next work day following the day designated by the unit member as the last day of employment.
- 23.3.5.7 A unit member who, while on leave under this Article, provides written notice of determination to resign or retire, may rescind the resignation or retirement at any time up to and including the final day of employment. The unit member shall provide the District written notice

of his/her rescission of the prior notice of resignation or retirement.

23.3.6 Relationship to Other Benefits

23.3.6.1 Leave under this Agreement is in addition to and supplements all other benefits accorded a unit member or any member of her/his family under this Agreement, or under any statute, or under any other employment.

TOPIC: CATASTROPHIC LEAVE BANK

Catastrophic leave banks are an alternative to costly income protection insurance. Until the passage of AB 2007 in July of 1991, these banks were impossible to bargain unless the District awarded more than ten (10) days of leave annually. Education Code Section 44043.5 has been amended to allow these banks.

Bargaining unit members will be contributing their own sick leave to the bank. The bank may be somewhat controversial, even though participation is, by statute, strictly voluntary. Because unit members are able to count accumulated sick leave toward retirement service, some unit members may be reluctant to contribute to the bank. All unit members need protection from catastrophic illness or injury. The one day a year contribution to a bank would have a minimal impact on retirement, compared to the lost wages from a long-term illness/injury. But it is essential to write in protections against abuse, especially since a withdrawing participant is using another person's sick leave.

This language, utilizing a definition of catastrophic and providing for waiting periods, segmented withdrawals, and independent review of extension requests, attempts to balance the interests of the withdrawing participant to confidentiality without violating the trust of the contributing unit member. Those legitimately in need will not mind the checkpoints.

The law allows catastrophic leave banks for all employees. Classified employees will probably want a bank of their own as their hours and duty days are frequently counted in hours, not days. Administrators may want to participate in the Association's bank because it represents a bigger pool. CTA does not recommend that administrators be included in the Association bank. Administrators are not covered under the recognition clause of the Agreement or the official unit description listed for the Association's bargaining unit at PERB. If the Association does include administrators, be careful how the administering committee is constituted. If the committee is a joint committee and is overbalanced with administrators, or if it is merely empowered to recommend to the District, the potential for abuse exists and the trust necessary for a bank will be violated.

SAMPLE LANGUAGE

23.4 Catastrophic Leave Bank

23.4.1 Creation

23.4.1.1 The Association and the District agree to create a Catastrophic Leave Bank effective _____. The Catastrophic Leave Bank shall be funded in accordance with the terms of Section 23.4.2 below.

23.4.1.2 For the purposes of this section, a "day" shall be any day a unit member is expected to be on duty as determined by the terms of this Agreement.

23.4.1.3 Days in the Catastrophic Leave Bank shall accumulate from year to year.

23.4.1.4 Days shall be contributed to the Bank and withdrawn from the Bank without regard to the daily rate of pay of the Catastrophic Leave Bank participant.

(NOTE: Insist upon the following if the district does not contribute days.)

23.4.1.5 The Catastrophic Leave Bank shall be administered by a three (3) member Catastrophic Leave Bank Committee appointed by the Association. The terms of the Committee shall be staggered three-year terms. Initial appointments shall be for one (1) year, two (2) years, and three (3) years.

(NOTE: Use the following language if the district insists upon a joint Association/District committee:)

23.4.1.5 The Catastrophic Leave Bank shall be administered by a joint committee comprised of three (3) members appointed by the Association and two (2) members appointed by the District.

23.4.2 Eligibility and Contributions

23.4.2.1 All unit members on active duty with the District are eligible to contribute to the Catastrophic Leave Bank.

- 23.4.2.2 Participation is voluntary, but requires contribution to the Bank. Only contributors will be permitted to withdraw from the Bank.
- 23.4.2.3 Unit members who elect not to join the Catastrophic Leave Bank upon first becoming eligible have a waiting period of _____ days after joining the bank before becoming eligible to withdraw from the Bank.
- 23.4.2.4 The contribution, on the appropriate form, shall be authorized by the unit member and continued from year to year until canceled by the unit member.
- 23.4.2.5 Cancellation occurs automatically whenever a unit member fails to make her/his annual contribution or assessment. Cancellation, on the proper form, may be effected at any time and the unit member shall not be eligible to draw from the Bank as of the effective date of the cancellation. Sick leave previously authorized for contribution to the bank shall not be returned if the unit member effects cancellation.
- 23.4.2.6 Contributions shall be made between July 1 and October 1 of each school year. Unit members returning from extended leave which included the enrollment period and new hires will be permitted to contribute within 30 calendar days of beginning work. The District shall supply enrollment forms for the Catastrophic Leave Bank to all new unit members and those unit members returning from leave.
- 23.4.2.7 The annual rate of contribution by each participating unit member for each school year shall be one (1) day of sick leave which shall be deemed to equate to the legal minimum required by Education Code Section 44043.5.

(NOTE: The following two sections are optional:)

- 23.4.2.7.1 An additional day of contribution will be required of participants if the number of days in the Bank falls below _____. Catastrophic Leave Bank unit member participants who are drawing from the Bank at the time of the assessment will not be required to contribute to remain eligible to draw from the bank. If a

Catastrophic Leave Bank unit member participant has no remaining sick leave at the time of the assessment, she/he need not contribute the additional day to remain a participant in the Catastrophic Leave Bank.

23.4.2.7.2 If the number of days in the Bank at the beginning of a school year exceeds _____, no contribution shall be required of returning unit members. Those unit members joining the Catastrophic Leave Bank for the first time and those returning from leave shall be required to contribute one day to the Bank.

23.4.3 Withdrawal from the Bank

23.4.3.1 Catastrophic Leave Bank participants whose sick leave is exhausted may withdraw from the Bank for catastrophic illness or injury. Catastrophic illness or injury shall be defined as any illness or injury that incapacitates a unit member or a member of the unit member's family for over ten (10) consecutive duty days which requires the unit member to take time off work to care for that family member. If a reoccurrence or a second illness or injury incapacitates a unit member or member of the unit member's family within 12 months, it shall be deemed catastrophic after five (5) consecutive days. Thus, a unit member who used the Bank, after exhaustion of sick leave, for 25 days to care for her/his spouse who dies of cancer, and, after returning to work, suffers a heart attack, shall be deemed to have a second catastrophic illness and may again withdraw from the bank after five (5) consecutive days off work.

23.4.3.2 Unit members must use all sick leave, but not differential leave, as defined in Article 23, Section 23.2, available to them before eligible for a withdrawal from the Bank.

23.4.3.3 Unit members who have exhausted sick leave, but still have differential leave available are eligible for a withdrawal from the Catastrophic Leave Bank. The District shall pay the unit member full pay and the Bank shall be charged one-half (1/2) day.

- 23.4.3.4 The first ten (10) days of illness or disability must be covered by the unit member's own sick leave, differential leave, or leave without pay, the first time said unit member qualifies for a withdrawal from the Bank. For subsequent withdrawals within twelve (12) consecutive months, the first five (5) duty days of illness must be covered by the unit member's own sick leave, differential leave, or leave without pay.
- 23.4.3.5 If a unit member is incapacitated, applications may be submitted to the Committee by the participant's agent or member of the unit member's family.
- 23.4.3.6 Withdrawals from the Catastrophic Leave Bank shall be granted in units of no more than 30 duty days. Unit members may submit requests for extensions of withdrawals as their prior grants expire. A unit member's withdrawal from the bank may not exceed the statutory maximum period of twelve (12) consecutive months.
- 23.4.3.7 Unit members applying to withdraw or extend their withdrawal from the Catastrophic Leave Bank will be required to submit a doctor's statement indicating the nature of the illness or injury and the probable length of absence from work. Members of the Committee shall keep information regarding the nature of the illness confidential. A unit member's withdrawal may not exceed the statutory maximum period of twelve (12) consecutive months.
- 23.4.3.8 If a unit member has drawn 30 Catastrophic Leave Bank days and requests an extension, the Committee may require a medical review by a physician of the Committee's choice at the unit member's expense. The Committee shall choose only a physician who qualifies under the negotiated insurance policy. Refusal to submit to the medical review will terminate the unit member's continued withdrawal from the Bank. The Committee may deny an extension of withdrawal from the Catastrophic Leave Bank based upon the medical report. The participant may appeal any termination under the procedures outlined in Section 23.4.3.13 below.
- 23.4.3.9 Leave from the Bank may not be used for illness or disability which qualifies the unit member for worker compensation benefits unless the unit member has

exhausted all worker compensation leave, her/his own sick leave, and provided further that the unit member signs over any worker compensation checks for temporary benefits to the District. If there are any worker compensation checks signed over to the District, the Bank will not be charged days, or if charged, will be reimbursed the number of days for which the worker compensation payment is equivalent to a regular day of pay at the negotiated rate for that unit member. If the District challenges the worker compensation claim, the unit member may draw from the Bank, but upon settlement of the claim, the Bank shall be reimbursed the days by the District.

23.4.3.10 If the Catastrophic Leave Bank does not have sufficient days to fund a withdrawal request, the Committee is under no obligation to provide days and the District is under no obligation to pay the participant any funds whatsoever. If the Committee denies a request for withdrawal, or an extension of withdrawal, because of insufficient days to fund the request, they shall notify the unit member, in writing, of the reason for the denial.

23.4.3.11 Withdrawals shall become effective immediately upon the exhaustion of sick leave or the waiting periods provided for in Sections 2.3 and 3.4, whichever is greater. For example, if a unit member contributed when first eligible to contribute (Section 2.3) and had ten (10) days of accumulated sick leave when the illness began (Section 3.4), she/he shall begin withdrawing upon the 11th duty day, if otherwise eligible. If the unit member had 15th days of sick leave at the beginning of the illness, she/he shall begin withdrawing days on the 16th duty day. If the unit member had five (5) days of sick leave at the beginning of the illness, she/he shall begin withdrawing days on the eleventh 11th duty day.

(NOTE: Use the following language with Association only committee:)

23.4.3.12 Catastrophic Leave Bank unit member participants who are denied a withdrawal or whose withdrawal is not renewed or terminated may, within 30 days of denial, appeal, in writing, to the Executive Board of the Association. The Executive Board of the Association shall hold a hearing within 15 days. The Executive Board shall issue a confidential written decision within fifteen

15 duty days of the hearing. If the unit member's incapacitation does not allow participation in this appeal process, the unit member's agent or member of the family may process the appeal.

(NOTE: Use the following language with joint District/Association committee:)

23.4.3.13 Catastrophic Leave Bank unit member participants who are denied a withdrawal or whose withdrawal is not renewed or terminated may, within 30 days of denial, grieve the denial, non renewal, or termination. The unit member participant shall be deemed the grievant; the committee shall be deemed the District. All other provisions of the grievance procedure (Article 10) shall be interpreted in light of this. The Association shall provide representation to a grieving unit member, unless the grievant refuses representation. If the unit member's incapacitation does not allow participation in this appeal process, the unit member's agent or member of the family may process the grievance.

23.4.4 Administration of the Bank

23.4.4.1 The Catastrophic Leave Bank committee shall have the responsibility of maintaining the records of the Catastrophic Leave Bank, receiving withdrawal requests, verifying the validity of requests, approving or denying the requests, and communicating its decisions, in writing, to the unit member participants, to the Association, and to the District.

23.4.4.2 The committee's authority shall be limited to administration of the Bank. The committee shall approve all properly submitted requests complying with the terms of this Article. Withdrawals may not be denied on the basis of the type of illness or disability.

23.4.4.3 Applications shall be reviewed and decisions of the committee reported to the applicant, in writing, within ten (10) duty days of receipt of the application.

23.4.4.4 The committee shall keep all records confidential and shall not disclose the nature of the illness except as is necessary to process the request for withdrawal and defend against any appeals of denials.

23.4.4.5 By October 5 of each school year, the District shall notify the committee of the following:

23.4.4.5.1 The total number of accumulated days in the Bank on June 30th of the previous school year.

23.4.4.5.2 The number of days contributed by unit members for the current year.

23.4.4.5.3 The names of participating unit members.

23.4.4.5.4 The number of days contributed by the District.

23.4.4.5.5 The total number of days available in the Bank.

23.4.4.6 By the tenth day of each calendar month, the District shall notify the committee of the following:

23.4.4.6.1 The names of any additional unit members who have joined in accordance with Section 23.4.2.

23.4.4.6.2 The names of any unit members who have canceled participation in accordance with Section 23.4.2.

23.4.4.6.3 The total number of days in the Bank at the beginning of the previous month.

23.4.4.6.4 The total number of days added to the Bank by new participants and the District's match.

23.4.4.6.5 The total number of days awarded during the previous month and to whom they were awarded.

23.4.4.6.6 The total number of days remaining in the Bank on the last day of the month.

- 23.4.4.7 Any dispute between the committee and the District as to the accounting of Catastrophic Leave Bank days shall be immediately submitted to binding arbitration without the need to follow earlier steps of the grievance procedure as per Article 10.
- 23.4.4.8 If the Catastrophic Leave Bank is terminated for any reason, the days remaining in the Catastrophic Leave Bank shall be returned to the then current members of the Bank proportionately.

TOPIC: PERSONAL NECESSITY LEAVE

Personal necessity leave is provided by Education Code Section 44981. The code provides that unit members get at least seven (7) days unless more are bargained in the collective bargaining Agreement. A District may not ask for advance permission for leave taken for death or serious illness of an immediate family member or because of accident involving the unit member or property of a unit member, or the person or property of a member of her/his immediate family. Some Associations may be faced with enumerating the reasons for personal necessity leave. If necessary, such limitations should be as broad as possible. One combination that may be acceptable to the parties is no restriction on the first seven (7) days and tighter restrictions on an unlimited number of days.

SAMPLE LANGUAGE

23.5 Personal Necessity Leave

- 23.5.1 A unit member may use, at her/his election, unused sick leave for the purpose of personal necessity leave.

(NOTE: The Education Code provides at least seven (7) days with the ability to bargain more.)

- 23.5.2 Unit members shall submit notification for personal necessity leave to their immediate supervisor at least one (1) day prior to the beginning date of the leave, except where extenuating circumstances make this impossible. Such leave may be used at the discretion of the unit member who shall not be required to give verification or explain the reason for the leave.

TOPIC: BEREAVEMENT LEAVE

In the event of the death of a family member or friend, the Agreement should provide sufficient leave for a unit member to attend the funeral and conclude all related necessary business. Sometimes the number of days of bereavement may need to be taken in non-consecutive days.

SAMPLE LANGUAGE

23.6 Bereavement Leave

- 23.6.1 A unit member shall be granted leave of absence for the death or imminent death of any member of the immediate family without loss of pay or deduction from other leave benefits found in this Article. This leave shall be for three (3) days, unless travel of more than 200 miles is required; in such case the length of the leave shall be for five (5) days. Such days need not be taken in consecutive order.

TOPIC: JURY DUTY/WITNESS LEAVE

SAMPLE LANGUAGE

23.7 Jury Duty/Witness Leave

- 23.7.1 Unit members shall be granted leave, without loss of pay, to appear in court as a witness, other than as a litigant, or to respond to an official order from duly authorized government agencies, or to serve as a juror.
- 23.7.2 Any compensation, less any mileage expenses, received for appearance as a witness or from serving as a juror under this section shall be endorsed over to the District so that the unit member's compensation for any days of absence for the above purposes shall not be in excess of nor less than, her/his regular pay.

TOPIC: INDUSTRIAL ACCIDENT AND ILLNESS LEAVE

SAMPLE LANGUAGE

23.8 Industrial Accident and Illness Leave

- 23.8.1 Section 44984 of the Education Code shall be supplemented as follows:
- 23.8.1.1 A unit member shall be entitled to such leave without limitation as to the number of days of entitlement.
 - 23.8.1.2 The total of the unit member's temporary disability indemnity and the portion of salary due him/her during her/his absence shall equal her/his full salary.
 - 23.8.1.3 A unit member shall be deemed to have recovered from an industrial accident or illness, and thereby able to return to work, at such time as she/he and her/his physician agree that there has been such a recovery.
 - 23.8.1.4 An industrial accident or illness, as used in this paragraph, means any injury or illness whose cause can be traced to the performance of services for the District.
 - 23.8.1.5 The District's report of an industrial accident or illness shall be kept on file in the Business Office.
 - 23.8.1.6 The benefits provided in this paragraph are in addition to sick leave benefits. Accordingly, the District shall not deduct accumulated sick leave from the sick leave allotment of a unit member who is absent as the result of an industrial accident or illness.

TOPIC: SABBATICAL LEAVE

There are many ways to be creative with sabbatical leaves using semester combinations and partial salary when a District seems unwilling to accommodate full year sabbatical leaves. Although this section gives optimum language recommendations, locals may find creativity helpful in securing sabbatical leaves.

SAMPLE LANGUAGE

23.9 Sabbatical Leave

- 23.9.1 Sections 44966 through 44974 of the Education Code are incorporated into this Agreement, except as supplemented below:

- 23.9.1.1 The number of unit members on leave during any one semester shall be limited to _____ percent of the unit members employed by the District. If the number of eligible unit member applicants does not exceed such _____ percent, each of the applicants shall be granted sabbatical leave so long as the purpose of such Leave is to pursue a program of study, research or travel which may be of benefit to the schools. If the number of eligible unit member applicants exceeds the _____ percent maximum, selection shall be made on the basis of District-wide seniority, subject only to the same "purpose of program" restriction referred to in the preceding sentence.
- 23.9.1.2 While on sabbatical leave, a unit member shall be eligible for any of the other leaves of absence enumerated in this Article. In the case of a paid leave, the unit member may use such leave and be reimbursed at her/his regular hourly rate for all unused sabbatical leave at the expiration of such leave.
- 23.9.1.3 The District shall pay a unit member who is on a semester sabbatical leave her/his full salary for such period. The District shall pay a unit member who is on a full year leave 60 percent of her/his full salary. There shall be no reduction in fringe benefits during the term of a sabbatical leave.
- 23.9.1.4 The District and a unit member who is to go on sabbatical leave shall develop a payment schedule that is acceptable to her/him, at least 30 days before the sabbatical leave is scheduled to commence.
- 23.9.1.5 The District shall provide the Association with copies of the sabbatical leave form upon request.

TOPIC: PERSONAL LEAVE WITH PAY

SAMPLE LANGUAGE

23.10 Personal Leave with Pay

A unit member shall be granted up to _____ days of leave per school year with pay, without deduction from other leave benefits. This leave may be taken without obtaining advance permission and without having to state any reasons for such leave.

TOPIC: PERSONAL LEAVE WITHOUT PAY

SAMPLE LANGUAGE

23.11 Personal Leave Without Pay

23.11.1 A unit member may apply for and shall be granted an unpaid health leave of absence for the remainder of the current school year and up to one (1) additional school year. The unit member shall furnish the District, upon request, a physician's verification of her/his need for such health leave. Such leave may be extended for an additional twelve (12) months.

23.11.2 The District shall grant a unit member, upon request, an unpaid leave of absence for up to one (1) school year to pursue personal endeavors such as, but not limited to, study, exchange teaching, Peace Corps, Vista, or other personal interests.

TOPIC: DISABILITY APPLICANT LEAVE

SAMPLE LANGUAGE

23.12 Disability Applicant Leave

The District shall grant a leave of absence to any unit member who has applied for a disability allowance from the State Teachers' Retirement System (STRS). This leave shall not extend thirty (30) days beyond the final determination of the disability allowance. If the unit member is determined to be eligible for the disability allowance by STRS, such leave shall be extended for the term of the disability, but not for more than thirty-nine (39) months from the date of notification of the determination. This leave shall be in addition and consecutive to any leave granted pursuant to Education Code Sections 44978 and 44978.1.

TOPIC: JOB-SHARING

SAMPLE LANGUAGE

23.13 Job-Sharing

23.13.1 Job-sharing shall refer to two (2) unit members on regular contracts sharing one (1) teaching assignment. Job-sharing may include working one, two, or three tracks of a school year. Two unit members may share an assignment for a minimum of one (1) year. Job applications for a job-sharing assignment for the following school year shall be filed with the District no later than March 1. Applications shall not be denied except for just cause. The District shall approve or deny requests and notify, in writing, the applicants of its decision by May 1. If a request is denied, the applicants shall be notified, in writing, of the specific reasons for the denial. Notwithstanding other provisions of this Agreement, job-sharing unit members' wages, benefits, and paid leaves shall be prorated relative to the actual time worked. In no event shall the total amount of health and welfare benefits for the job-sharers exceed the amount the District would have paid if the position had not been shared.

23.13.2 Each job-sharing unit member shall receive a salary schedule increment each year.

23.13.3 Upon request of the two unit members, a job-sharing assignment may be renewed provided the two unit members notify the District prior to March 1. In the event the two unit members fail to notify the District of their desire to continue the job-sharing assignment, or in the event the District does not approve the continuance of the assignment, the unit members shall be returned to full-time assignments.

23.13.4 If a unit member on a regular contract is in a job-sharing assignment and elects to return after the first year to full-time teaching, the unit member will be returned to her/his original school and track. If a unit member on a regular contract is in a job-sharing assignment for more than one (1) year and elects to return to full-time teaching, the unit member will be assigned to the first available full-time teaching position for which she/he is certificated and in conformance with the provisions of this Agreement.

TOPIC: INCENTIVE FOR REDUCED ABSENCES

SAMPLE LANGUAGE

23.14 Incentive for Reduced Absences

23.14.1 Unit members shall receive a yearly bonus for reduced absences as follows:

23.14.1.1 No more than four (4) total absences in a work year =
\$ _____

23.14.1.2 No more than three (3) total absences in a work year =
\$ _____

23.14.1.3 No more than two (2) total absences in a work year =
\$ _____

23.14.1.4 No more than one (1) total absence in a work year =
\$ _____

23.14.1.5 Zero (0) days absent in a work year = \$ _____

(Locals should bargain reasonable bonus amounts acceptable to members.)

23.14.2 Bonus payments shall be made in a single lump sum, no later than June 30, and such payments shall not be cumulative.

23.14.3 Unit members employed for less than a full work year shall receive a pro-rata bonus for which the unit member is eligible.

23.14.4 For purposes of this section, absences taken by a unit member for observance of a religious holiday shall not be counted.

LEGAL REFERENCES

A. Education Code Sections Cited

- 1294 - Rights of certificated employees
- 22708 - Employees in personal leave program
- 22717 - Accumulated and unused leave of absence for illness or injury; credit
- 22718 - Service credit for sick leave; billing rules and regulations; nonpayment
- 22721 - Accumulated sick leave payments; transfer from another district, death or retirement
- 24001 - Application for allowance; conditions; on-the-job injury or disease; leaves of absence
- 24002 - Payment of allowance; application period
- 44036 - Leaves of absence for judicial and official appearances
- 44037 - Jury duty; exemptions
- 44043 - Temporary disability
- 44043.5 - Catastrophic leave
- 44800 - Effect of active military service on status of employees
- 44801 - Leave of absence for employees elected to the Legislature
- 44940 - Leave of absence; certificated employee charged with mandatory or optional leave of absence offense; suspension of credentials; definitions
- 44962 - Leaves of absence
- 44963 - Power to grant leaves of absence
- 44964 - Power to grant leave of absence in case of illness, accident or quarantine
- 44965 - Granting of leaves of absence for pregnancy and childbirth
- 44966 - Leaves of absence for study and travel
- 44967 - Time qualifications for leaves of absence for travel and study
- 44968 - Service and compensation during leaves of absence for travel and study
- 44968.5 - Agreement not to receive compensation during leave of absence
- 44969 - Manner of payment for leave of absence time
- 44973 - Reinstatement after leave of absence
- 44974 - Liability for death or injury during leave of absence
- 44975 - Effect of leave of absence on probationary employee
- 44976 - Rights to leaves of absence when school or place of employment transferred between districts
- 44977 - Salary deductions due to absence from duties, exhaustion of annual sick leave
- 44978 - Provisions for sick leave of certificated employees
- 44978.1 - Salary Deductions due to Absence from duties; Reemployment List
- 44979 - Transfer of accumulated sick leave
- 44980 - Transfer of accumulated leave for injury or illness
- 44981 - Leave of absence for personal necessity
- 44982 - Transfer of accumulated leave of absence
- 44983 - Exception to sick leave when district adopts specific rule
- 44984 - Required rules for industrial accident and illness leaves of absence
- 44985 - Leave of absence due to death in immediate family
- 44986 - Leave of absence for disability benefit applicant
- 44986.1 - Reinstatement of member to former position

- 44987 - Public employee organization officer; leave of absence to serve; full service credit in state teachers' retirement system
- 44987.3 - Leave of absence to serve on certain boards, commissions, committees or groups
- 45190 - Leaves of absence and vacations
- 45191 - Leave of absence for illness or injury
- 45192 - Industrial accident and illness leaves of absence for classified employees
- 45193 - Leave of absence for pregnancy
- 45194 - Bereavement leave of absence
- 45195 - Additional leave for non-industrial accident or illness; reemployment preference
- 45196 - Salary; deductions during sick leave
- 45197 - Annual vacations
- 45198 - Effect of provisions authorizing leaves of absence
- 45199 - Power of governing board to grant leave of absence compensation for accident or illness
- 45200 - Interruption or termination of vacation leave
- 45202 - Transfer of earned leave of absence for illness or injury
- 45203 - Paid holidays
- 45381 - Leave of absence
- 87035 - Leaves of absence
- 87763 - Leaves of absence
- 87764 - Power to grant leaves of absence
- 87765 - Power to grant leaves of absence in case of illness, accident, or quarantine
- 87766 - Power to grant leaves of absence for pregnancy
- 87767 - Leave of absence for study and travel
- 87774 - Reinstatement after leave of absence
- 87776 - Effect of leave of absence of contract employee
- 87781 - Provisions for sick leave of certificated employees
- 87784 - Leave of absence for personal necessity
- 87787 - Required rules for industrial accident and illness leaves of absence
- 87788 - Leave of absence due to death in immediate family
- 88190 - Leaves of absence and vacations
- 88191 - Leaves of absence for illness or injury
- 88192 - Industrial accident and illness leaves for classified employees
- 88193 - Leave of absence for pregnancy
- 88194 - Bereavement leave of absence
- 88197 - Absences due to illness or accident; deductions from salary; amounts payable to employee under insurance policy
- 88199 - Power of governing board to grant leave of absence and compensation for accident or illness
- 88203 - Paid holidays
- 88207 - Personal necessity
- 89519 - Leave of absence for pregnancy; memorandum of understanding

B. Government Code Sections Cited

- 12945.2 - Family care leave; definitions; conditions; unlawful employment practices

HEALTH AND WELFARE BENEFITS

ARTICLE 24

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ARTICLE 24

HEALTH AND WELFARE BENEFITS

Employer paid HEALTH AND WELFARE BENEFITS are a form of compensation, like salaries. As a result of soaring health care costs, health and welfare benefits comprise an ever increasing percentage of educators' total compensation.

Historically, employer-funded health and welfare benefits originated to compensate employees' whose wage levels were too low to pay doctors and hospital bills directly from their salaries. Today, that same rationale may apply in some school districts. However, employer sponsored group health benefit plans can serve to spread risks and to reduce costs through economies of scale. Regardless of their underlying rationale, employer-sponsored health plans protect bargaining unit members from catastrophic expenses resulting from medical problems.

At a minimum, a comprehensive health and welfare benefits program for any bargaining unit should provide a range of health, retirement, and income protection benefits. These benefit plans should include, but are not necessarily limited to:

- Medical plan(s) to provide for professional, hospitalization, and post hospitalization services
- Dental plan
- Vision plan
- Prescription drug plan (if not included in medical)
- Employee assistance program
- Life insurance plan
- Income protection plan (Also see Catastrophic Leave Bank in Article 23, Leaves)

Such plans constitute the minimum elements of an employee health and welfare benefits program. However, tax law extends tax incentives to group plans that provide bargaining unit members a more diverse offering of welfare benefits.

A bargaining team considering negotiation of health and welfare benefits must do substantial preparation prior to presenting its initial proposal. The considerations requiring research and assessment include:

- What plans are available in the geographic area where a majority of bargaining unit members live and work?
- What will a plan's design (coverage) be?
- Who will be eligible for coverage?
- Who will pay the cost?
- When will coverage begin and end?

Local chapters should independently research answers to these questions prior to bargaining so as not to have bargaining dominated by the employer's broker.

WHAT PLANS WILL BE OFFERED?

If your Agreement does not have a "complete" health and welfare benefits program, prioritize the importance of the plans and bargain to get the best program for the money available even though you may have fewer plans than the optimum.

Scrutinize any proposal to join a Joint Powers Agreement (JPA) which is controlled solely by management. JPAs typically require a long-term commitment on the part of the Employer that may choke your effectiveness in bargaining benefits in the future. Furthermore, it is a common practice of JPAs to understate premiums by not budgeting plan reserves. Any Employer which severs its relationship with a JPA is obligated to pay for claims incurred but not paid from plan reserves. This can become a prohibitive amount over and above premiums already paid.

Beware of proposals to create cafeteria plans under IRS rule 125. Such plans have only limited opportunities for members and they pose the threat of shifting the cost of health and welfare benefits onto unit members.

Some Districts still have cafeteria plans in which district fringe benefit money may be used to purchase tax-deferred annuities (TDA). CTA does not recommend such arrangements, but if they exist, CTA recommends they be converted into IRC 125 plans. An IRS audit of a section 403(b) TDA arrangement could provide a potential penalty of taxation of all employee fringe benefit dollars.

Avoid increasing the choice of plans, particularly medical. Carriers generally give better quotes for a bigger percentage of total participants in a plan.

Consider adding an employee assistance program if it will ease claims pressure on the medical plan(s) and help to contain costs. Care must be exercised to protect employee confidentiality and due process rights in the event of discipline.

Do not waive the Association's right to bargain the selection of health and welfare benefit plans and carriers even if the Association is represented on a district insurance committee. If you participate in a joint trust, usually the trust will select the carrier.

If your health and welfare benefits are working to the satisfaction of your members, you may want to avoid proposing any changes in the program, particularly if you know that the employer is going to propose reductions. It may be a preferable organizing strategy in such circumstance to defend the status quo rather than demand increased benefits.

WHAT WILL A PLAN'S DESIGN (COVERAGE) BE?

The optimum health and welfare benefits program consists of plans designed through a joint employer/employee health and welfare benefits trust. Within a joint trust, labor and management have an equal say in the design of plans and the administration of the program.

A separate Trust Agreement and Participation Agreement are necessary. Often, participation agreements require decisions on eligibility and plan design to be done by the Trust. The collective bargaining Agreement has to be in conformance with the Participation Agreement. Consult your CTA staff for assistance. The collective bargaining Agreement should specify district contributions to the trust on behalf of bargaining unit members and the manner in which those payments are made. The collective bargaining Agreement would also dictate eligibility.

However a plan's design is determined, your Agreement should specify the coverage in sufficient detail to enable members to determine whether the district is fulfilling its obligation. Detailed coverage also makes it easier for the Association to enforce the district's obligation.

WHO WILL BE ELIGIBLE FOR COVERAGE?

The optimum health and welfare benefits program provides coverage for unit members, retirees, and their dependents. Domestic partners should be included in the definition of dependents along with the children of domestic partners. Domestic partners are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring, who live together and who have agreed to be jointly responsible for basic living expenses incurred during

the domestic partnership. Domestic partners are not related by blood; neither person is married or is related by marriage; the persons are 18 years of age or older; and have signed a declaration of domestic partnership. Some plans, such as income protection or life insurance, may be limited to unit members only.

Unit members who work less than full-time may have limited coverage. The Association will have to decide a bargaining strategy for how job-sharing arrangements will receive benefits.

Unit retirees may have medical coverage coordinated with Medicare and/or limited coverage. CTA recommends that Associations bargain the issue of Medicare coverage for unit members hired before April 1, 1986. If the Association is able to bargain benefits besides Medicare beyond age 64, such benefits should be in the form of a supplement to Medicare.

Eligibility should not discriminate on the basis of age, sex, or marital status and should include domestic partners with the same benefits as spouses. Be aware that retiree domestic partner coverage may cause a significant increase in premiums.

WHO WILL PAY THE COST?

The optimum health and welfare benefits program provides plans fully paid for by the employer.

The most cost effective rates for plans which provide unit member, retiree and dependent coverage are composite rates. A composite rate is when the premium is the same cost no matter how many dependents a participant has. The fact that some dependents may have coverage in their own right is cause to coordinate benefits, but not to waive them. All unit members should be entitled to coverage, even if both family members work for the district. Associations, believing that the number of premiums paid will cause an overall cost reduction, sometimes agree to reduce the number of unit members covered. However, just the opposite happens, because the same number of claims exist with fewer dollars available to pay for them. This drives the premium up in the long run.

If cost containment has become a necessity, then bargain plan and/or program design with the objective of managing cost in the best interest of your bargaining unit. Avoid simply shifting increased cost onto unit members. A cost shift means that the cost is the same, but the entity paying for the cost is different. Cost containment means that total costs are reduced or kept from increasing as rapidly as they would have otherwise. Examples of cost shifting are increased deductibles, increased co-pays, and the unit member paying part of the premium. Examples of cost containment include negotiating lower rates with providers, second opinions, and elimination or reduction of certain types of coverages.

Do not waive the Association's right to bargain Employer contribution for health and welfare benefits, even if the Association is represented on an Employer insurance committee.

If it becomes necessary to agree to a cap on the Employer's contribution, it would be preferable to agree to a cap on unit member/retiree contribution for health and welfare benefit coverage at a specific dollar amount using a composite rate rather than a cap on the district's aggregate

obligation for health and welfare benefits. Sticking to a flat dollar amount places the district in a position to pick up the increases while unit members make some contribution. If an aggregate amount is used and the bargaining unit grows, the unit members will be paying for the increased number in the bargaining unit. If the unit shrinks, the district will be paying more per person than it would have otherwise. Tie the contribution to the unit member so that aggregate funding will increase or decrease depending on the size of the bargaining unit.

Some Employers have reported windfalls from carriers due to retention or other causes. Negotiate a requirement that the Employer must pay first dollar before any employee contribution kicks in. If a windfall occurs, the windfall would offset the employee's contribution.

WHEN DOES COVERAGE BEGIN AND END?

The health and welfare benefit program should be provided for the duration of the Agreement.

The Association should avoid multi-year Agreements in which the district is not obligated to absorb increases in the cost of the health and welfare benefits program. Bargaining on the cost of benefits within a reopener handicaps the Association's ability to manage issues and to organize support. Labor peace for the district without the security of full benefit compensation for unit members is not in the best interest of the Association or its members.

Individual coverage should begin with employment, no later than the beginning of the first full month of employment. Individuals who have coverage at the end of a school year should continue to have coverage through the first month of the succeeding school year. Retirees should have coverage at least until they become eligible for Medicare. Unit members who are terminated at the end of the school year should have their fully paid benefits extend for the full year, which in a traditional calendar would be until the end of September. Procedures to ensure employee rights under the Consolidated Omnibus Budget Reconciliation Act (COBRA) should be included.

Today, employers may sponsor employee health and welfare benefits through two analytically and practically distinct forms: Group Defined Benefits Plans and individual Defined Contribution Plans. Comprehensive group insurance plans funded by employer-paid premiums, like the old Blue Cross 365 plans, are examples of the group Defined Benefits Plan form. "Section 125" cafeteria plans are examples of the individual Defined Contribution Plan form. A union's choice between these two alternatives will have significant practical effects on bargaining unit members.

CTA strongly recommends that its chapters bargain health and welfare benefits programs only in the group Defined Benefits Plans form. This recommendation is explained and analyzed in the CTA Department of Legal Service's Advice Memorandum, *Cafeteria Benefits Plans Under IRC Section 125* (August, 1997) available from your local CTA staff or the CTA Legal Department.

Given the high cost of medical care, some form of health insurance is essential for all employees. A wide range of factors determines the cost of any health and welfare benefits plan. However, the largest single determinants of health care costs are the scale of the purchasing group and

demographics characteristics. While their cost may be thought of in dollars per unit member, it is misleading to equate group insurance plan rates to individual salary.

If a group protection plan is provided, it should be considered a part of the total compensation for every eligible unit member. Options that allow individual unit members to receive additional salary in lieu of group coverage result in unequal compensation and adversely affect the demographics of the group being insured.

Care should be taken to bargain compensation, both salary and health and welfare benefits, on an equitable basis.

CAUTION: Local chapters that elect to establish a cafeteria benefits plan under IRC 125 should seek legal advice prior to finalizing any such agreement. The employer's attorney and an association attorney should consult to be sure that no adverse tax penalties arise out of creating a Cafeteria IRC 125 plan.

SAMPLE LANGUAGE

24.1 Group Insurance Plans

24.1.1 Medical Plan

24.1.1.1 The Employer shall provide unit members and their eligible dependents, including domestic partners and their dependents, with a health services insurance plan.

24.1.1.2 The plan provider shall be (name of insurer) and the specific coverage shall be (identify code/name or specifics).

24.1.1.3 Prescription drug coverage shall be included in the plan.

24.1.1.4 Tuberculosis examinations required of unit members shall be included in the plan coverage or provided by the Employer.

24.1.1.5 All medical plans of the Employer shall provide, at no co-pay or deductible, Hepatitis B vaccine injections for unit members.

(NOTE: Include language that would offset unit member contributions if any money due to adjustments in retention or other windfalls is realized by the Employer. This would only be necessary in cases involving total compensation formulas or where Associations have had to bargain fixed employer contributions [caps].)

24.1.2 Dental Plan

24.1.2.1 The Employer shall provide unit members and their eligible dependents, including domestic partners and their dependents, with a dental services insurance plan.

24.1.2.2 The plan provider shall be (name of insurer) and the specific coverage shall be (identify code/name or specifics).

24.1.2.3 Orthodontia coverage shall be included in the plan.

24.1.3 Vision Plan

24.1.3.1 The Employer shall provide unit members and their eligible dependents, including domestic partners and their dependents, with a vision services insurance plan.

24.1.3.2 The plan provider shall be (name of insurer) and the specific coverage shall be (identify code/name or specifics).

24.1.4 Life Insurance Plan

(NOTE: The Association may wish to provide a life insurance provision allowing a recipient to collect a portion of the insurance before death in a fatal illness situation. Many plans make this option available.)

24.1.4.1 The Employer shall provide unit members with a life insurance plan.

24.1.4.2 The plan provider shall be (insurer's name) and the specific coverage shall be (identify code/name or specifics).

24.1.4.3 The plan shall provide additional coverage for accidental death.

24.1.5 Income Protection Plan

24.1.5.1 The Employer shall provide unit members with an income protection plan.

24.1.5.2 The plan provider shall be (insurer's name) and the specific coverage shall be (identify code/name or specifics).

24.1.5.3 The plan coverage shall be coordinated with eligibility for any State Teachers Retirement System disability allowance.

24.2 Duration of Benefits

- 24.2.1 Unit members who are employed during the last month of a school year shall be eligible for benefits through the first month of the subsequent school year.
- 24.2.2 Unit members who are initially employed subsequent to the first day of the school year shall be eligible for coverage on the first day of employment.
- 24.2.3 Unit members who terminate their employment prior to the close of the school year shall be provided benefits through the last day of the payroll period in which the termination occurred.
- 24.2.4 Unit members who are absent on account of illness and who have exhausted their accumulated sick leave shall continue to be provided with fully paid benefits for a period of not less than one year beyond the first 100 work days following the exhaustion of sick leave.
- 24.2.5 The Employer shall inform in writing all qualified unit members and/or beneficiaries of their right to continue benefit coverage under provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985. The Employer shall continue to provide benefits coverage to all qualified beneficiaries during the 60-calendar-day election period.

(NOTE: This reference manual contains a number of specific retirement provisions listed separately under Retirement. Check this section for additional language.)

- 24.2.6 The Employer shall provide retirees and their eligible dependents with all of the health and welfare benefits plans provided to unit members.

(NOTE: Specify any exclusion, such as income protection.)

(NOTE: The following section on STRS disability retirement is necessary because the new STRS disability retirement is actually a retirement instead of, as in the past, an active employment status.)

- 24.2.7 Unit members who would have otherwise been eligible for fringe benefits if they retired under normal or early STRS retirements are eligible for the same retirement fringe benefits if the unit member uses STRS disability retirement.

- 24.2.8 The determination of eligibility for health and welfare benefits shall not discriminate on the basis of age, sex, or marital status.

TOPIC: EMPLOYER/EMPLOYEE TRUST

Prior to any action to create a new Employer/Employee Trust, chapters should thoroughly explore the possibility of joining one of several existing joint trusts in operation throughout California. Joining an existing trust which is geographically accessible, and has an acceptable benefits program, avoids unnecessary duplication and small risk pools. See yearly CTA update of "California Schools Joint Employer/Employee Trusts".

24.3 Formation of an Employer/Employee Health and Welfare Benefits Trust

(Option 1, only if forming a new trust:)

- 24.3.1 The Association and the Employer hereby create an expressed joint trust, as provided herein. The express joint trust shall:
- 24.3.1.1 Be entitled, the *[name]* Health and Welfare Benefits Fund (hereinafter referred to as the "Benefits Trust").
 - 24.3.1.2 Be formed and operated as a tax exempt "Voluntary Employee Benefits Association" as defined in Section 501(c) (9) of INTERNAL REVENUE CODE.
 - 24.3.1.3 Be administered to provide the Beneficiaries with the highest quality health and welfare benefits reasonably available from the amounts of money available to the trust corpus.
 - 24.3.1.4 Provide in its delivery of health benefits, only "medically necessary" health care coverage.
 - 24.3.1.5 Be administered for the sole and exclusive benefit of the Beneficiaries, described herein.
 - 24.3.1.6 Be administered to the full extent permitted by law, in such a manner as to ensure that the contributions to the Benefits Trust and benefits provided by the Benefits Trust shall not be deemed to be wages and shall be excluded from federal and state taxation as tax exempt benefits.

24.3.1.7 Be directed by a joint Board of Trustees acting as fiduciaries. One-half of these trustees shall be selected to represent the Employer. One-half of these trustees shall be selected by the Association to represent the Association(s)/union(s). All decisions of the Board of Trustees shall be based on a "unit vote" with a single vote cast by the Association(s)/union(s), and a single vote cast by the Employer Trustees. In the event of a deadlock vote, the matter in dispute shall be submitted to arbitration.

(Option 2, only if joining an existing trust:)

24.3.2 In order to provide health and welfare benefits described herein, the Employer and the Association agree to seek membership in the *[Trust name]* TRUST, a tax exempt "Voluntary Employee Benefits Association" as defined in Section 501(c) (d) of INTERNAL REVENUE CODE. Hereinafter the *[Trust name]* TRUST shall be referred to as the Benefits Trust.

24.3.3 Beneficiaries of the Trust

The Benefits Trust shall provide health and welfare benefits to its Beneficiaries, as provided in the declaration and agreement of trust, referred to herein, including the following public school employees:

24.3.3.1 The members of the bargaining unit represented by the *[Association name]* and their eligible dependents, pursuant to this Agreement and the terms of a participation agreement between the Employer, the Association, and the Benefits Trust.

24.3.3.2 Such other employees of the Employer and their eligible dependents as may be provided health and welfare benefits under the terms of a participation agreement between the Employer and the Benefits Trust.

24.3.3.3 Retired employees of the Employer and their dependents, pursuant to this Agreement and the terms of a participation agreement between the Employer, the Association and the Benefits Trust.

24.3.3.4 The employees, retirees and dependents of other public school employer(s) which has collectively bargained to

secure health and welfare benefits from the Benefits Trust, pursuant to the terms of a participation agreement between the other public school employer(s), the Association and the Benefits Trust.

24.3.4 Benefits to be Provided by the Trust

All Beneficiaries of the Benefits Trust shall be eligible for health and welfare benefits under the terms of :

- 24.3.4.1 The health and welfare benefits provided for in this Agreement.
- 24.3.4.2 The Benefits Trust agreement and declaration of trust referred to herein.
- 24.3.4.3 The terms of a participation agreement between the Employer, the Association and the Benefits Trust.
- 24.3.4.4 Such specific benefit plans or programs as the Trustees shall adopt and implement.

24.3.5 Contributions to Fund the Trust

The trust corpus shall be comprised of contributions paid to the Benefits Trust by the Employer. The amount of such contributions shall be established as follows:

- 24.3.5.1 The Employer shall pay the Benefits Trust the full cost of providing the benefits set forth in this Agreement.
- 24.3.5.2 In a timely manner, the Employer shall pay contributions to the Benefits Trust on a tenthly basis on such terms as are provided in the declaration and agreement of trust, referred to herein and in any applicable participation agreement.

24.3.6 Authority of the Trust's Trustees

The Trustees shall have the authority to take all actions necessary to achieve the purpose of the Benefits Trust. The Trustee's powers and duties shall include the authority to:

- 24.3.6.1 Direct and exercise general supervision over the administration of the Benefits Trust including the

adoption of participation agreements, bylaws, and standing rules.

- 24.3.6.2 Deliver the health and welfare benefits provided for in this Agreement including plan design, contracting with insurance and stop-loss carriers, determination of claims eligibility, and resolving claims appeals.
- 24.3.6.3 Interpret the provision of the agreement and declaration of trust referred to herein, and decide all questions arising under agreement and declaration of trust.
- 24.3.6.4 Interpret the provision of any plan(s) of benefits administered by the Benefits Trust and decide all questions arising under any plan(s).
- 24.3.6.5 Decide all questions affecting the eligibility of any public school employees or their dependents to become Beneficiaries under any plan(s) of benefits administered by the Benefits Trust.
- 24.3.6.6 Decide all questions affecting the eligibility of any public school employer and/or labor organization to become a participant in the Benefits Trust.
- 24.3.6.7 Ensure the solvency of the Benefits Trust including determining matters related to the amount of reserves to be maintained, the collection of contributions, and the investment of Trust assets.
- 24.3.6.8 Contract for services with third party administrators and consultants in accounting, claims auditing, financial fund management, investments, and legal matters.
- 24.3.6.9 Exercise such other expressed powers and duties as specified in the Agreement and declaration of trust referred to herein.

24.3.7 Drafting of a Declaration of Agreement of Trust

All the terms and conditions governing: Obligations to beneficiaries; participation in; contributions to; direction and general supervision of; and amendment, merger, and termination of the Benefits Trust shall be set forth in a "agreement and declaration of trust".

- 24.3.7.1 The Association and the Employer agree to take all actions necessary to form the expressed joint trust described herein.
- 24.3.7.2 The Association and the Employer further agree to direct their respective legal counsel to draft a proposed agreement and declaration of trust for the review and approval of each party. Such agreement and declaration of trust shall effect the intent of the parties and incorporate the terms of this Agreement.
- 24.3.7.3 The creation of the expressed joint trust described herein shall not take effect until such time as each party has the reviewed and the approved proposed agreement and declaration of trust drafted by counsel.
- 24.3.7.4 Upon approval by each party, the agreement and declaration of trust shall be binding upon the parties.

24.4 Employee Assistance Program Plan

- 24.4.1 The Employer shall provide unit members and their eligible dependents, including domestic partners and their dependents, access to an employee assistance program plan.
- 24.4.2 The plan provider shall be (name of insurer) and the specific coverage shall be (identifying code/name or specifics).
- 24.4.3 Unit member participation in the employee assistance plan shall be entirely voluntary and shall be kept confidential. The Employer shall not use any information about a unit member gathered as a result of their participation in the employee assistance plan for any evaluation, discipline or dismissal procedure.
- 24.4.4 A unit member's decision to participate or not to participate in the employee assistance plan shall not in itself jeopardize any right to which the member is otherwise entitled.

TOPIC: HEALTH CARE REFORM

The primary issue regarding health care reform and the Agreement is to ensure that the negotiated benefits are guaranteed. By having all benefits specified and guaranteed, Associations will be in a good position to deal with any issues involving health care reform. If health care reform benefits are less than existing benefits, the contract should prevail until the

reform benefits are negotiated into the contract and/or supplemental benefits can be negotiated. Review the following contract provisions: Article 1, Agreement; Article 5, Maintenance of Standards; Article 7, Savings; Article 8, Statutory Changes; and Article 9, Management Rights (Zipper) to see that they conform with CTA's recommendations.

LEGAL REFERENCES

A. Education Code Sections Cited

23410, 23922, 24000 - Retirement

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Act
3543.2 - Scope of Representation

SALARIES
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ARTICLE 25

SALARIES

SALARIES for education employees have long been a subject of study by CTA. This Article incorporates the salary policies of the CTA State Council of Education.

Every school district must have salary schedules and fringe benefit programs which will attract and retain scholarly, intelligent, creative, and dedicated personnel. Salary schedules should have a minimum salary that is equivalent to at least the amount necessary for an urban wage earner with a family of four (4) to have a moderate standard of living. This amount is established annually by the Bureau of Labor Statistics. Salary schedules should provide that salary, after ten (10) years of service with an AB plus 60 semester units, be at least twice the minimum. Salary schedules should also provide that personnel with a Master's and/or Doctorate degree receive appropriate additional compensation.

SALARY SCHEDULE PHILOSOPHY

As part of its policy, the CTA State Council of Education has determined that CTA believes in a single salary schedule, with unit members who work a longer day or work year paid on a pro-rata basis for this additional time. Separate schedules may be necessary for STRS purposes, but reflect the daily rate concept. This means no merit pay, stipends, or differentiated staffing.

Salary schedules were probably invented by a board of education as a way to reduce the cost of providing education. Instead of all teachers earning the same salary for teaching the same or nearly the same curriculum, it was determined in our early educational history that salary schedules would pay beginning teachers far less than experienced teachers. The longer the schedule, the better for the school board's budget, because teachers would have to wait longer to attain the maximum salary. Today, an ideal salary schedule would probably be three steps, scheduled in amounts paid to a beginning teacher, a second year probationary teacher, and the highest to the tenured teacher. Given comparability requirements, a first-year teacher would receive about what most first-year teachers are paid. A second-year probationary teacher would receive a comparable wage equivalent to the middle of what most of California teacher salary schedules pay. A tenured teacher would receive a salary comparable to the maximum salaries paid in school districts. By doing the math, it is easy to see why California school districts do not have three-step schedules. Consider, however, how greatly improved a teacher's lifetime

earnings would be, even if the maximum were a little less than standard maximum pay. Bargaining teams should keep lifetime earnings in mind when they consider adding longevity steps to a salary schedule. Twenty- and thirty-year earning calculations are a good way to compare salary schedules. What good does a longevity step do if no one is on the step to collect it? But keep in mind that the district looks good in the rankings with a high longevity step. If district "A" pays \$57,000 at the maximum step, which is step 9, and district "B" pays at the \$60,000 maximum step, which is step 30, which district would pay the better salary? Which would be the better district regarding salaries for a career teacher? Which district would look good in the rankings? Which district is better for STRS allowances?

A salary schedule index is a calculation of the relationship between salary schedule steps. If step 1, column 1 is 1.00000 and another step is calculated at 2.00000, then the second step is twice as big as the first step. A weighted index shows the indexed schedule in a form in which each cell of the schedule is weighted by the number of full-time equivalent unit members at that step. Both types of indexing help determine weakness and strengths in a salary schedule.

This is a sample salary schedule index of a 2:1 with equal percentage increments.

Step	BA	BA + 15	BA + 30	BA + 45	BA + 60
1.00	1.00	1.05	1.11	1.17	1.24
2.00	1.05	1.11	1.17	1.24	1.31
3.00	1.11	1.17	1.24	1.31	1.38
4.00	1.17	1.24	1.31	1.38	1.45
5.00	1.24	1.31	1.38	1.45	1.53
6.00	1.31	1.38	1.45	1.53	1.62
7.00	1.38	1.45	1.53	1.62	1.70
8.00			1.62	1.70	1.80
9.00				1.80	1.90
10.00					2.00

A salary schedule, with the components listed above, provides payment for a standard workday, and a standard work year. If the Association determines that certain personnel in the bargaining unit work a longer day or work year, then such personnel should be paid on a pro rata basis for this additional time.

Members of the bargaining unit who participate in extra-duty assignments should receive pay for such assignments as specified in the collective bargaining Agreement.

UNIFORM SALARY SCHEDULE REQUIREMENT

Education Code Section 45028 requires that all certificated employees except administrative and supervisory be classified on a salary schedule on the basis of uniform allowance for years of training and years of experience. It is not, however, a violation of the uniformity requirement for a district and Association, through a collective bargaining Agreement, to grant any employee hired after a locally specified date, differential credit for prior years of experience or prior units of credit for purposes of initial placement on a salary schedule.

WHAT IS COMPARABILITY?

Under the Educational Employment Relations Act, factfinders are expected to look at comparability as a factor when making recommendations. Comparability in every school district can be argued to be different things, but generally, it is how one district compares to other districts of similar size, type, and income, and often within the same geographical area. For example, comparability within a county for all unified school districts is generally accepted, but not all unified districts in Los Angeles County as compared to a unified district in Alameda County. Sometimes statewide comparisons can be made by using size, particularly large school districts. Even then, some argue that a large rural district is not comparable to a large urban district. Among the state's big twenty school districts, size differences are tremendous! Los Angeles has 40,000 teachers while the next largest school district, San Diego, has approximately 7,000 teachers. There are ways these two districts can be compared and ways that they cannot.

Funding is also a factor in comparability. Given two school districts of the same size and type, such as Palo Alto Unified with an ADA of 8919 and Gilroy Unified with an ADA of 8356 both located in Santa Clara County, it might be assumed that they are comparable districts. Their incomes are so disparagingly different, however, that they usually are not considered comparable districts. Palo Alto has a \$6896 revenue per ADA and Gilroy has a \$4,945 revenue per ADA (figures are for 96-97).

BONUSES

During hard economic times, when state resources impact unfavorably on education funds, or when local education budgets are strained, districts sometimes wish to offer teachers raises "off the schedule". CTA recommends that Associations try to avoid "off the schedule" bonuses if possible. Each situation, however, has to be considered in light of the local district's budget. Considerations would include determining if the money the district is willing to spend is one-time money or ongoing. If the Association does decide to accept a bonus, CTA recommends that the bonus be a lump sum check that contains the entire bonus. This allows unit members to consider it a bonus rather than being something that was on the schedule and then lost by the Association when it was taken off.

It is preferred that bonuses be paid as a percentage of salary rather than flat dollar amounts. Percentages are similar to across the board raises that are usually given when regular raises are granted. Flat dollar amounts give less experienced teachers a larger percentage of their salary than experienced teachers.

DAILY RATE OF PAY

The daily rate of pay, or per diem, is calculated by taking the unit member's annual salary and dividing by the number of days worked. For example, if a teacher makes \$58,000 as an annual salary and works 182 days per year, the teacher's daily rate is \$58,000 divided by 182, which equals \$318.68 per day. Unit members are not paid for holidays, vacations or other calendar phenomena -- only for the days the contract says they will work. When Associations bargain

calendar, workdays are arranged at that time, and provision is made for non-work time to fall on holidays. Teachers are not paid for vacations or days they do not work. By using the same example as above, the same teacher on a non-paid leave would lose \$318.68 per day.

ACAP

The National Education Association and the CTA have developed the *Association Compensation Analysis Program* (ACAP). It is a computer program designed to analyze salary schedules and total compensation. The program, among other things, automatically costs schedules, calculates daily rates of pay, hourly rates of pay, average salary, costs of increments, new money (costs), percent change in cost, total FTEs, and an index. For fringe benefits, it calculates mandated costs, and health and welfare benefit costs. For total compensation costs, it calculates the total district compensation cost, and employee compensation cost. The program is in DOS format and available free of charge to CTA locals. Associations may obtain a copy of the program from CTA staff.

TOPIC: SALARY SCHEDULE INCREASE

This provision addresses salary schedule increases based upon comparability and cost-of-living factors. Increases are applied to the schedule in a manner that causes the last continuous step of the salary schedule to be twice the beginning salary, a 2-to-1 ratio.

SAMPLE LANGUAGE

25.1 Salary Schedule Increase

25.1.1 Unit members who serve other than the required number of workdays set forth in this Agreement shall receive a salary which is not less than that which bears the same ratio to the established annual salary as determined by their salary position as the number of days they serve bears to the number of working days required by this Agreement. Notwithstanding the above, unit members who serve for one (1) full semester shall receive not less than one-half (1/2) the annual salary applicable to their class and step.

25.1.2 Unit members covered by the salary schedule attached as Appendix A include the following job positions:

25.1.2.1 Classroom teacher

25.1.2.2 *List other positions as appropriate.*

25.1.3 Unit members assigned to the Children Center Teachers' Salary Schedule attached as Appendix B include the following job positions:

25.1.3.1 Children Center Teachers

25.1.3.2 *List other positions as appropriate.*

(NOTE: Additional unit member salary schedules should be included and described as needed.)

**TOPIC: RULES AND REGULATIONS/
METHOD OF PAYMENT OF WAGES**

This provision establishes initial placement on the salary schedule and subsequent movement based on years of experience and attainment of additional units and degrees. It also provides for the method and timing of payment of wages.

SAMPLE LANGUAGE

25.2 Salary Schedule Implementation

25.2.1 The annual salaries set forth in this Agreement shall be paid in ten (10) or twelve (12) installments, payable on the ____ day of each month with appropriate deductions as mutually agreed between the District and Association.

(NOTE: Most school districts and county offices of education offer a variety of payroll payment schedules. The Association may request a copy of the payment schedules offered. Then a decision can be made about which one to bargain.)

Salary payments for services in addition to the unit member's regular assignment shall be made not later than the ____ day of the month following the payroll period in which the service was performed.

(NOTE: If unit members are given an option of salary payments in 10 or 12 installments, include the language listed below in Section 25.2.1.1.)

25.2.1.1 Unit members selecting payment of wages in twelve (12) paychecks, upon request, may receive their July, August and September pay warrants on the last working day in June.

25.2.1.2 Mandatory deductions from gross earnings are those required by law, provisions of this Agreement, including Federal and State Income Tax and State Teachers Retirement System.

25.2.1.3 Optional deductions are those deductions, that the District and Association have mutually agreed upon, which the unit member may elect to have taken from her/his gross earnings. Optional deductions must be initiated in writing by the unit member. Such authorizations shall remain in effect continuously until the District receives from the unit member a written notice withdrawing the authorization for a particular deduction.

25.2.2 Credit for service outside the District shall be allowed on the salary schedule at the rate of one (1) increment (step) for one (1) year of service up to a maximum of ____ increments. Private school experience for step increment on the salary schedule shall be accepted, providing the private school was state accredited and the unit member in question held a valid credential at the time of the teaching experience. Unit members employed to teach vocational education subjects may be granted up to ____ years of credit for appropriate work experience, including work as a journeyman, in lieu of teaching experience. Earned degrees received and units of study in an accredited institution of higher learning shall be allowed for initial placement and subsequent horizontal movement on the salary schedule. Units of study for professional growth shall also be counted for horizontal movement on the salary schedule.

(NOTE: CTA recommends year-for-year service credit for salary schedule placement.)

25.2.2.1 Courses that are deemed by a college or university to be applicable to a graduate degree and that were completed prior to completion of and were not included in the attainment of the Bachelor's Degree, shall be considered for salary placement as though they had been completed subsequent to the granting of the Bachelor's Degree. Such conditions must be verified through official transcripts or other suitable proof.

25.2.2.2 Unit members who resign from the District and are subsequently re-employed shall be granted full experience credit.

25.2.2.3 Unit members whose initial employment with the District was in programs conducted under contract with public or

private agencies or other categorically funded projects, and then were subsequently employed as probationary unit members with no break in service, shall be credited with the time served in the specifically funded program for salary schedule placement and advancement purposes.

25.2.3 All unit members shall advance one (1) vertical step on the salary schedule for each year of service, except those whose placement is at the maximum step for their class. A year of service is defined as _____ % of the regularly scheduled work year.

25.2.3.1 Unit members who have been employed in the regular educational program of the District as probationary or permanent employees before being subsequently assigned to programs conducted under contract with public or private agencies or other categorically funded projects shall be entitled to continue vertical advancement on the salary schedule for each year of service while assigned to such restricted programs.

25.2.4 Course credit for salary placement and movement on the salary schedule shall be given for post-graduate, lower division, upper division or graduate course work taken at two-year or four-year colleges, universities, or graduate schools which are accredited by a regional accrediting commission or other programs approved by the District. Units of study for professional growth and district inservice (professional development) shall also be counted for salary placement and movement on the salary schedule including Continuing Education Units (CEU's) granted for attending professional development programs. Semester hours (units) as defined by the particular accredited college or university will be acceptable for placement on the salary schedule. Quarter hours (units) shall be converted to semester hours (units) by multiplying the total of such hours (units) by two-thirds (2/3).

(NOTE: The blanks in Section 25.2.4.1 need dates.)

25.2.4.1 Unit members requesting reclassification from one class to another must file such requests with the Personnel Division no later than _____ of each year. Supporting records or transcripts verifying post-graduate units of study that are to apply toward such a reclassification must be filed with the Personnel Division no later than _____ of the ensuing year. If by _____, the unit member is unable to submit supporting records or transcripts verifying post-graduate units of study which are to apply toward reclassification, official notices in the form of a

grade card or letter from the college or university shall be submitted. Such temporary verification, which indicates satisfactory completion of the course(s) shall be sufficient evidence to meet the above requirement. The unit member shall provide the official transcript or affidavit to the District as soon as it becomes available.

TOPIC: ANNIVERSARY AND LONGEVITY INCREMENTS

This provision establishes payment for further years of service in addition to that set forth in the continuous steps of the salary schedule. The terms anniversary and longevity are interchangeable. Some districts try to limit the payment of these additional salary schedule steps by limiting them to credit for only those years served in the district. CTA recommends that all years of experience count for anniversary and longevity increments. CTA recommends a 3:1 index for anniversary and longevity increments.

SAMPLE LANGUAGE

25.3 Anniversary Increments

25.3.1 Each unit member shall receive, in addition to regular scheduled salary, an annual anniversary (longevity) increment. This increment shall be an amount equal to ____ percent of the unit member's regular annual salary. The increment shall initially accrue at the beginning of the ____ year of service; it shall be increased to ____ percent of total salary at the beginning of the ____ year of service and to ____ percent of total salary at the beginning of the ____ year of service. All such anniversary increments shall become an integral part of the salary schedule and accrue from year to year.

25.3.2 Years of service shall include all service granted under Article 25, Section 25.2.2.

TOPIC: SUPPLEMENTAL PAY (EXTRA-CURRICULAR OR CO-CURRICULAR CONTRACTS)

This provision establishes conditions of work and pay for employees who perform various extra-curricular or co-curricular activities.

SAMPLE LANGUAGE

- 25.4 Supplemental Pay
- 25.4.1 Elementary and middle school teachers shall explicitly be considered for supplemental pay when responsible for such duties as: Coaches, yearbook advisers, grade-level leaders, department heads, etc.
- 25.4.2 Participation in programs beyond the regular workday shall be voluntary and paid in accordance with the title of the activity and number of positions listed in Appendix _____ of this Agreement. (*Some examples of extra-curricular or co-curricular positions to be included in the Appendix are: Coaches, Chorus Instructors, Band Directors, Drama Teachers, Yearbook Advisors, and Newspaper Advisors.*) Supplemental contracts shall continue from year-to-year unless terminated in writing by either party.
- 25.4.3 Notice of intent to terminate shall be served by either party upon the other, not less than _____ days prior to completion of the activity. Notice shall include a statement of the reason for termination. The District may terminate a supplemental contract only for just cause.
- 25.4.4 Participation in the extra-curricular program shall be voluntary. Positions in the program shall be filled according to provisions set forth in this Agreement governing advertising and filling vacant positions found in Article 13, Assignment, Transfer and Reassignment.
- 25.4.5 All such positions shall be opened to unit members before they are offered to people outside the unit. The positions shall be posted and awarded to the most senior qualified applicants.
- 25.4.6 Wages paid holders of supplemental contracts shall be as set forth in this Agreement provided that all wages paid be determined solely according to the principle of equal work, and without regard for age, sex, color, race, religion, disability, national origin, or marital status.

TOPIC: HOURLY RATE OF PAY

This provision addresses, in general terms, payment of wages for those instructional or co-curricular programs, which require additional work beyond the contractual workday. The enactment of education reform measures AB 1626 "Pupil Promotion and Retention", AB 1639 "Mandatory Summer School", and SB 2x "High School Exit Exam", has created more

supplemental instructional programs to work with students who need extra help to achieve the academic standards necessary to advance grade levels, and earn a high school diploma. Locals should include in their contracts reference to such supplemental programs that may be offered after school, on Saturdays, during intersessions, and during the summer. See also Article 32 (Summer School/Supplemental Instructional Programs) and Article 33 (Year-Round).

SAMPLE LANGUAGE

25.5 Pro Rata Hourly Rate of Pay

- 25.5.1 Participation in instructional or hourly co-curricular programs beyond the regular workday shall be voluntary except as may be required in Article 21, Section 21.2 of this Agreement. *(Some examples of instructional or hourly co-curricular positions to be included in this section are: Driver Training, Adult School, Evening School, Home Teaching, Substitution, Supervision of After School Events, Summer School, supplemental instructional programs including but not limited to after school tutoring. Saturday classes, intersession classes and/or any remediation classes or programs which occur outside the regular workday and/or work year, and adjunct duties specified in Article 21, Section 21.2 which occur beyond the hours specified in Section 21.2.5.)*
- 25.5.2 All such positions shall be opened to unit members before they are offered to people outside the unit. The positions shall be posted and awarded to the most senior qualified applicants.
- 25.5.3 Unit members performing instructional or co-curricular work beyond the regular workday or work year shall be paid their pro rata hourly wage rate for all such work performed.
- 25.5.4 When the performance of the duty requires travel from the work site or the unit member's home, pay shall commence from the time the unit member leaves for the assignment and terminate when the unit member returns from the assignment.
- 25.5.5 In the event that travel is required, the employee shall be entitled to mileage pay at the rate set forth in this Agreement in Article 25.

TOPIC: DEPARTMENT HEAD PAY

This provision gives monetary recognition to unit members who perform the responsibility and tasks for coordinating departments.

SAMPLE LANGUAGE

25.6 Department Head Pay

Unit members who carry out an assignment of Department Head shall receive annual compensation in addition to their regular salary. The amount paid shall be the sum of _____ dollars plus _____ dollars per unit member in the department or grade level.

(NOTE: Amounts paid to department heads should be similar to the unit member's hourly rate of pay for the duty they are to perform. Most department heads are senior teachers, so doing the calculation on maximum salary may be appropriate.)

TOPIC: MILEAGE RATE

This provision sets forth compensation for the use of a unit member's auto when required as part of her/his assignment.

SAMPLE LANGUAGE

25.7 Mileage Rate

The District agrees to pay unit members _____ cents per mile for the use of personal vehicles in the performance of work assignments or other district related business.

TOPIC: BUSINESS EXPENSE

This provision sets forth a unit member's right to claim reimbursement for expenses such as fees, meals, lodging, travel and incidentals incurred when a unit member has been authorized or directed by an administrator to attend conventions, workshops, meetings, conferences, institutes, seminars, classes, visit schools, businesses, or governmental agencies and offices.

SAMPLE LANGUAGE

25.8 Business Expenses

The District shall pay all expenses, including, but not limited to fees, travel, lodging, meals and incidentals, incurred when the unit member is involved in an activity at the discretion of or authorized by a District administrator when such activity is away from the unit member's primary work location.

TOPIC: INCENTIVE PAY

The enactment of AB 858 in 1998, and AB 1114 in 1999 authorized two forms of incentive pay, one relating to National Board certification, and the other related to school accountability and staff performance incentives. To the extent that the substance of this legislation may be viewed as merit pay, local chapters may not wish to bargain any contract language dealing with this legislation. Without contract language, implementation of this legislation would then default to the specific provisions of each bill, which are now found in California Education Code Sections 44395 et seq. and 44650 et seq. The sample language given here is for local chapters that wish to address this legislation in their contracts.

SAMPLE LANGUAGE

25.9 National Certification Award

- 25.9.1 Unit members who have attained certification from the National Board for Professional Teaching Standards shall be granted a one-time salary award of ten thousand dollars (\$10,000).
- 25.9.2 A unit member receiving such National Certification shall provide a copy of the certificate or other supporting documents in order to receive the salary award.
- 25.9.3 The District shall pay the award within thirty (30) days of receipt of the proof specified in Section 25.9.2 above.
- 25.9.4 Prior to issuing the award payment, the District shall consult with the unit member about the amount of tax withholding and other deductions as may be required by the District.

(NOTE: Compensation received for the National Certification Award is not subject to STRS contributions.)

25.10 Academic Performance Incentive Bonus

25.10.1 The District shall provide a one-time salary bonus for unit members at school sites that receive performance awards pursuant to Education Code Section 44650.

(NOTE: Local chapters can negotiate one of the following pay options for determining how much each unit member at the site will receive. Option 1 divides the money equally between all full time unit members. Option 2 divides the money using a formula contemplated in the law that utilizes placement on the salary schedule in determining the amount each unit member will receive. In both options, part-time unit members receive a percentage of the award based on the amount of time worked at the school/site.)

25.10.2 Pay Option 1: Full time unit members shall be paid an amount that is equal to the amount of the award divided by the number of full-time equivalent unit member at the school/site.

Example: Amount of Award (\$500,000)
Number of FTE unit members (20.6) = \$24,271.84 each

Unit members working at the school/site on a part-time basis shall receive an amount equal to full-time award multiplied by the percentage of time worked at the school/site.

$$\$24,271.84 \times 60\% = \$14,563.11$$

25.10.3 Pay Option 2: Full time unit members shall be paid an amount that is equal to a percentage of their base salary that is determined by dividing the total amount awarded to the school/site by the sum of the annual base salaries for unit members at the school/site.

Example: Amount of Award (\$500,000)
Sum of annual base salaries (\$800,000) = 0.625

Unit member A's salary = \$42,000 X 0.625 = \$26,250 award

Unit member B's salary = \$32,000 X 0.625 = \$20,000 award

Unit members working at the school/site on a part-time basis shall receive an amount equal to full time award multiplied by the percentage of time worked at the school/site.

25.10.4 The District shall pay unit members eligible for the performance award within thirty (30) days of receipt of the award money.

- 25.10.5 Prior to issuing the award payment, the District shall consult with the unit member about the amount of tax withholding and other deductions as may be required by the District.

(NOTE: Compensation received from performance incentive bonuses is not subject to STRS contributions. Further, the law provides that one-time performance bonuses will go to certificated teachers and other certificated employees at the school/site. This sample language shares the award only among bargaining unit members. The District may take the position that any bonus may have to be divided among all certificated employees working at the school/site. In addition, if counselors, psychologists or other certificated school/site employees are in separate bargaining units, the bargaining process will have to address that issue.)

LEGAL REFERENCES

A. Education Code Sections Cited

37252.5 - Supplemental Instruction to Pupils
42239 - Summer School Funding
44041 - Salaries (rights and duties)
44395 - National Board Certification
44650 - Academic Performance Incentive
45023.5 - Salaries (sex discrimination in extra duty pay)
45028 - Salaries (training and experience as basis for)
45040 - Salaries (payable by 5th/withholding for Aug. & Sept. pay)
45042 - Salaries (alternative method of computation for less than a full school year)
45048 - Salaries (payable by the 5th)
45060 - Salaries (dues deduction)
48070.5 - Promotion and Retention of Students; Policy
60648 - Pupil Performance Standards
60850 - High School Exit Exam

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Act
3543.2 - Scope of Representation

RETIREMENT

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ARTICLE 26

RETIREMENT

RETIREMENT provisions are usually thought of as a fringe benefit program for some period of time or the Golden Handshake. Although these are common retirement provisions, there are many creative approaches to retirement that a bargaining team can pursue.

The first step in creating a retirement proposal is to determine the objective of the proposal. Will the retirement program be an ongoing benefit in the Agreement which is designed to be a reward for service to the district, or will it be a one-time offer designed to reduce the number of bargaining unit members in an effort to avoid a layoff or free money during a budget crisis? Maybe it is a combination of the two. Or maybe some other motive exists. Once the objective is determined, then a retirement plan can be created to meet the objective.

Many bargaining teams fail to cost out retirement proposals. This can lead to misunderstandings at the bargaining table and also make the Association seem unprepared for bargaining. Not knowing the true cost of a proposal could place the Association in a position of giving up huge amounts of money that it might otherwise have made available for bargaining. If a district presents a cost analysis of any retirement program, the Association should check all assumptions and calculations.

There are two ways to save money from a retirement proposal. One is by replacing a unit member at the top of the pay scale with one at a much lower rate. The other is not replacing a unit member at the top of the pay scale. Retirement savings failure happens when districts hire too many replacements or hire replacements at positions greater than beginning salaries. NEA and CTA have developed the Association Compensation Analysis Program (ACAP) computer

program for costing out salary proposals. Associations may also use this program to cost out retirement proposals by doing calculations on the estimated number of retirees and replacements. The program will figure the costs of retirees and replacements over a five-year period by using the advancement feature. By performing this calculation, either by ACAP or by hand, bargaining teams will be surprised by the total savings.

Most districts have an average entry-level salary, which they calculate for budgeting purposes. It is arrived at by taking a history of new hires over a period of years and averaging the entry level. Do not use a step one, column one placement. Very few unit members enter the salary schedule on this step. Listed below is an example of a basic calculation required for estimating cost savings from retirements:

1. Cost per teacher at beginning entry-level is \$38,450 which includes an average entry level at Class II, Step 1 of \$30,000, mandated driven costs of (STRS, Medicare, worker compensation, and unemployment insurance) of about 11.50% of salary which is \$3,450, and a District fringe benefit contribution of about \$5,000.
2. Cost per teacher at the maximum salary level is \$68,829 which includes maximum salary of \$58,000, mandated fringe costs of about 10.05% of salary (Medicare is not included), and a District fringe benefit contribution of about \$5,000.
3. The Difference between an entry-level bargaining unit member and a bargaining unit member at maximum salary is \$30,739!
4. Subtract from #3 the cost of the retirement incentive program. The amount subtracted depends upon the program.

This calculation would yield a saving per retiree. The calculation should be extended out over a five (5) year period to determine multiple year savings. Remember to move the replacement of the unit member one step on the pay scale each year.

If the retiring unit member has no replacement, count the entire amount in #2 as the savings, after subtracting the cost of the retirement incentive program.

Keep in mind the ongoing cost of retirement proposals. Some proposals do not save much money and may even cost the district. Many bargaining teams are finding that they would rather place money on the unit member salary schedule than use it for retirements if the program costs more than it saves.

The important lesson is to know the immediate and long-range costs of any proposal before it is made, so that other economic proposals can be built on the savings of a retirement proposal.

Most retirement provisions are located in the compensation Articles of the contract. Normally they would appear under Salaries, Health and Welfare Benefits, or Compensation.

TOPIC: RETIREE CONTRACT FOR SERVICES PLAN

Education Code Section 24214 provides that any STRS service retirant may be employed by a school district and earn not more than the maximum provided for by law in any one school year, and the rate of pay for that employment shall not be less than the minimum, not exceed that paid by the district to other employees performing comparable duties. The maximum earnable is adjusted by STRS each year. This language provides retirees an option of serving the district under this law.

SAMPLE LANGUAGE

26.1 Retiree Contract for Services Plan

- 26.1.1 The District shall offer retirees the opportunity to enter into an ancillary services contractual agreement.
- 26.1.2 A unit member shall have reached the age of 50 years and have been employed by the District for not less than 10 years. The unit member shall retire and shall not return to regular employment with the District except under exceptional circumstances.
- 26.1.3 The contract for services shall be for a period of five (5) years. The participant will provide 30 days of service per fiscal year, in services mutually agreed upon by the parties. Termination of the contract prior to completion of the five (5) years shall be by mutual agreement.
- 26.1.4 A participant approved for this plan shall receive the following benefits:
 - 26.1.4.1 A contract for a period of five (5) years.
 - 26.1.4.2 Thirty work days per year at a compensation rate that is equivalent to the number of days of service times the per diem rate of pay which the participant would have received as a regular employee.
 - 26.1.4.3 The District shall provide participants with health and welfare benefits as though they were full time employees.

- 26.1.5 The unit member shall file an application for a retiree contract with the personnel office at the time of retirement.

(NOTE: AB 2765, effective January 1, 1999, allows school districts to request an exemption from the post-retirement earnings limitation, referred to above, for qualified unit members who retired from service on or before July 1, 1998, and to be exempt from such limitation through June 30, 2002, unless a later enacted statute deletes or extends this date.

The purpose of this exemption is to allow districts to hire back retired teachers to help alleviate the teacher shortage resulting from the state class size reduction program. In order to qualify for the exemption, the retired teacher must teach in a K-3 class size reduced class, or to fill a position in grades 4-12 that was vacated due to a transfer to a grade K-3 class in the same school district.

The legislation requires that such retirees be classified as temporary employees within the bargaining unit, and that compensation be subject to the collective bargaining agreement between the Association and the District.)

SAMPLE LANGUAGE

26.2 Retiree Contract for Service Related to Class Size Reduction (CSR)

- 26.2.1 The following shall apply to retired teachers hired by the District to fill Class Size Reduction (CSR) positions in accordance with Education Code Section 24214, and AB 2765 (1998).

26.2.1.1 Reemployed retired teachers shall be members of the bargaining unit, and shall be covered by all provisions of this Agreement.

26.2.1.2 Reemployed retired teachers shall be classified as temporary bargaining unit members.

26.2.1.3 Reemployed retired teachers shall be placed on the regular certificated salary schedule at not less than the same step/column placement and degree stipend at the time they retired from the District.

TOPIC: REDUCED SERVICES EMPLOYMENT PLAN

The Reduced Services Employment Plan, also known as the Willie Brown Plan, provides an employee election to reduce her/his workload from full-time to part-time duties, and receive the service credit the unit member would receive if the unit member was employed on a full-time basis and have her/his retirement allowance, as well as other benefits that the unit member is entitled to, based upon the salary that the unit member would have received if employed on a full-time basis.

SAMPLE LANGUAGE

26.3 Reduced Services Employment Plan

26.3.1 Reduced services employment shall consist of either the:

26.3.1.1 Equivalent of one-half the number of sequential days of service required by the unit member's contract of employment during her/his final year of service in a full time position and will commence on the first day of the first half of the work year, or the first day of the second half of the work year; or,

26.3.1.2 Equivalent to half-time employment per day for the full school year.

26.3.2 A unit member must have reached the age of 55 years prior to reduced services employment. The unit member must have been employed full time in a position requiring certification for at least 10 years of which the immediately preceding five (5) years were full time employment.

26.3.3 A unit member shall be paid a salary, which is one-half of the salary that would have been earned had the unit member not elected to exercise the option of reduced services employment. The unit member's State Teachers Retirement System contribution paid by both the District and the unit member shall be the same as if the unit member taught full time.

26.3.4 The District shall provide participating unit members with health and welfare benefits as though they were full time employees.

26.3.5 A unit member shall file application for reduced services employment with the personnel office by (date) for the following school year.

26.3.6 A reduced services unit member may be returned to full time employment only with the mutual consent of the unit member and the District.

TOPIC: GOLDEN HANDSHAKE

(NOTE: The legislation authorizing the Golden Handshake Additional Service Credit program expired on December 31, 1998. Unless and until this program is re-authorized by the Legislature, it will not be available.)

Golden Handshake Additional Service Credit for STRS members was authorized by SB 858 (Chapter 20, Statutes of 1994). The legislation authorizes K-12 and community college districts, under certain conditions, to pay for two years of additional service credit upon retirement for K-12 and community college teachers.

Districts may pay the cost of this early retirement provision over a four-year period or all in one year. Payment over the four years will help with the audit requirements.

Senate Bill 858:

1. Requires specified cost/savings data be included in the annual audit for participating districts and offices and requires the Controller to prepare a cost analysis of the audit and report annually its findings to the Legislature and the Governor.
2. Specifies a retirement "window" period of 60 to 120 days.
3. Requires the district to certify that the Golden Handshake program will result in net savings, a reduction of the number of certificated employees as a result of declining enrollment, or the retention of certificated employees credentialed to teach in teacher shortage disciplines. Requires the certification to include data on positions vacated, age and service credit of retirees, salary and benefit comparisons, and retirement costs.
4. Requires the districts to transmit funds to STRS to pay the costs of the increased benefit, purchasing power protection, and administrative costs.
5. Requires school districts to reimburse the county superintendent for costs.
6. Provides that members who are re-employed forfeit the additional service credit.
7. Authorizes the program through December 31, 1998.
8. Authorizes the Superintendent of Public Instruction and the Chancellor of the Community Colleges to request reimbursement from local districts for administrative costs and requires reimbursement to the Department of Finance for administrative costs.

SAMPLE LANGUAGE

26.4 Golden Handshake Additional Service Credit

26.4. 1 The District shall offer unit members the Golden Handshake Additional Service Credit program authorized by Education Code Section 44929 between _____ and _____.

(NOTE: Provide a window period consistent with the Golden Handshake Education Code provisions.)

TOPIC: ONE-YEAR FINAL COMPENSATION

Effective July 1, 1990, districts may enter into collective bargaining Agreement with certificated exclusive representatives for the purpose of a one-year final compensation formula for unit members. District certification is required in order for an individual to receive this benefit.

Collective bargaining Agreements must contain a mechanism to pay STRS the present value cost of the additional benefit, as well as the administrative costs incurred by STRS in the establishment of the program.

The Agreement may apply only to persons who retire, become disabled, or die on or after July 1, 1990.

The unit member must meet the eligibility requirements for Service Retirement, or Disability Allowance, or have survivors' eligibility to receive a Family Allowance as a result of the unit member's death, which occurs on/or after July 1, 1990.

The district must certify that the unit member has been employed as a classroom teacher as defined in Section 22135 of the Education Code, with the same district for the last 10 years of her/his employment immediately preceding the effective date of retirement, or disability, or the date of death. For the purposes of continuity of employment with the same district, an authorized leave of absence for sabbatical, illness, or other district-bargained approved leaves do not constitute a break in service. However, such time is not included in computing the ten (10) year employment requirement.

Upon receiving certification from the district, STRS will determine the present value and administrative costs associated with the increased benefit, and bill the district for those costs. The administrative costs have been initially estimated to be approximately \$250 per applicant. Both the Present Value and Administrative Costs are subject to change as experience dictates.

STRS will calculate and pay the increased benefit to the member or other eligible recipient upon receipt of certification of eligibility from the District.

The District is required to reimburse the STRS within 30 days of receiving an invoice, for the total amount of the costs identified by STRS. Interest will accrue at the regular interest rate for any payment not received within 30 days of receipt of the invoice.

Districts, unit members, and Associations should be aware that the adoption of one-year final compensation constitutes a change in STRS benefits after October 14, 1987, and therefore will be subject to the pension limitations of Section 415 of the Internal Revenue Code.

SAMPLE LANGUAGE

26.5 One-Year Final Compensation

26.5.1 The District and the Association agree as follows with respect to benefits under the State Teachers Retirement System ("STRS") for unit members who are classroom teachers and who retire, become disabled or die after commencement of this Agreement.

26.5.1.1 Pursuant to Education Code Section 22135, "Final Compensation" for each affected classroom teacher shall be the highest annual compensation earnable by the unit member during any period of 12 consecutive months during her/his membership in STRS.

26.5.1.2 The determination of who is a "classroom teacher" shall be made by the District in accordance with Education Code Section 22135.

26.5.1.3 Notwithstanding this agreement, the District and Association understand that no benefits will be paid by STRS in excess of the benefits payable under the laws governing STRS, including any limitations imposed by Section 415 of the Internal Revenue Code of 1986.

26.5.1.4 All benefits provided by this Agreement shall be paid through District and employee contributions as follows:

26.5.1.4.1 (NOTE: Set out portions paid by District and employees.)

26.5.1.4.2 In accordance with Education Code Section 22135, a trust fund shall be established by the District and maintained solely to collect, retain and disburse such contributions for the benefits provided by this Agreement and associated costs.

- 26.5.1.5 The District shall remit to STRS, at the time and in the amount determined by STRS in accordance with Education Code Section 22135, the cost of the benefits provided under this Agreement, including any associated administrative costs.
- 26.5.1.6 Upon execution of this agreement, the District shall notify all of its certificated employees of this agreement and of their ability, if applicable, to elect to terminate membership in the Public Employees' Retirement System within ninety (90) days following date of notification and to become a member of STRS.
- 26.5.1.7 The District shall submit a signed copy of this Agreement to STRS immediately after its signing, at the following address: Benefits Division, P.O. Box 1525-C, Sacramento, CA 95851.

TOPIC: FRINGE BENEFITS

An ideal fringe benefit program for retirees would be to provide district-paid health and welfare benefits for life upon retirement. Since most employees are eligible for Medicare, this would mean providing the district's regular benefit program to retirees until they are eligible for Medicare. Upon Medicare eligibility, retirees would be provided a district-paid supplement to Medicare which would bring the level of benefits to a level as equal as possible to active employees. Those not eligible for Medicare would have the district buy Medicare or have the employee pay for Medicare.

Many school districts in California provide retiree fringe benefits for a particular period of time. To avoid age discrimination, these types of plans need to provide a specific number of years rather than cutting off at a specific age. A plan that provided ten (10) years of coverage would be nondiscriminatory, but a plan that cuts off at age 65 would be. Even language providing benefits for ten (10) years or to age 65, whichever occurs first, would be age discrimination.

Some districts provide a sliding scale of coverage depending upon service in the district. Teachers who have provided 30 or more years to a district might receive life coverage. Teachers with less would be provided with a lesser number of years of benefits depending upon service.

As with all retiree benefits, Associations should plan benefit packages wisely with cost effectiveness in mind. Money spent on retiree fringe benefits uses funds that would otherwise be available for bargaining compensation for active employees.

SAMPLE LANGUAGE

26.6 Retiree Fringe Benefits

- 26.6.1 The District shall provide retirees and their eligible dependents with all of the health and welfare benefits plans provided to unit members. Such coverage shall be supplementary to Medicare.

TOPIC: MEDICARE

Government Code Sections 22202, 22203, 22204, 22208, and 22302 provide for the ability to cover certificated employees with Medicare if they were hired before April 1, 1986. This Medicare election must be bargained because of the cost to the District. Once Medicare is bargained, eligible employees may make a non-revokable selection of whether or not to participate in the program. Not all eligible employees will elect to take Medicare because they are already covered. The District and employee each pay 1.45% of payroll if an employee elects to contribute to Medicare. Employees hired April 1, 1986 and after are already covered by Medicare. The Medicare election legislation has been extended to 2002, and will sunset on that date unless extended further by Congress.

SAMPLE LANGUAGE

26.7 Medicare

- 26.7.1 The District agrees to allow bargaining unit members to elect individually whether they shall become eligible for Medicare coverage as provided for by AB 265 (1989), and Government Code Section 2209.03 et seq. The election shall be conducted pursuant to the rules and regulations promulgated by the Public Employee Retirement System (PERS).
- 26.7.2 All bargaining unit members who are members of STRS and who were hired on or before March 31, 1986, shall be eligible to participate in the individual election.
- 26.7.3 The Association shall be provided a copy of the list of the bargaining unit members eligible to participate in the individual election and their anticipated total wages for the current fiscal year.
- 26.7.4 The effective date of coverage shall be _____.

- 26.7.5 Bargaining unit members electing to participate in Medicare coverage shall be permitted to authorize payroll deduction of 1.45% of total wages for the period of time from the effective date of coverage until the PERS process of entering Medicare is completed. Such funds shall be placed in an Escrow Account to be used for the unit member's retroactive payment to Medicare. Any remaining moneys and interest earned during this time shall be returned to the unit member.
- 26.7.6 The Association shall be furnished copies of all correspondence between the District, PERS, and other parties regarding the implementation of AB 265.

TOPIC: SUPPLEMENTAL INCOME RETIREMENT PLAN

Supplemental income retirement plans provide a separate monthly lifetime bonus benefit to early retirees equivalent to what the unit member would earn without any age penalty for early retirement. This benefit is provided by the district purchasing an annuity for the retiree, sometimes coupled with a life insurance policy (the district is the beneficiary of the life insurance policy). The savings to the district come through staff turnover. Normally, this type of supplemental income retirement plan is offered as a one-time option because it encourages a large number of retirements all at one time, creating a substantial savings. Sometimes this type of proposal is used if a district is facing layoffs.

SAMPLE LANGUAGE

26.8 Supplemental Income Retirement Plan

- 26.8.1 The District shall offer a one-time lifetime retirement supplement to unit members retiring between _____ and _____. This supplement shall be provided by an annuity purchased by the District which is the equivalent, when added to the unit member's STRS retirement, to what the unit member would earn if the unit member had no age penalty in the STRS retirement program.

(NOTE: When bargaining this plan, Associations should create language that meets the specifics of the supplemental income retirement plan that they want. There are many different types of annuities available. This language represents only the basics of a proposal.)

LEGAL REFERENCES

A. Education Code Cited

- 2000-24900 - State Teachers Retirement System (STRS)
- 44929 - Additional service credits
- 44986 - Leave of absence for disability allowance applicant
- 47611 - Participation in STRS

B. Government Code Sections Cited

CLASS SIZE

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ARTICLE 27

CLASS SIZE

CLASS SIZE is considered one of the most important professional issues on the bargaining table. Technically, it is an economic issue because the lower the class size, the higher the cost. If management is charged with running a highly cost effective program, then establishing high class sizes would be a major contributor to economic savings. A district with high class sizes may also be paying higher salaries. Associations should do a careful analysis of all the class size relationships that exist in their district before submitting a class size proposal.

Other factors governing the real class size in a district are the formulas used. In one district, the formula may be the enrollment divided by the bargaining unit. This obviously has its drawbacks because certain bargaining unit members do not have classrooms because they serve as resources to classrooms. Class size in this case may be very large if there is a large number of certificated support personnel in the bargaining unit.

Another case may establish limits but with penalties which really circumvent the intention of class size limits. These would include payment to teachers for extra pupils or adding instructional aides when limits are reached. A clear class size Article establishes a ratio or maximum. If the Article does that without saying what happens next, an arbitrator can rule in favor of the Association and thereby cause the district to hire more teachers for the pupils they have. CTA recommends class size ratios measured by grade levels within a school or maximums measured by individual classrooms. Associations find contract enforcement very difficult if ratios are measured by grades or bands of grades throughout the whole district. It is too difficult to get accurate numbers of pupils enrolled, however, in the case of a single grade in a school or in single classrooms it is very easy to establish if a violation of the contract occurs. Class size

Articles should be educationally sound. They should be flexible enough to allow for team teaching, innovative programs, and class size variations in particular specialized instances. Class size in marching band may need to be unlimited because of the performance aspect of the class. Physical education may need more pupils than usual, but should not become an avenue for the district to save money by having excessive class sizes. Each program requires careful consideration by the Association. A proposal must take into consideration realities in the district, the wishes of unit members, and cost constraints.

Class size calculations involve many different considerations because of the variety of programs a district may offer. The following calculations are an example of how class size calculations are done using the gross concept of an across the board reduction to all classes within a district. Usually certain programs are affected differently and need special calculations.

CALCULATION FOR REDUCTION OF CLASS SIZE BY ONE PUPIL	CALCULATION FOR THE AVERAGE TOTAL COMPENSATION COST OF ONE BARGAINING UNIT MEMBER
<p>ASSUMPTIONS: Bargaining Unit = 1,000 FTEs 90% (900) of Unit are Classroom Teachers Current Class Size Ratio = 30:1 New Class Size Ratio = 29:1 1% Pay Increase = \$448,000 Number of Pupils = 900 X 30 = 27,000</p>	<p>ASSUMPTIONS: Average Salary = \$40,000 Average Fringe Benefit = \$5,000 Mandated Costs @ 12% = \$4,800 <i>includes STRS, Unemployment, Workers' Compensation, MediCare</i> Total Average Cost = \$49,800</p>
<p>CALCULATION: $27,000 / 29 = 931$ Total Teachers Needed $931 - 900 = 31$ Difference in Number of Teachers $31 \times \\$49,800 = \\$1,543,800$ Cost of Additional Teachers $\\$1,543,800 / \\$448,000 = 3.45\%$</p>	
<p>The equivalent of a 3.45% salary increase across the board would be needed to lower class size by one pupil. Generally, the cost is between 3% and 4%. Districts with smaller class sizes or special programs where class size is low are more costly to lower. For example, if a class size were ten pupils, lowering it by one pupil would cost about three times as much, or over 10% in salary. Associations should be sure to do this calculation if they face a class size increase. The exact savings in such a case should be duly noted at the bargaining table.</p>	

Associations also need to be aware of penalties that may be assessed to a district's revenue limit at P2 calculations for violations of class size maximums and averages in grades Kindergarten through 3. Education Code Sections 41376 and 41378 are summarized below and are recommended as a maximum class size provision for these grades; **except where the state funded class size reduction program has been implemented:**

GRADE LEVEL	AVERAGE	MAXIMUM
Kindergarten	31	33
1	30	32
2	30	32
3	30	32

CTA monitors and advocates at the State Board of Education meetings where waivers of this law are considered. If an Association wants to oppose a waiver on class size, contact CTA staff for assistance.

The particular language on class size given below, weights pupils by the extra resources they may need. Associations are invited to consider the language and then fashion proposals unique to education improvement plans in the local districts. Consider alternative ways of delivering service without sacrificing professional issues. Teaming with other professionals may cause shifts in class size depending upon curriculum and instruction needs on a particular day in such instances. Consider how instructional aides and support personnel are used to maximize effective instruction without sacrificing professional control of the workplace. Teachers should always have the controlling educational prescription for a pupil. Other support personnel should be in a position to support the teacher's prescription for the pupil or class. CTA does not recommend replacing a teacher-to-pupil ratio with an adult-to-pupil ratio.

SAMPLE LANGUAGE

27.1 The District shall not exceed a ratio of pupils to classroom unit members of _____ to one (1).

27.2 The District shall not exceed the following class maximums, which may be weighted as described in Section 27.2.4.

(NOTE: Association should include any special classifications in this section, which may pertain to unique programs. There may be a difference between junior high school and middle school that needs to be distinguished here. Associations may wish to include total load maximums for classrooms that are not self-contained.)

27.2.1	<u>ELEMENTARY</u>	<u>CLASS MAXIMUM</u>
	K (one unit member per classroom)	_____
	K (team teaching classroom)	_____
	K (under Class Size Reduction Program)	_____
	1 – 3	_____
	1-3 (Under Class Size Reduction Program)	_____
	4 – 6	_____

27.2.1.1 The maximum pupil load shall be reduced by two (2) in all classes that combine more than one grade level.

27.2.2 SECONDARY CLASS MAXIMUM

Academic Classes	_____
Academic Classes (under Class Size Reduction Program)	_____
Laboratory Classes	_____
Typing	_____
Music	_____
Art	_____
Physical Education	_____
Community Day School	_____

27.2.3 No class size shall exceed the number of work stations in the classroom.

27.2.4 The following weighting factors shall be utilized in determining the size of each class.

(NOTE: Weighted factors need to be adjusted depending upon class size averages and maximums.)

27.2.4.1 LEVEL I WEIGHTED 1.0

Pupils in regular education who do not require support services other than generally provided to all pupils.

27.2.4.2 LEVEL II WEIGHTED 1.5

Pupils qualified for Gifted and Talented Education (GATE).

27.2.4.3 LEVEL III WEIGHTED 1.5

Pupils qualified as Limited English Proficient (LEP).

27.2.4.4 LEVEL IV WEIGHTED 2.0

Pupils with exceptional needs whose functioning levels are such that they are assigned to the least protected sheltered environment. This would include elementary and secondary pupils who require periodic monitoring and supervision of a special education teacher and demonstrate functioning levels as follows:

- 27.2.4.4.1 Works independently with periodic monitoring and supervision;
- 27.2.4.4.2 Does not require individual activities/tasks; can perform most activities/tasks in a group;
- 27.2.4.4.3 Self-monitors and controls behavior on a consistent basis;
- 27.2.4.4.4 Exhibits independence in toileting and feeding;
- 27.2.4.4.5 Does not exhibit self-abuse or serious abuse to others; and
- 27.2.4.4.6 Exhibits minimal self-stimulation behavior or maladaptive behavior, which requires infrequent intervention.

27.2.4.5 LEVEL V WEIGHTED 2.5

Pupils with exceptional needs whose functioning levels are such that they are assigned to a less protected sheltered environment. This includes preschool, elementary, and secondary pupils who require direct supervision of a special education teacher and demonstrate functioning levels as follows:

- 27.2.4.5.1 Works independently for short periods with continual supervision;
- 27.2.4.5.2 Does not require individual activities/tasks and is able to perform some activities/tasks in a group;
- 27.2.4.5.3 Self-monitors and controls behavior in a structured setting;
- 27.2.4.5.4 Requires periodic monitoring in toileting and/or feeding;
- 27.2.4.5.5 Exhibits some self-abuse or abuse to others; and,

27.2.4.5.6 Exhibits some self-stimulating behavior or maladaptive behavior, which requires frequent intervention.

27.2.4.6 LEVEL VI WEIGHTED 3.0

Pupils with exceptional needs whose functioning levels are such that they are assigned to the most protected sheltered environment. This includes infants, preschool, elementary, and secondary pupils who require direct, continual supervision by a special education teacher and demonstrate any combination of three of the following descriptors or descriptor 27.2.4.6.7:

27.2.4.6.1 Unable to work independently, requires constant, direct supervision;

27.2.4.6.2 Primarily requires individual activities/tasks;

27.2.4.6.3 Unable to self-monitor; control of behavior requires highly structured setting;

27.2.4.6.4 Requires direct assistance by the teacher, on a regular basis, in toileting or feeding;

27.2.4.6.5 Exhibits severe self-abuse or abuse to others;

27.2.4.6.6 Exhibits self-stimulating behavior or maladaptive behavior which requires constant intervention; and

27.2.4.6.7 Requires a specialized physical health care procedure(s) on a regular basis where a health care aide, or other appropriate non-instructional person is not available.

27.3	<u>SUPPORT PERSONNEL STAFFING</u>	<u>CASE LOAD MAXIMUM</u>	<u>RATIOS</u>
	Counselors	_____	_____
	Nurses	_____	_____
	Librarians	_____	_____
	Psychologists	_____	_____
	Speech Therapists	_____	_____
	_____	_____	_____

LEGAL REFERENCES

A. Education Code Cited

- 41376 - Class Size
- 41378 - Kindergarten Class Size
- 52080 et seq. - Grade 9 Class Size Reduction Program
- 52120 et seq. - K-3 Class Size Reduction Program
- 55612, 56517 - Special Education Class Size
- 56324 - Credentialed nurse and psychologist services available to each site

B. Government Code Sections Cited

- Government Code, Chapter 10.7 - Educational Employment Relations Act
- 3543.2 - Scope of Representation

SCHOOL IMPROVEMENT

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ARTICLE 28

SCHOOL IMPROVEMENT

SCHOOL IMPROVEMENT is the reason for bargaining employee involvement in the decision-making process at the local school level. Such terms as "School Based Management," "Shared Decision-making," "Restructuring," and other similar terms shall be considered the same or similar enough that teacher rights involved in each program need to be fully protected with equivalent collective bargaining language.

CTA urges its affiliates to become involved in site-based decision-making only through collective bargaining. If an Association decides to participate in site-based decision-making, the collective bargaining Agreement must establish a procedural framework allowing appropriate flexibility when applied at the building level. Simultaneously, it must provide a vehicle by which the Association can monitor school plans to be sure that they do not diminish the status of the Association or compromise the integrity of the collective bargaining Agreement. Some school districts may assert that bargaining over certain aspects of the recommended CTA language may be out of SCOPE. These districts need to be reminded that they may bargain these issues if they want and that they must do so if they want a successful site-based decision-making program. Local Associations may need to turn to organizing in instances where a district refuses to bargain. Chapters should consult CTA staff throughout the bargaining process and especially if a district refuses to bargain all aspects of site-based decision-making.

Site-based decision-making is still in a developmental stage, with a very limited track record. Several issues must be included when developing proposals related to site-based decision-making. These issues include such matters as:

- a centralized, district-wide mechanism to coordinate the development and implementation of site-based decision-making at individual schools,
- funding for the developmental process as well as for the implementation of site-based decision-making,
- the procedure for determining which site-based decision-making proposals should be implemented,

- the rights and obligations of employees who would prefer not to participate in a site-based decision-making arrangement embraced by the majority,
- the relationship between the collective bargaining Agreement and those aspects of site-based decision-making that impact on terms and conditions of employment,
- the procedure for discontinuing site-based decision-making agreements that turn out to have adverse consequences,
- the resolution of disputes that may arise regarding site-based decision-making agreements,
- a mechanism to determine the scope of site-based decision-making: which areas are open for decision-making and which are not,
- a process for evaluation of site-based decision-making on at least an annual basis,
- a process for considering contract amendments and waivers of school board policy and law, if any, and
- a process for allocation and determination of representation on the central council and site councils.

In dealing with these issues, Associations typically pursue both union and educational objectives. Some type of centralized control and regulation at the district level will assure the integrity of the collective bargaining process. The Association's desire to encourage initiative and innovation at the building level may cause some necessary modifications of the collective bargaining Agreement for that school site, but such modifications must be considered in light of the impact on other schools in the district and individual teacher rights. Any modifications should be developed in a manner that does not set a precedent for the Association as a whole.

When developing proposals related to the composition of central councils and site councils, Associations should be aware that parents, community members, and business interests, elected school board members to represent them. School board appointments, whether they are parents, community members, business leaders, pupils, or administrators, should be considered representative of the community at large. Sometimes interest groups try to have a selection process outside school board jurisdiction, which Associations should avoid. The school board could agree, however, to separate elections for constituent interest groups within the parameters of their 50% of these councils. [For the purposes of recommended language, the figure of 50% is used as the number of unit members. For different Associations, this figure may vary. In some cases, all of the council members are unit members. In others, it is less than 50%.]

Associations wishing to enter site-based decision-making agreements with their school districts should consult their CTA staff person for information about developing a proposal that meets the needs of their local situation. No one piece of contract language is right for everyone. The

recommended language in this document is meant to guide the Association in the development of its proposal.

Although site-based decision-making should be developed at the local level, some state laws have been created to help the process. Others are likely to be developed in the future. All of them have basic components that can be met with the CTA sample language.

BACKGROUND FOR SCHOOL-BASED MANAGEMENT AND CAREER OPPORTUNITIES PROGRAM

Sections 44666 through 44669, 52049.1, and 54760.1 of the Education Code are meant to encourage school districts to plan and implement alternative models of school-based management projects or advanced career opportunities for classroom teacher projects, or both, for one or more schools in a school district. The program requires the sign-off of the certificated exclusive representative before implementation. CTA recommends that before sign-off occurs, a negotiated written agreement incorporated into the collective bargaining Agreement must be accomplished. The intent of the legislation is for school district governing boards and administrators to work with classroom teachers and exclusive representatives to develop and strengthen procedures that increase the decision-making authority of teachers in responsibilities that affect their ability to teach. Districts receiving "Supplemental Grant" money, "Staff Development" money, or "School Improvement Program" money may use these funds, within prescribed guidelines, to fund the implementation of this statute. Funds appropriated for this legislation may be carried over to the subsequent fiscal year for the purposes of this law. Districts may enter agreements with exclusive representatives to allocate other district funds for site-based decision-making as well.

BACKGROUND FOR RESTRUCTURING EDUCATION

Education Code Section 58900 et seq. create a pilot project for restructuring California schools that has two phases including planning and demonstration. Although the legislation does not specifically call for site councils that include teachers or the exclusive representative, this legislation requires the sign-off of the certificated exclusive representative before a school district may obtain a demonstration grant (sign-off is not required for a planning grant). This would allow for a local Association to have either a say in the program or the ability to stop it if the Association did not agree. Again, CTA recommends before sign-off occurs, that a negotiated written agreement incorporated into the collective bargaining Agreement must be accomplished.

OTHER SITE-BASED DECISION-MAKING LAWS

Other laws that contain site-based decision-making components in them include:

SB 813 School Improvement (1983) codified as Education Code Section 44662,

AB 40 Alternative Assessment (1991) codified as Education Code Section 60730,

SB 1882 Staff Development (1988) codified as Education Code Section 44670.3,

AB 777 School Based Program Coordination Act (1981),

AB 1470 Education Technology (1989) codified as Education Code Section 51870, and

AB 1649 School Discipline Plans (1986) codified as Education Code Section 35291.

If you have specific questions about these laws, ask CTA staff.

The CTA has policy and guidelines related to site-based decision-making that Associations should consult before bargaining. Under no circumstances should an Association enter site-based decision-making without appropriate training and consultation from CTA staff, and without a collective bargaining Agreement that covers operating procedures for this program!

A school site Project Agreement, for the purposes of this sample language, is a plan initiated by a Site Council that outlines how the school will implement site-based decision-making. Other names may be used to describe a school plan.

Provision for a head faculty representative, for the purposes of this language, is merely a means of putting one faculty representative in charge if there is more than one representative at a site. If an Association decides to use this approach, it must designate a head representative. This can be done by an Association appointment or through a site election. The process for selection of a head faculty representative should be included in the Association's bylaws.

SAMPLE LANGUAGE

28.1 The District and the Association recognize that site-based decision-making, in which employees at individual schools are given increased responsibility for making decisions, may improve effective professional practice and the educational process. Accordingly, in order to provide for the development and implementation of site-based decision-making in the District, the parties agree as follows:

28.2 A Central Site-Based Decision-Making Council (Central Council) shall be established within _____ days after the effective date of this Agreement.

28.2.1 The Central Council shall consist of _____ members, of whom 50% will be appointed by the Association and 50% by the District. Bargaining unit members, classified employees, administrators, parents, community members and pupils may be appointed to this Council. Additional participants as needed may be appointed by the Central Council for service on Special Committees, maintaining the same ratios established in the Central Council for appointees. The Association and District may appoint alternates to attend Central Council meetings at which members may be absent.

(NOTE: The Association must determine appropriate percentages of representation and numbers of representatives. Because the Central Council is charged with reviewing contract amendments and waivers of school board policy and law that may affect employment and working conditions, appropriate Association representation is critical. Before determining any percentage of representation or number of representatives, Associations may wish to consult with other unions and interest groups in the district. CTA recommends at least 50% be bargaining unit members.)

- 28.2.2 The Central Council shall be jointly chaired by one person appointed by the Association and one person appointed by the District.
- 28.2.3 The Central Council shall have the following functions and responsibilities:
 - 28.2.3.1 Study site-based decision-making.
 - 28.2.3.2 Receive training on site-based decision-making.
 - 28.2.3.3 Develop training programs for site-based decision-making.
 - 28.2.3.4 Develop and implement program guidelines and criteria for school site Project Agreements consistent with Section 28.3.
 - 28.2.3.5 Share information.
 - 28.2.3.6 Review, approve, and evaluate school site Project Agreements on a yearly basis as submitted to it by Site Councils.
 - 28.2.3.7 Monitor school site Project Agreements and provide remediation or Projects when necessary.
 - 28.2.3.8 Terminate a school site Project Agreement when necessary.
- 28.2.4 The Central Council is prohibited from hiring, firing, evaluating or directing the work of unit members or establishing alternative pay plans for unit members.
- 28.2.5 The Central Council shall review plans for alignment with the District's collective bargaining Agreement, school board policy, Education Code, Federal Law, other laws, regulations, and other agreements such as Consent Decrees.

(NOTE: Site specific contract amendments are provided in Article 4, Negotiations Procedures and waivers of law and policy are provided for under Article 12, Association Rights.)

Central Council meetings shall be held at any time convenient for members of the Central Council. The attainment of consensus among all members of the Central Council shall be a primary goal. Both parties recognize that decisions made by consensus are the most effective in promoting cooperation and commitment to the decisions of the Central Council. Only if consensus cannot be reached shall decisions be made by a majority vote. In order to be resolved by vote at a meeting in the event that consensus fails, the meeting agenda must have identified the proposed action with sufficient particularity that the council members could have, prior to the meeting, meaningfully consulted with all interested parties with respect to the specific action under consideration. The vote required shall be a majority of those council members present at the meeting. With respect to procedures governing matters before the Central Council, Robert's Rules of Order shall be applicable to issues not addressed herein. All Central Council meetings are open meetings. An agenda shall be prepared by the co-chairs of the Central Council seven (7) days prior to each meeting. Agenda items and supporting documents may be submitted by any Council member at least 24 hours prior to preparation of the agenda. Decisions of the Central Council with respect to functions and responsibilities are subject to review and approval by both the District and the Association.

28.2.7 Unit members serving on the Central Council shall receive release time or their hourly rate of pay for Central Council meetings.

28.3 If two-thirds of the Bargaining Unit members at a school site, voting by secret ballot, wish to participate in site-based decision-making, a site-based decision-making School Site Council (Site Council) shall be established to receive Central Council approved training, develop a school site-based decision-making Project Agreement (Project Agreement) and make ongoing decisions in accordance with this Project Agreement once it is approved by the Central Council.

28.3.1 The number of members of each Site Council shall be determined in accordance with the table set forth below. Fifty percent of the Site Council shall be comprised of the head Association faculty representative, faculty representatives and other certificated bargaining unit members who are elected by certificated bargaining unit members at the school site in an election conducted by the Association. The other 50% shall be comprised of the principal, elected parent and community representatives, elected classified employee representatives, and at the secondary level a pupil representative. Elections of other Site Council members shall be jointly supervised by the principal and the head Association faculty representative. In the event of any change in the size of a Site Council, the above ratio shall be maintained.

28.3.1.1 The number of members of a Site Council, including the head Association representative and the site principal, shall be as follows:

Regular Elementary Schools (K-6)	_____
over 1000 pupils	_____
1000 to 500 pupils	_____
less than 500 pupils	_____
Regular Junior High/Middle Schools	_____
Regular Senior High Schools	_____
Magnet Schools	_____
Special Education Schools	_____
Continuation High Schools	_____
Adult Education	_____
Child Development	_____

28.3.1.2 The number of parent/community representatives on Site Councils shall be as follows:

Council Size	Number of Positions
_____	_____
_____	_____
_____	_____
_____	_____

(NOTE: The Association should carefully consider representation issues. Once the representation decision is made, changing it may be impossible.)

28.3.1.3 Such representatives shall be elected specifically to serve on the Site Council. Only parents and community members living within the attendance boundaries of the school site, who are non-employees of the district, shall be eligible for election to the positions allocated to parents and community members.

28.3.1.4 In addition to faculty representatives, certificated bargaining unit members on the Site Council shall be elected on an "at large" basis, with itinerant unit members voting on a proportional basis corresponding to the time they spend at the site.

28.3.1.5 There shall be two "alternate" Site Council members designated for each category of members on the Council (two unit members, two parent/community, two administrators, etc.). They shall be permitted to attend and participate in any Site Council deliberations, and may vote if the regular representative is absent.

- 28.3.2 Site Councils shall have joint chairpersons: The site principal and the head Association faculty representative.
- 28.3.3 The Site Councils shall consider all points of view and shall solicit the advice and counsel of parent organizations, employee groups and all other interested parties. All Site Council meetings are open meetings. The Site Councils shall have the following functions and responsibilities:
 - 28.3.3.1 Participation in site-based decision-making training.
 - 28.3.3.2 Developing a School Site Project Agreement. Such an agreement shall not include the Site Council hiring, firing, evaluating or directing the work of bargaining unit members. Neither shall such a Project Agreement include an alternative pay system for certificated bargaining unit members. The School Site Project Agreement shall include goals and objectives and may include a plan for involving parents in school activities, staff development, and shall include an evaluation of the Project Agreement on a regular basis. Decision-making authority of a Site Council shall be limited to any one or more of the following:

(NOTE: The following section establishes the scope of decision-making authority of the Site Council. Associations must fashion a list that meets the unique needs of the Association and district. SB 824 (Education Code Section 44666 et seq., Education Code Sections 52049.1 and 54760.1) contains several requirements regarding Project Agreements. If the local Association is designing language that is to be implemented as a pilot project under this legislation, the legislation should be consulted. The list beginning with Section 28.3.3.2.1. is provided only as an example. Some items listed below come from SB 824 and the local Association may not want to include them in regular contract language.)

- 28.3.3.2.1 Selection of curricular areas for improvement.
- 28.3.3.2.2 Tailoring and coordinating curriculum and instruction across grade levels and within departments at the school site level.
- 28.3.3.2.3 Establishing pupil discipline policies.
- 28.3.3.2.4 Designing and conducting staff development programs and policies.

- 28.3.3.2.5 Assignment of pupils within the framework of the transfer and assignment provisions of the Agreement.
- 28.3.3.2.6 School-wide problem solving and program development.
- 28.3.3.2.7 Organization of the school for effective instruction.
- 28.3.3.2.8 Development of procedures designed to institutionalize teacher involvement in decision-making.
- 28.3.3.2.9 Determining the roles and functions of teachers, administrators and classified employees at the school site, within the framework of the collective bargaining Agreements and definitions of units as established by the Educational Employment Relations Act.
- 28.3.3.2.10 Development of an educational grant system that would pay additional money for unit member's who assume additional educational responsibilities and/or for the unit member's educational project.
- 28.3.3.2.11 Establishment of policies to decentralize District decision-making by providing school site administrators and teachers with greater budget authority, within the Agreement, including allocation of resources at the school site.

28.3.4 A Site Council may decide to use funding from Supplemental Grant funds, Staff Development funds, School Improvement funds (including funds from site councils established in Education Codes Sections 52012, 52852 and 54724 or any other similar codes) and other funding provided by the State specifically designed for and distributed to the school site such as the school site grants contained in the 1996-97 and 1998-99 state budgets, and school accountability award funds. In addition to using Supplemental Grant, Staff Development and School Improvement funds (or any other site council funds), Site Councils may propose using additional funds from other district or school site discretionary funds. If

School Improvement Funds (or any other site council funds) are used, Local School Improvement Program (SIP), School Site Councils (or other site councils) shall be collapsed by means of a waiver request to the District and Association in favor of the Site Council assuming all former SIP School Site Council (or other site councils') responsibilities as provided in Article 12, Association Rights.

28.3.5 The focus of Site Council activity shall be upon establishment of local policy and planning direction rather than day-to-day administration or execution of policy and plans.

28.3.6 It is recognized that site-based decision-making may be an innovative process and that proposals may be considered that are in conflict with collective bargaining Agreements, school board policy or regulation or law. Waivers of law and policy may be achieved pursuant to Article 12, Association Rights and site specific contract amendments may be achieved pursuant to Section 28.7 of this Article.

(NOTE: Site specific contract amendments are provided in Article 4, Negotiations Procedures and waivers of law and policy are provided for under Article 12, Association Rights.)

28.3.7 The Site Council meetings shall be held at any time convenient for members of the Site Council. The attainment of consensus among all members of the Site Council shall be a primary goal. Both parties recognize that decisions made by consensus are the most effective in promoting cooperation and commitment to the decisions of the Site Council. Only if consensus cannot be reached shall decisions be made by a majority vote. In order to be resolved by vote at a meeting in the event that consensus fails, the meeting agenda must have identified the proposed action with sufficient particularity that the council members could have, prior to the meeting, meaningfully consulted with all interested parties with respect to the specific action under consideration. The vote required shall be a majority of those Council members present at the meeting. With respect to procedures governing matters before the Site Council, Robert's Rules of Order shall be applicable to issues not addressed herein. An agenda shall be prepared by the co-chairs of the Site Council seven (7) days prior to each meeting. Agenda items and supporting documents may be submitted by any Council member at least 24 hours prior to preparation of the agenda. Decisions of the Site Council with respect to functions and responsibilities are subject to review and approval by both the Board of Education and the Association.

28.3.8 Unit members serving on the Site Council shall receive release time or their hourly rate of pay for Council meetings.

**TOPIC: SCHOOL CHANGE, IMPROVEMENT, REFORM,
RENEWAL, RESTRUCTURING, AND QUALITY**

28.4 Statement of Intent

- 28.4.1 The District and Association agree that it is in the best interest of the District to cooperatively engage in activities which result in the improvement of the quality of the educational experience and student learning through the development of common goals; a cooperative, trusting environment; and teamwork. It is agreed that actively involving all relevant stakeholders contributes significantly to achieving these goals.
- 28.4.2 The District and Association agree that the school/site is the appropriate place for making decisions that affect the education of students at that site. Accordingly, they agree that school sites should have as much flexibility as possible in managing their budget and organizing their educational programs for maximum educational effectiveness.
- 28.4.3 The District and Association agree that the best quality decisions are likely to result from a process of shared decision-making. Shared decision-making is a process in which all stakeholder groups collaborate in identifying problems, defining goals and formulating site improvement plans. The purpose of shared decision-making is to create a school site climate where the faculty, support staff, parents, administration, students, and other community participants working together share the responsibility and accountability for school improvement; increased student performance; increased satisfaction among professional colleagues; greater involvement by and with parents; and stronger support from the community at large.
- 28.4.4 The District and Association recognize that the overriding goal of school improvement and shared decision-making is to improve the quality of education and learning for students. All actions taken pursuant to this Article will be consistent with this goal.
- 28.4.5 The District and Association recognize that the most important interactions affecting student performance take place daily between teachers and students. Teachers, therefore, must be given a shared voice in decisions at the school site. The District and Association agree that with this increased role in the decision-making process the teachers at the school site assume more responsibility and accountability for the success of the school.

- 28.4.6 The District and Association recognize that parental involvement is essential in achieving educational success for students. Therefore, parents shall also be given a voice in decisions at the school site.
- 28.4.7 The District and Association realize that school instructional and pedagogical practices; the implementation of content standards and performance assessment for students; the use of technology; parental participation and community partnerships; the effective use of time; sustained professional development and the governance structure are essential to optimal student learning. The parties recognize that school improvement is a continuous process and that improvement will take time--and will not be accomplished in a single year and will require a sustained commitment from the leadership of the Association, the School Site, the Central Office/Superintendent and the School Board.

28.5 Assistance

The Superintendent or designee(s) and the Association President or designee(s) are recognized as resources to the individual school sites and are available, by the School Site Council, for assistance and support to assist each site to develop and/or implement the School Site Plan.

28.6 School Site Councils

- 28.6.1 Each school site shall elect a School Site Council for the purposes enumerated in this Article.
- 28.6.2 The purpose, function and composition of the School Site Council shall adhere to California Education Code Sections, 52000, 52001, 52012, 52014, 52015, 52015.5, 52016, 52017, 52019, 52021, 52034, 35147.
- 28.6.3 School Site Councils may also have associate, nonvoting members, for example grade level chairs, department chairs, certificated non-classroom educators, support staff, representatives from the business or university community.
- 28.6.4 School Site Councils shall adopt bylaws and standing rules. Bylaws shall include the following:

- Statement of Purpose
- Vision Statement
- Size, Composition and Term of Office
- Scope of Authority Election Procedures
- Voting Rights
- Termination of Membership
- Transfer of Membership

Resignation
Vacancy
Officers
Committees
Dispute Resolution
Site Council Training
Meetings of the School Site Council
Conduct of Meetings
Meetings Open to the Public
Site Council Assessment Procedures

- 28.6.5 Bargaining unit members of Site Councils are to be elected by site bargaining unit members by a secret ballot election conducted by the Site Association Rep(s). Other stakeholder groups will be responsible for selecting their representative(s) on the Site Council.
- 28.6.6 Approval of Site Plans/School Improvement Plans by stakeholders shall follow the guidelines developed by the Site Council. Consensus is the preferred decision-making process. If consensus cannot be reached, an alternative process requiring 70% of the identified stakeholder groups shall be required to approve the plan prior to submission to the Board of Education for final approval.
- 28.6.7 If any aspect of the proposed School Site Plan is contrary to the terms of the collective bargaining agreement, an approval must be requested from the Association and the Board of Education. If such a plan is recommended by the Site Council and approved as part of the Site Plan, and if approved by the district and Association, it shall be part of the collective bargaining agreement for a specific period of time, for specific worksite and applies to all certificated members at the site.

TOPIC: SCHOOL IMPROVEMENT PLANS REQUIRING CONTRACT WAIVERS

Local school site-based decision-making may lead to local site improvement, restructuring and reform plans which may be contrary to a right or benefit contained in the collective bargaining agreement. For example, a local secondary school site may decide to implement a block scheduling instructional program, which does not provide for a daily preparation period as required by the collective bargaining agreement. In such a case, the local school site would need to seek a waiver of the preparation period provision of the collective bargaining agreement, through the Association, in order to move ahead with the block schedule program. The Association should encourage local school site experimentation in reform and restructuring, but also ensure that member contract rights are protected at the same time.

SAMPLE LANGUAGE

28.7 Contract Waivers

28.7.1 School site improvement, restructuring or reform plans shall not contain any provisions contrary to, or in conflict with any article or section of this Agreement, unless specific waivers to such Agreement articles and sections are agreed to by the Association and the District.

28.7.2 The following Articles in this Agreement shall not be eligible for contract waivers: Recognition, Association Rights, Professional Dues & Payroll Deduction, Grievances, Discipline, Non-Discrimination.

(NOTE: Locals may add to this list as needed.)

SAMPLE ASSOCIATION BYLAWS/STANDING RULES LANGUAGE

(Local Associations should take the internal steps necessary to add to and/or amend their Bylaws and/or Standing Rules to incorporate the following suggested provisions concerning contract waivers.)

ASSOCIATION BYLAWS/STANDING RULES

Section _____, Collective Bargaining Agreement Waivers Related to School Restructuring and/or Site-Based Decision-Making.

In the event that Association members at a school/site wish to implement a restructuring and/or site-based decision-making proposal that would require the waiving of any provisions of the collective bargaining agreement between the Association and the District, the following steps shall be taken.

1. The Association Building Representative(s) at the school/site shall send a letter to the Association President outlining the restructuring/site-based decision-making plan, and indicating which provisions of the collective bargaining agreement may need to be waived in order to implement the plan. The President shall refer the letter to the Association bargaining team for review.
2. The Association bargaining team shall review the letter from the school/site to determine if collective bargaining agreement waivers are necessary to implement the restructuring/site-based decision-making plan, and report their findings to the Association Executive Board.
3. If the Association Executive Board determines that one or more provisions of the collective bargaining agreement needs to be waived in order to implement the school/site plan, the Association Representative Council shall be informed, and a waiver election shall be conducted by the Association at the school/site as follows:

- a. Only Association members at the affected school/site shall be eligible to vote in the waiver election. Eligible Association members shall be defined as any bargaining unit member working at that school/site for any part of her/his job description, and who is a member of the Association. (NOTE: The collective bargaining agreement is between the Association and the District, and therefore non-members should not vote in decisions to waive parts of the agreement. Non-members should become members if they want to vote in a waiver election.)
- b. The election shall be conducted at the school/site according to the election procedures established in the Bylaws/Standing Rules.

(NOTE: Use whatever voting procedures are normally followed in other Association elections.)

- c. The Association shall prepare a ballot indicating specifically which section(s) of the collective bargaining agreement need to be waived in order to implement the school/site plan, the length of the waiver period, which shall not exceed one school year, and asking each eligible member to vote "yes" or "no" on each requested waiver.
 - d. The ballots shall be counted at the Association office by Association members, appointed by the President, who do not work at the school/site in which the election took place. School/site Association members may choose an observer to be present during the counting of the ballots.
 - e. If no less than _____ percent (NOTE: The threshold for a waiver should be a super majority such as 2/3rds or 75%) of the members eligible to vote at the school/site (or of eligible members voting) vote "yes" on the waiver, the waiver shall be agreed to.
4. If the waiver is agreed to in the election described above, the Association President shall, in writing, so notify the District, specifying that the waiver applies only to the school/site which conducted the election, that the waiver is valid for only the period specified in the election, which shall not exceed one year, the waiver must be renewed annually following the above procedures, and the waiver does not set a collective bargaining precedent or a precedent for any other school/site.
 5. The process for granting waivers herein shall be completed no later than April 1 (or other acceptable date) of the year prior to the year the waiver(s) takes effect).

**TOPIC: SCHOOL ACCOUNTABILITY/UNDERPERFORMING
SCHOOLS PROGRAM**

SB 1X, Public School Accountability Act of 1999, established the "The Immediate Intervention/Underperforming Schools Program". Based on a new Academic Performance Index (API), state schools will be ranked in percentile bands with up to 430 of lowest performing schools subject to the intervention program. For schools participating in this intervention program, the statute provides for an initial \$50,000 planning grant, and on-going funding for each year of participation of about \$200 per pupil enrolled at the school/site, but not less than \$50,000 per year. School Districts are required to provide local matching funds as a condition of receiving these intervention funds. Locals should bargain language that involves unit members in the spending decisions related to these interventions, particularly decisions related to the most effective remediation programs. After participating in the intervention program for 24 months, a school, which meets or exceeds its growth targets each year shall be eligible for the Governor's Performance Award Program described in the next section. After 24 months, a school that has made significant growth toward its targets will be eligible to participate in the intervention program for one additional year. Finally, after 24 months, a school that fails to show progress toward its growth targets will be subject to sanctions provided for in the statute including reassignment of certificated employees and closure of the school. See Article 13, Assignment, Transfer and Reassignment, and Article 21, Hours and Adjunct Duties, for further discussion.

SAMPLE LANGUAGE

- 28.8 School Accountability Underperforming Schools Program
 - 28.8.1 State funds that are provided to a school/site as part of the School Accountability/Underperforming Schools Program shall be given to the school site council, and spending decisions shall be in accordance with the site-based decision-making and site council provisions of this article.
 - 28.8.2 Sanctions involving bargaining unit members, that may be imposed on a school that fails to meet its growth targets as provided for in the School Accountability/Underperforming Schools Program, shall be applied in accordance with all the provisions contained in this Agreement.

TOPIC: SCHOOL ACCOUNTABILITY PERFORMANCE AWARDS

SB 1X, Public School Accountability Act of 1999, established the "Governor's Award Program" to provide both monetary and non-monetary awards to schools/sites that meet certain performance growth targets. The statute provides for up to \$150 per pupil enrolled at the school/site, and, at the election of the school/site, a request to the State Department of Education to waive, and be exempt from Education Code Sections, regulations or programs that the school has identified as unnecessary for the continued improvement of pupil performance at the school. Locals should bargain language that involves unit members in the spending decisions related to the reward funds, and language that protects members' rights in the event any waivers are sought by the school/site.

SAMPLE LANGUAGE

28.9 School Accountability Performance Awards

28.9.1 State funds that are awarded to a school/site as part of the School Accountability Act shall be given to the school site council, and spending decisions shall be in accordance with the site-based decision-making and site council provisions of this article.

28.9.2 A school/site, which participates in the Governor's Performance Award Program under the School Accountability Act shall not seek a waiver of any Education Code Section, regulation or program that would, in any way, diminish the statutory and/or contractual rights of members of the bargaining unit.

LEGAL REFERENCES

A. Education Code Sections Cited

- 35147 - Open Meeting Law (School Site Committees)
- 35291 - Rules; school maintenance
- 44662 - Evaluation and assessment guidelines
- 44666 - Legislative findings and declarations
- 44667(a) - School-based management projects; models and procedures
- 44667(b) - Voluntary participation in programs
- 44667.2 - School-based management proposals; contents
- 44669 - Waiver of statutes or regulations
- 44670.1 - Legislative intent
- 44670.3 - Staff development activities; purposes
- 44670.4 - School improvement objectives

44670.5 - Plans to strengthen subject matter and instruction; inclusion of other school plans; professional development programs objectives
44670.6 - Professional development activities
44670.7 - Waiver; code provisions
44670.9 - Funding of school development plans
44671 - Duties of board
44671.1 - Duties of superintendent
44671.2 - Rules and regulations; standards and criteria
44671.3 - Consolidation of standards and criteria with state and federal categorical projects
44671.4 - Funding
52800 - Legislative intent
51870 - Educational technology
52050 et seq. - Public Schools Accountability Act of 1999
53049.1 - School-based management; use of school improvement grants
54760.1 - School-based management; use of supplemental grants
58900 et seq. - Demonstration of restructuring in public education
60730 - Selection of pilot projects

B. Government Code Sections Cited

PEER ASSISTANCE AND REVIEW

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ARTICLE 29

PEER ASSISTANCE AND REVIEW

The following sample language is consistent with the recently enacted AB 1X, The California Peer Assistance and Review (PAR) Program for Teachers. This legislation eliminated the former California Mentor Teacher Program, and incorporated its funding in this new PAR Program, using consulting teachers to assist and review the performance of permanent teachers in the school district. This legislation amends Education Code Sections 44662 and 44664, and adds Section 44498. The language implementing this program should be bargained very carefully, and chapters should not be rushed into an agreement. School districts are required to implement the program on July 1, 2000 (for the 2000-01 work year) in order to avoid a financial penalty.

SAMPLE LANGUAGE

- 29.1 The Association and the District are continuously striving to provide the highest possible quality of education. In order for students to succeed in learning, teachers must succeed in teaching. Therefore, the parties agree to cooperate in the design and implementation of programs to improve the quality of instruction through expanded and improved professional development and peer assistance. Teachers referred to or who volunteer for the program are viewed as valuable professionals who deserve to have the best resources available provided to them in the interest of improving performance to a successful standard.

(NOTE: The funding of the state law contemplates that only permanent classroom teachers will participate in the PAR Program in districts with 250 ADA or more, and that non-classroom unit members such as counselors, librarians, nurses and speech and language specialists will be excluded. The law allows districts with fewer than 250 units of ADA to include probationary teachers in the PAR Program. An Association may opt to include non-classroom unit members as well as probationary teachers in the PAR Program, being mindful of the additional cost of doing so.)

29.1.1 Joint Committee (JC)

29.1.1.1 The Joint Committee shall consist of _____ members, the majority of whom shall be certificated classroom teachers who are chosen to serve the Association. The District shall choose the administrators of the Joint Committee.

(NOTE: The Association must discuss and decide several issues in regards to how the teacher members of the Joint Committee are chosen. It is recommended that the Association appoint the teacher members to the Joint Committee. This increases the likelihood of getting strong teacher advocates on the Committee. Another option is to hold an election. If the Association selects this option, it should recommend a slate of candidates to be members of the Joint Committee. If an election is held, it should be conducted by Association Representatives at each site.

The state law covers classroom teachers. Therefore, another issue the Association must decide is who will be eligible to vote for the Joint Committee members. One option is that only those bargaining unit members who may participate in the PAR Program are eligible to vote. Another option is to allow all bargaining unit members to vote.

It is recommended that the bargaining unit resist district efforts to dilute the advocacy process.)

29.1.1.2 The Joint Committee shall establish its own meeting schedule. To meet, two-thirds of the members of the Joint Committee must be present. Such meetings shall take place during the regular teacher workday. Teachers who are members of the Joint Committee shall be released from their regular duties to attend meetings, without loss of pay or benefits. If, in carrying out their responsibilities as members of the Joint Committee, teachers find it necessary to work beyond their regular workday, they shall be compensated at the unit member's pro rata hourly rate of pay.

29.1.1.3 The Joint Committee shall be responsible for the following:

1. Providing annual training for the Joint Committee members.
2. Establishing its own rules of procedure, including the method for the selection of a Chairperson.
3. Selecting the panel of Consulting Teachers.

(NOTE: The broadest representation of all categories of teachers for the panel of Consulting Teachers is optimal. This may require looking at various methods of release time for the Consulting Teacher.)

4. Selecting trainers and/or training providers.
5. Providing training for Consulting Teachers prior to the Consulting Teacher's participation in the program.

(NOTE: Training for Consulting Teachers should include, but not be limited to, the PAR Program, peer coaching, due process, adult learning theory and duty of fair representation.)

6. Sending written notification of participation in the PAR Program to the Referred Participating Teacher, the Consulting Teacher and the site principal.
7. Making available the panel of Consulting Teachers for selection by the Participating Teacher.
8. Adopting Rules and Procedures to effect the provisions of this Article. Said Rules and Procedures shall be consistent with the provisions of this Agreement, and to the extent there is an inconsistency, the Agreement shall prevail.

(NOTE: Examples of specific Rules and Procedures are available from your local CTA staff person.)

9. Distributing, at the beginning of each school year, a copy of the adopted Rules and Procedures to all bargaining unit members and administrators.
10. Establishing a procedure for application as a Consulting Teacher.
11. Determining the number of Consulting Teachers in any school year, based upon participation in the PAR Program, the budget available and other relevant considerations.
12. Reviewing the final report prepared by the Consulting Teacher and making recommendations to the Governing Board regarding the Referred Participating Teacher's progress in the PAR Program.
13. Evaluating annually the impact of the PAR Program in order to improve the program.

29.1.1.4 All proceedings and materials related to evaluations, reports and other personnel matters shall be strictly confidential. Therefore, Joint Committee members and Consulting Teachers may disclose such information only as necessary to administer this Article.

29.1.1.5 The District agrees to indemnify and hold harmless and provide a defense to the Association and any Association-selected member of the Joint Committee against any claims, causes of action, damages, grievances, administrative proceedings or any other litigation arising from the Association's participation in Peer Assistance and Peer Review. The Association retains the right to select its own attorney to represent it in such actions and will maintain complete control of the litigation. The District shall pay legal costs and fees in such actions.

(NOTE: It is important to retain the right to select our own attorney, since the Association does not want a management attorney representing it, due to possible conflicts of interest and the risk of confidential Association business falling into the hands of the District.)

29.1.2 Participating Teachers (PT)

(NOTE: The funding of the state law contemplates that only permanent classroom teachers will participate in the PAR program in Districts with at least 250 units of ADA. An Association may opt to include first and/or second year probationary teachers, as well as non-classroom unit members, being mindful of the additional cost of doing so.)

29.1.2.1 A Referred Participating Teacher is a teacher with permanent status who receives assistance to improve his or her instructional skills, classroom management, knowledge of subject, and/or related aspects of his or her teaching performance as a result of an unsatisfactory final evaluation.

(NOTE: The Association must bargain what exactly constitutes an unsatisfactory evaluation based on the specific procedures and forms in the Evaluation Article used by the District [refer to Section 29.1 of this Article].)

29.1.2.2 A Volunteer Participating Teacher is a teacher with permanent status who volunteers to participate in the PAR Program. The purpose of participation in the PAR Program for the Volunteer Participating Teacher is for peer assistance only and the Consulting Teacher shall not participate in a performance review of the Volunteer Participating Teacher. The Volunteer PT may terminate his or her participation in the PAR Program at any time.

29.1.2.3 A Referred Participating Teacher shall select his or her Consulting Teacher from the panel of Consulting Teachers provided by the Joint Committee. A different Consulting Teacher may be selected to work with the Participating Teacher at any time during the process when requested to do so by the Participating Teacher or the Consulting Teacher.

29.1.2.4 All communication between the Consulting Teacher and a Volunteer Participating Teacher shall be confidential, and without the written consent of the Volunteer, shall not be shared with others, including the site principal, the evaluator or the Joint Committee.

29.1.2.5 The Participating Teacher has the right to be represented throughout these procedures by the Association representative of his or her choice.

29.1.3 Consulting Teachers (CT)

29.1.3.1 A Consulting Teacher is a teacher who provides assistance to a Participating Teacher pursuant to the PAR program. The qualifications for the Consulting Teacher shall be set forth in the Rules and Procedures, provided that the following shall constitute minimum qualifications:

29.1.3.1.1 A credentialed classroom teacher with permanent status.

(NOTE: In a school district with an average daily attendance of less than 250 pupils, without permanent status teachers, the Consulting Teacher can be a credentialed classroom teacher who has completed at least three consecutive school years as an employee of the district in a position requiring certification qualifications.)

29.1.3.1.2 Substantial recent experience in classroom instruction.

(NOTE: An Association can bargain a minimum number of years of recent classroom experience rather than using the language in the law.)

29.1.3.1.3 Shall demonstrate exemplary teaching ability, as indicated by, among other things, effective communication skills, subject matter knowledge, and mastery of a range of teaching strategies necessary to meet the needs of pupils in different contexts.

(NOTE: Local Associations can determine their own criteria as deemed important and/or necessary.)

29.1.3.2 In filling a position of Consulting Teacher, each applicant is required to submit three references from individuals with specific knowledge of his or her expertise, as follows:

29.1.3.2.1 A reference from a building principal or immediate supervisor.

29.1.3.2.2 A reference from an Association representative.

29.1.3.2.3 A reference from another classroom teacher.

- 29.1.3.3 All applications and references shall be treated with confidentiality.
- 29.1.3.4 Consulting Teachers shall be selected by a majority vote of the Joint Committee following classroom observations by the Joint Committee.

(NOTE: Observation language should be outlined in the Rules and Procedures.)

- 29.1.3.5 A Consulting Teacher shall be provided release time as needed. The term of the Consulting Teacher shall be three (3) years, and a teacher may not serve in the position for more than one (1) consecutive term. A teacher shall not be appointed to an administrative position in the District while serving as a Consulting Teacher or for two (2) full years after concluding service as a Consulting Teacher.

(NOTE: The Association will have to determine the type of release time that is best suited for its local situation. A full time release program releases the Consulting Teacher from other duties, but also ends up taking an excellent teacher out of the classroom. A full-time release CT may also be viewed as not being a peer, since that person is no longer in the classroom. Alternative models could include some full time release and some part-time release CTs and/or job sharing (refer to Contract Reference Manual Article 23, Leaves, and Article 24, Health & Welfare Benefits). The positive aspects of part-time release programs are that it provides a broader cross section of categories of teachers on the CT panel and the CT would not have to give up his or her teaching assignment. In addition, funds may be available to release the PT to observe or attend workshops or other trainings. Drawbacks include increasing a classroom teacher's workload. In such situations, a stipend for additional duties or pro rata hourly pay should be considered.)

- 29.1.3.6 Functions performed by consulting teachers pursuant to this Article by bargaining unit employees shall not constitute either management or supervisory functions. The Consulting Teacher shall continue all rights of bargaining unit members. In addition to the regular salary, a Consulting Teacher shall receive pro rata hourly pay for all work beyond the regular workday and/or work year.
- 29.1.3.7 Upon completion of his or her service as a full-time released Consulting Teacher, a teacher shall be returned to a regular assignment in accordance with Article 13, Transfer Rights, of this Agreement. (Refer to Contract

Reference Manual Article 13, Assignment, Transfer & Reassignment.)

29.1.3.8 Consulting Teachers shall have the responsibility for no more than _____ Participating Teachers. Each Referred Participating Teacher shall receive no less than _____ hours of assistance per semester from the Consulting Teacher. Consulting Teachers shall assist Participating Teachers by demonstrating, observing, coaching, conferencing, referring or by other activities, which, in their professional judgment, will assist the Participating Teacher.

(NOTE: The number of Participating Teachers and the number of hours of assistance are dependent upon the amount of release time negotiated for the CT.)

29.1.3.9 The Consulting Teacher shall meet with the Referred Participating Teacher to discuss the PAR Program, to establish mutually agreed upon performance goals, develop the assistance plan and develop a process for determining successful completion of the PAR Program.

29.1.3.10 The Consulting Teacher shall conduct multiple observations of the Participating Teacher during classroom instruction, and shall have both pre-observation and post-observation conferences.

29.1.3.11 The Consulting Teacher shall monitor the progress of the Referred Participating Teacher and shall provide periodic written reports to the Referred Participating Teacher for discussion and review.

29.1.3.12 The Consulting Teacher shall continue to provide assistance to the Referred Participating Teacher until he or she concludes that the teaching performance of the Participating Teacher is satisfactory, or that further assistance will not be productive. A copy of the Consulting Teacher's report shall be submitted to and discussed with the Referred Participating Teacher to receive his or her input and signature before it is submitted to the Joint Committee. The Participating Teacher's signing of the report does not necessarily mean agreement, but rather that he or she has received a copy of the report. The Consulting Teacher shall submit a final report to the Joint Committee. The Referred Participating Teacher shall have the right to submit a written response,

within 20 days, and have it attached to the final report. The Referred Participating Teacher shall also have the right to request a meeting with the Joint Committee, and to be represented at this meeting by the Association representative of his or her choice.

29.1.3.13 The results of the Referred Participating Teacher's participation in the PAR Program shall be made available for placement in his or her personnel file, and may be used in the evaluation of the Referred Participating Teacher.

29.1.3.14 The District agrees to indemnify and provide a defense for the Consulting Teacher against any claims, causes of action, damages, grievances, administrative proceedings or any other litigation arising from the Consulting Teacher's participation in Peer Assistance and Peer Review. The Consulting Teacher retains his or her right to select his or her own attorney to represent him or her in such actions. The District will pay legal costs and fees in such actions.

**TOPIC: BEGINNING TEACHERS SUPPORT AND
ASSESSMENT PROGRAM (BTSA)**

SAMPLE LANGUAGE

29.2 With regard to the implementation of the BTSA Program, the Association and District agree as follows:

29.2.1 The majority of the BTSA Steering Committee shall be appointed by the Association.

29.2.2 The Steering Committee shall be responsible for establishing its rules of procedure and the application process for becoming a BTSA Support Provider.

29.2.3 BTSA Steering Committee members shall receive additional compensation consistent with the funding of the BTSA program, so as not to encroach on unrestricted general fund revenues.

- 29.2.4 BTSA Steering Committee members shall receive release time for meetings or shall be paid the pro rata hourly rate for meetings that take place before or after the contractual workday.
- 29.2.5 BTSA Steering Committee shall be responsible for conducting an annual evaluation of the program and to make recommendations for improvement.
- 29.2.6 Teacher participation in the BTSA program shall be voluntary.
- 29.2.7 BTSA support providers shall not evaluate teacher participants (except as may be provided for in this Article).

LEGAL REFERENCES

A. Education Code Sections Cited

44279.1 - Beginning Teacher Support and Assessment
44500 et seq. - Peer Assistance and Peer Review Program for Teachers
44498 - Mentor Teacher Program repealed as of 1/1/02

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Act

PROFESSIONAL GROWTH

ARTICLE 30

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ARTICLE 30

PROFESSIONAL GROWTH

THE 150 HOUR REQUIREMENT AND 105 HOUR REQUIREMENT FOR CHILD DEVELOPMENT PERMITS

PROFESSIONAL GROWTH requires that any teacher receiving her/his first credential or any teacher who does not have a clear or designated subject matter credential must take 150 clock hours of professional growth every five (5) years effective September 1, 1985. Education Code Section 44277(b) states that the program of professional growth is bargainable. Prior to submission of an

initial bargaining proposal and the actual bargaining on a provision in a contract related to professional growth, it is important to read the education code provisions and Title V regulations which govern this new area for teachers and is reprinted by CTA in *The California Professional Growth Manual*. A copy may be obtained from CTA staff. This will enable the Association leadership and bargaining team to understand and utilize the minimum standards which are in the law, and to ensure that the final agreement on professional growth does not go below these minimum standards.

Although the education code allows mentor teachers to sign off on a teacher's program, this should be avoided by the Association. By making it a responsibility of management, any grievance by a unit member is filed against a manager, not against another bargaining unit member.

For Child Development Center (CDC) permit teachers, a similar professional growth program exists in order to renew a Child Development Permit. The program requires completion of 105 clock hours every five (5) years. Obtain a copy of *The California Professional Growth Manual for Child Development Permits* from the California Commission on Teacher Credentialing as a reference. The sample language set forth below can be adjusted to fit the CDC permit requirements.

TOPIC: 150 CLOCK HOUR REQUIREMENT

SAMPLE LANGUAGE

- 30.1 This Article applies only to those unit members who, as of September 1, 1985, did not hold a clear multiple- or single-subject teaching credential.
- 30.2 Those bargaining unit members to whom this Article applies shall develop an individual program of professional growth which consists of a minimum of 150 clock hours of participation in activities which contribute to competence, performance or effectiveness in the profession of education. This program is to be completed within a five (5)-year period. The five (5)-year period begins September 1, 1985, or on the date that a credential takes effect after September 1, 1985.
- 30.3 Each unit member who obtains a clear credential after September 1, 1985, shall develop a professional growth plan which consists of one or more of the following:
 - 30.3.1 A subject the unit member teaches, or reasonably expects to teach, in kindergarten or in grades 1 through 12.
 - 30.3.2 A field of specialization in which the unit member serves, or reasonably expects to serve, in kindergarten or in grades 1 through 12. Examples of fields of specialization include, but are not limited to, bilingual education, cross-cultural education, and special education.

- 30.3.3 Concepts, principles and methods of effective teaching, curriculum, and evaluation in kindergarten or in grades 1 through 12.
 - 30.3.4 Concepts and principles of physical, intellectual, social, and emotional development among children and youth.
 - 30.3.5 Concepts and principles of human communication, learning, motivation, and individuality.
 - 30.3.6 Languages and cultural backgrounds of groups of children and youth who attend California schools.
 - 30.3.7 Concepts and principles of human communication, learning, motivation and individuality.
 - 30.3.8 Languages and cultural backgrounds of groups of children and youth who attend California schools.
 - 30.3.9 Concepts and principles of effective relationships among schools, families and communities.
 - 30.3.10 Roles, organization, and operation of public education and of institutions that promote public education.
- 30.4 Acceptable activities for the implementation of professional growth plan shall include, but not be limited to, the following:
- 30.4.1 Courses from a regionally accredited college and university.
 - 30.4.2 Participation in professional conferences, workshops, lectures, by persons of expertise in education.
 - 30.4.3 Teacher Education/Computer Center, Teacher Center, staff development, or similar educationally focused institutions.
 - 30.4.4 Service as a mentor teacher.
 - 30.4.5 Participation in curriculum development projects.
 - 30.4.6 Participation in systematic programs of observation and analysis of teaching.
 - 30.4.7 Participation in alternative work experience programs, paid or voluntary, in which the unit member fulfills new professional responsibilities for a specific period of time.

- 30.4.8 Cultural experiences, such as attendance at museums or musicals, dramatic or dance productions, or cross-cultural immersion in the language and culture of an ethnic or national group.
 - 30.4.9 Service in a leadership role in a professional organization.
 - 30.4.10 Participation in educational research or innovation efforts.
 - 30.4.11 Creative endeavors in areas such as TV, music, or art.
 - 30.4.12 Publication of professional articles in professional journals.
 - 30.4.13 Travel related to teaching area and credential area.
 - 30.4.14 Participation as an exchange teacher.
 - 30.4.15 Participation in a speaker's bureau or on talk shows on education-related committees.
 - 30.4.16 Membership on national, state, or local education related committees.
 - 30.4.17 Service as a master teacher for student teachers.
 - 30.4.18 Staff meetings called by bargaining unit member's immediate supervisor or other administrator.
- 30.5 A clock hour is determined by the actual time spent in the activity with the following exception: For courses taken from an accredited college or university, each semester unit shall equal 15 clock hours, and each quarter unit shall equal 10 clock hours.
- 30.6 The District shall designate a sufficient number of certificated, non-bargaining unit members to serve as professional growth advisors.
- 30.7 Prior to beginning an activity, which could accumulate clock hours, the unit member shall submit the proposed plan to her/his professional growth advisor. Within five (5) working days, the professional growth advisor shall review the proposed plan. If the proposed plan is in conformance with Section 30.3 above, then the professional growth advisor shall sign off on the proposed plan. If the proposed plan is not in conformance, then the reasons for non-conformance shall be placed in writing by the professional growth advisor. If the unit member desires to amend an already approved activity for accumulation of clock hours, the same process shall be followed.
- 30.8 The professional growth advisor shall approve or disapprove of proposed plans independently of any evaluation that may affect the unit member's employment status.

- 30.9 Upon completion of the activity, the unit member shall submit to her/his professional growth advisor a form which contains the following information: Type of activity engaged in, dates of the activity, and the number of clock hours spent in the activity. The professional growth advisor shall sign the form and submit it to the District personnel office, with a copy of the signed form to the unit member. This shall constitute the necessary verification that the unit member has completed the number of clock hours specified on the form.
- 30.10 No later than October 1 of each year, the District shall submit in writing to each unit member who is affected by this Article (section) the number of clock hours that the unit member has on file and the date by which the total of at least 150 clock hours must be completed in order that the unit member's credential can be renewed.

LEGAL REFERENCES

A. Education Code Sections Cited

- Education Code, Part 25, Chapter 2 (§§ 44277-44279.2)
- Education Code, Part 25, Chapter 3 (§§ 44494-44666)
- Education Code, Part 25, Chapter 3.1 (§§ 44670.1-44671.5)
- Education Code, Part 28, Chapter 6 (§§ 52049.1-54686)
- 44277 - Legislative intent; minimum requirements for maintenance of valid teaching credential; individual program of professional growth; verification of satisfaction of requirements
- 44278 - Appeal; adverse actions related to programs of professional growth; findings; effect
- 44279.2 - Legislative findings and declarations; establishment of support and assessment program; purposes
- 44666 - School-based management and advance career opportunities for classroom teachers programs
- 44670.1- 44671.5 - School personnel staff development and resource centers
- 52049.1 - School-based management and advanced career opportunities for classroom teachers programs; use of grants
- 54760.1 - School-based management and advanced career opportunities for classroom teachers pilot programs; use of grants
- 54686 - Teacher training in techniques to apply toward professional growth Requirement

B. Government Code Sections Cited

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ARTICLE 31

CONSULTATION

CONSULTATION provides Association and unit members input into the educational program of the District. Although it is only input, meaningful discussion may occur between the parties over issues outside the scope of regular negotiations. Typical subjects for consultation include the definition of educational objectives, content of courses and curriculum and the selection of textbooks. A contract Article creating site-based decision-making is not generally thought to be a consult item, but within the scope of bargaining (see site-based decision-making). Consultation may be used if a District is considering the restructuring of its grade configurations or any number of other professional issues.

SAMPLE LANGUAGE

- 31.1 The Association has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, the selection of textbooks, and Board actions, or changes in written Board policies and/or written Administrative Rules and Regulations which affect employees covered by the terms of this Agreement.
- 31.2 The District shall give written notice to the Association that action on any matter of consultation, as defined herein, is being considered. Such notice shall be given to provide sufficient time for the parties to meet and consult in good faith.

- 31.3 The Association may exercise its right to consult on proposed Board action(s) by requesting consultation on the subject(s). The Association may also initiate the consult process on any matter.
- 31.4 Should the Association exercise its right to consult, within five (5) days the parties shall meet to exchange information, options, proposals and recommendations freely and to make a good faith effort to reach a resolution on the matter(s) under consideration.
- 31.5 The District shall give full consideration to such presentations made by the Association prior to arriving at a determination of policy or course of action.

LEGAL REFERENCES

A. Education Code Sections Cited

B. Government Code Sections Cited

3543.2 - Scope of Representation

SUPPLEMENTAL INSTRUCTIONAL PROGRAMS

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ARTICLE 32

SUPPLEMENTAL INSTRUCTIONAL PROGRAMS

SUMMER SCHOOL and supplemental instructional programs appear in the state budget as a separate appropriation. Each year, the funding mechanism is slightly different, but usually is an amount per pupil hour with special calculations for districts with smaller than 500 pupils. Caps usually exist on the number of hours a district can claim, based upon CBEDS enrollment from the prior year. The mandated program has no cap. For calculation purposes, the cap is on the percentage of pupils who may be served. A district may serve more pupils with less hours, or less pupils with more hours, as long as the total calculation matches what the state budget says will be paid. Due to recent legislation regarding social promotion and high school exit exams, traditional summer school may now be expanded to provide student remediation during the school year in after-school and Saturday programs. Therefore, the summer school concept is now part of an overall program of supplemental instruction.

CTA recommends that Associations seek to have all of the money generated by supplemental instruction ADA provisions go toward payment of bargaining unit member salaries and benefits. Other salaries, classified and administrative, could be considered, but only if their work year is increased in order to provide service in supplemental instruction programs.

All provisions regarding supplemental instruction programs apply equally to programs held during the traditional summer break and to intersession programs operated in year-round schools.

Supplemental instruction programs include Saturday School, Summer School, Year-Round School Programs, Tutoring, Remediation and Homework Assistance Programs both after school

and on other non-instructional days. Each of these have specific requirements for implementation.

School districts are required to offer supplemental instruction programs for graduating seniors, 11th grade pupils who would otherwise not graduate with their class, students who have not passed the high school exit exam, and students at various grade levels who have been retained or are in danger of being retained.

The most common contract issues related to supplemental instruction include wages, hours, preparation time, leaves, and selection procedures.

SAMPLE LANGUAGE

PREAMBLE: The provisions contained in this article shall apply to all summer school and supplemental instructional programs offered by the District for the benefit of students, including, but not limited to remedial instruction required by AB 1626, "Pupil Promotion and Retention", AB 1639 "Mandatory Summer School", and supplemental instruction required by SB 2x, "High School Exit Exam". Further, the provisions contained herein shall apply to all supplemental instructional programs regardless of when the program is offered, including, but not limited to, before or after the regular school day, on Saturdays, during year-round school intersessions, and/or on any other non-regular work day.

(NOTE: AB 1639 requires that active involvement of teachers and parents in the development of supplemental instructional programs related to promotion/retention. Local chapters should insure teacher involvement during the regular workday or at the pro rata hourly rate of pay after the regular workday.)

- 32.1 The hourly rate of pay for summer school/supplemental instructional programs unit members shall be the unit member's pro rata hourly rate of pay based on the unit member's placement on the regular certificated salary schedule during the year in which summer school and/or supplemental instructional work is performed.
- 32.2 Bargaining unit members shall report to assigned summer school/supplemental instruction classrooms fifteen minutes before classes start and may leave at the completion of their last class.
- 32.3 Bargaining unit members serving in summer school shall be entitled to one (1) day of sick leave for every 100 hours of instructional time served in summer school. Summer school sick leave shall accumulate with the unit member's regular sick leave. Unit members serving in summer school shall be entitled to use their regular accumulation of sick leave and other leaves provided by this Agreement during summer school.

32.4 Selection and appointment of bargaining unit members serving in summer school/supplemental instructional programs shall be the responsibility of the assistant superintendent for personnel services in compliance with this Article.

32.4.1 Regularly employed unit members of the District shall be given preference over outside applicants for summer school/supplemental instructional programs placement.

32.4.2 Additional details, consistent with this Agreement, regarding matters pertaining to employment, such as teacher and teacher aide responsibilities, will be included in a summer school/supplemental instructional programs handbook.

32.4.3 Any bargaining unit member on a 200-day contract or less shall be considered as a qualified applicant for a summer school/supplemental instructional programs assignment and may make application to the District for a summer school/supplemental instructional programs position. The District shall establish a summer school/supplemental instructional programs seniority list, which shall be maintained from year to year. The most senior unit member with an appropriate credential shall receive the assignment. After serving up to three years in a summer school/supplemental instructional programs assignment, the next senior unit member with appropriate credential, not already serving in a summer school/supplemental instructional programs assignment, shall be appointed to the position. Unit members rotating out shall be placed at the bottom of the summer school/supplemental instructional programs seniority list. A unit member may decline an assignment and maintain standing on the seniority list until acceptance of a summer school/supplemental instructional programs opening. New applicants for summer school/supplemental instructional programs assignments shall be placed at the bottom of the seniority list.

(NOTE: The Association needs to propose some type of seniority, rotation system, or combination of these two in developing a selection process. The process should assume that all unit members can teach a class if they have a credential to teach the class.)

32.4.4 After serving up to three years in summer school/supplemental instructional programs assignment, the next senior unit member with appropriate credential, not already serving in a summer school/supplemental instructional programs assignment, shall be appointed to the position. Unit members rotating out shall be placed at the bottom of the summer school/supplemental instructional programs seniority list. A unit member may decline an assignment and maintain standing on the seniority list until acceptance of a summer school/supplemental instructional programs opening. New applicants for

summer school/supplemental instructional programs assignments shall be placed at the bottom of the seniority list.

32.4.5 For summer school assignments specifically, the assistant superintendent for personnel services shall conduct an application process prior to April. By April 30, all applicants shall be notified of the tentative selection or non-selection. A listing of those tentatively selected shall be available in the Personnel Office for inspection which shall include:

32.4.5.1 A list of all applicants

32.4.5.2 Credentials of each applicant

32.4.5.3 Summer school seniority-rotation rank of each applicant

32.4.5.4 Year that each applicant last taught summer school

32.4.5.5 The assignment of those tentatively selected for summer school employment

32.4.6 All grievances related to summer school assignments must be made to the District by May 15. All grievances arising from this Article shall commence at Level II of the procedure.

32.4.7 The posting and notification of vacancies for all other supplemental instructional programs employment shall follow the provisions in Article 13, Section 13.4.

32.5 Class Size Limitations for Summer School and Instructional Programs

(NOTE: The recently enacted social promotion legislation, along with the new high school exit exam, will result in more students enrolled in summer school and supplemental remediation programs. A proper setting for remediation will require limits on summer school and supplemental program class sizes if remediation is to be successful. K through 3rd grade elementary students needing remediation may have come out of classes of 20 or less students. If such students were unable to do well enough to be promoted out of these small classes, it makes little sense to put these students in large summer school or supplemental classes and expect remediation to be successful. High school students unable to pass all or parts of the exit exam will need more individual attention in a remediation program. It makes little sense to put these students in classes as large, or even larger than those they experienced during the regular school year. Local associations should negotiate realistic summer school and supplemental program class sizes that provide a setting where remediation has a chance to work.)

(In setting the summer school and supplemental program limits, local associations should consult with their CTA staff person to analyze the funding available for summer school and supplemental remediation programs.)

- 32.5.1 K through 3rd grade students enrolled in summer school or other supplemental remediation programs shall be in classes and/or groups of no larger than _____ (*10 is a suggestion*) students for each credentialed teacher.
- 32.5.2 4th through 8th grade students enrolled in summer school or other supplemental remediation programs shall be in classes and/or groups of no larger than _____ (*15 is a suggestion*) students for each credentialed teacher.
- 32.5.3 9th through 12th grade students enrolled in summer school or other supplemental remediation programs shall be in classes and/or groups of no larger than _____ (*20 is a suggestion*) students for each credentialed teacher.
- 32.5.4 In addition to summer school, "other supplemental remediation programs" refers to any remediation program offered by the District after-school, in the evening, during year-round intersession, on Saturdays, during school recess breaks, or any other time during the regular work year.

LEGAL REFERENCES

A. Education Code Sections Cited

- 8651 - Science, mathematics, and technology teacher pipeline program; components
- 8950-8958 - California state summer school for the arts
- 14022.5 - "Enrollment;" allocation to state school fund; duration of section
- 37252 - Pupils to whom summer school instructional programs shall be offered
- 37253 - Instructional programs in mathematics, science, and other core academic areas; grants; operation; rules and regulations
- 37300-37307 - Year-round school demonstration project
- 37600-37620 - Continuous school programs
- 37630-37632 - Elements
- 37640-37644 - Finances
- 37670-37673 - Year-round scheduling
- 41976.5 - Summer school programs; substantially handicapped persons or graduating high school seniors
- 41835 - Support from state school fund due to average daily attendance
- 42239 - Summer school attendance computation; class scheduling

- 42239.5 - Saturday school programs; summer school apportionments; conditions; inability to attend for religious reasons; program advisory; duration of section
- 42239.6 - Pupils in voluntary after school programs; summer school apportionments; conditions
- 44913 - Summer school employment in computation for classification as permanent employee
- 45045 - Continuous school programs; employees; salary
- 45049 - Time of payment for additional activities
- 46200-46206 - Incentives for longer instructional day and year
- 46306 - Crediting of summer school average daily attendance
- 48070 - Policies
- 48070.5 - Promotion and retention of pupils; creation of policy
- 48980 - Notification of Parents/Guardians
- 51205 - Pupils in year-round school; access to equal educational opportunity
- 51730 - Powers of governing board; branches of study authorized for elementary schools
- 54444.3 - Migrant education; summer school programs
- 58702 - Tutoring and homework assistance provided pursuant to program; summer school apportionment credit; maximum funding; records
- 58806 - Summer school apportionments; enrollment count
- 60850 – High school exit examination; development; High School Exit Examination Standards Panel; field testing; standards for examination; definitions
- 60851 – Successful completion of test as requirement for graduation; effective date of requirement; time for taking examination; results; supplemental instruction
- 60852 – Deferment of examination requirement for certain students
- 60853 – Preparation of students for examination

B. Government Code Sections Cited

- 7906 - School Districts; Definitions (average daily attendance)
- 17610 - State Mandates

YEAR-ROUND EDUCATION

ARTICLE 33

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ARTICLE 33

YEAR-ROUND EDUCATION

YEAR-ROUND EDUCATION affects almost one-fourth of public school pupils in California. With a projected need to build one school per day for the next five (5) years to keep pace with the new pupils entering our schools, we can expect this percentage to increase even more. In fact, Education Code Section 17717.7 stipulates that first priority for scarce state building construction funds be given, among other criteria, to those districts with a "substantial enrollment" in multi-track year-round education.

Year-Round Education (YRE) language found in this Article is designed to be incorporated throughout an Agreement. YRE will require many changes in the way districts do business and the contract, as a whole, should reflect that. Most districts begin with one YRE school and then keep adding more sites. It is advisable to bargain from the mind set that all schools will be year-round in the near future. This method, while differentiating for YRE, grants all teachers the same rights.

When YRE will only affect one or two buildings, some bargaining teams think that the language should be a separate Article of the contract. They emphasize the efficiency of having all language on YRE accessible in one place where teachers can quickly ascertain their rights. They also claim it assists in reopeners on YRE. Just be careful that all teachers have the same rights, whichever approach is used.

When bargaining YRE issues, be sure to cover all the topics included in the sample contract language. Be aware that the sample language given in this Article only deals with YRE issues and is intended to **supplement** your existing language.

CTA recommends that Associations bargain all topics when the first school in a district goes YRE. Districts usually are anxious that a YRE program gets off to a successful start. Consequently, they usually give more at the table the first time it is bargained. Later, when the program is functioning, districts will not care as much about resolving problems, and the Association will have a harder time getting the district to return to the table and deal with these issues.

TOPIC: WORK YEAR

Calendar configuration is very important in YRE districts. It follows only salary in importance at ratification meetings. Usually one track is preferred (the one closest to traditional calendar) over others that appear to be less attractive. CTA recommends that Associations have a calendar committee to advise the bargaining team on this issue. The use of a computer program for developing calendars is also recommended.

It is important to look at more than one school year at a time when developing calendars. While YRE provides nice breaks during the year, there are frequently only very short breaks for several tracks between school years. It complicates the problem of maintenance and "deep cleaning" for schools. Consider scheduling at least one week of complete closure during the year for building maintenance.

YRE schedules are either single track or multi-track. In single track schools everyone, teachers and pupils, has the same academic and vacation schedule. In a multi-track calendar teachers and pupils are divided into different tracks. The primary reason for the multi-track school is to handle overcrowded classrooms. Calendar design can increase enrollment capacity from 20% to over 50%. Going YRE saves on facility construction. Listed below are some of the most popular YRE plans in use today.

COMMON YRE PLANS	
45-15 Single-Track Plan	This plan divides the year into four nine-week terms, separated by four three-week vacations (off-track time). Pupils and teachers are on track for nine weeks (45 days), then go off-track for three weeks (15 days). Enrollment capacity is not increased on this plan.
45-15 Multi-track Plan	This four-track plan has the same on and off-track intervals as its single track version. It can increase enrollment capacity by as much as 25%.

60-20 Plan	In this four-track plan pupils are on-track for 60 days and off-track for 20 days. Like the 45-15 Plan, this design can be used in both single and multiple track schools. Enrollment capacity on the multi-track version can be increased by 20 to 25%.
60-15 Plan	This plan is usually a single track schedule. It is usually implemented with five tracks available to pupils. It can be a multi-track plan, but enrollment capacity can only increase by 20% at best.
90-30 Plan	In this four-track plan, pupils are on-track for two 90 day semesters separated by 30-day off-track periods. Enrollment capacity can be increased by as much as 33%.
Quarter Plan	This design divides the calendar into four 12-week periods. Pupils attend any combination of three quarters. Attending the fourth quarter is optional.
Concept 6 Plan	This three-track plan has approximately 80 on-track days and 43 off-track days. The plan can be modified by reducing the off-track time and planning "overlap days," when all tracks are on-track at the same time. Without modification, enrollment capacity can increase by as much as 50%.
Orchard Plan	This three-track plan has approximately 80 on-track days and 43 off-track days. The plan can be modified by reducing the off-track time and planning "overlap days," when all tracks are on-track at the same time. Without modification, enrollment capacity can increase by as much as 50%. This five-track plan is unusual. The pupils are on-track for over 60 days and off-track for 10 to 20 days. The teachers work for eleven months, and teach continuously as the pupils enter and leave the same classroom on their YRE schedule. Enrollment capacity can increase by as much as 25%.

YRE programs sometimes use terms that are unfamiliar. Listed below are some commonly used terms in contract language:

COMMON YRE DEFINITIONS

Cross Tracking: Allows pupils to take a leave during their assigned track and resume their instruction on a different track.

Down Time: A period of time when the entire school plant is closed.

Exchange Days/Time: Allows teachers assigned to one track to trade days or time with a teacher on another track for conferences, conventions, religious holidays, educational opportunities and other activities.

Intersession: Additional instruction time during vacation periods for the purposes of enrichment or remediation; in lieu of summer school.

Mester: In Concept 6, 8 weeks of instructional blocks or one-half of a semester.

Modified Concept 6: Three track plan which divides instruction time into 8-week blocks with four weeks of vacation. Increases enrollment capacity by 33% per track.

Off-Track: Vacation time for pupils and teachers.

Overlap Days: Days of instruction when all tracks are in session.

Rainbow: Teachers work the entire year with no specific vacation period.

Rotation: Room sharing system whereby three or more teachers share two or more rooms; the teacher coming back from vacation moves into the room of the teacher going on vacation.

Roving: Room sharing system whereby designated teachers and their pupils move to a new classroom each time the track changes. All other teachers and pupils stay in one room for the entire year.

Track: A specific period of instruction and vacation time for both pupils and teachers.

Track Bidding: Allows a teacher to choose the instruction and vacation periods she/he wants.

Tracking: Assigning pupils to a specific instruction block.

CTA recommends that Associations do not let the calendar cross fiscal years. It causes difficulty in budgeting and complicates bargaining. It also complicates track transfers because new school year tracks will be starting before last year's tracks have ended. A teacher, however, receives STRS credit for a full year, even if fiscal years are crossed.

One solution to the calendar problem is to reduce the number of instructional days and increase the number of minutes taught each day. While this makes long days, it is preferable to overlapping fiscal years.

The Education Code, Section 37670, allows for calendars of less than 180 days with the minimum being 163 days for multi-track YRE schools. However, the number of instructional minutes must be maintained at SB 813 requirements.

SB 813 REQUIRED INSTRUCTIONAL MINUTES

Kindergarten	36,000 minutes
Grades 1 through 3	50,400 minutes
Grades 4 through 6	54,000 minutes
Grades 9 through 12	64,800 minutes
or the number of minutes offered in 1982/83, whichever is greater	

The length of the regular work year in YRE is the result of various choices made during the planning phase. For example, unit members in a 45/15 and 60/20 setting usually work a regular 180-day year. Concept 6 and Modified Concept 6 may work only 163 days with long instructional days (See Education Code Section 37670). Orchard Plan teachers work 240 days a year.

Generally YRE is used where space is limited for pupils, so having "overlap days" where all tracks are on campus at the same time, is usually not done. It is recommended, however, that teacher inservice days be arranged this way when possible. The faculty will have a chance to meet with each other and share ideas. Be sure that inservice days are contiguous with the unit member's tracks. Parent conference days should also be contiguous to the tracks of the unit members involved. Be very careful not to make unit members work during their off-track time.

MODIFIED WORK YEAR OR EXTENDED WORK YEAR FOR SPECIALISTS

If specialists are assigned to a track, there will be off-track times when specialists are not available to teachers and pupils. This causes unequal access to services and can usually be resolved in one of two ways.

Modified work year calendars provide for specialists to work a 180-day calendar with four-day weeks and some guaranteed off-track break. Extended-year calendars, 190 to 240 days, are offered so all tracks are serviced by specialists.

INTERSESSION

Summer school money is available for voluntary after-school programs, Saturday classes, and intersession programs, and are figured in hours toward the core academic summer school programs. Intersession Programs are, however, infrequently used due to space availability problems. All of these programs are sufficiently funded to allow per diem rates of pay for unit members.

SAMPLE LANGUAGE

33.1 The calendar is attached and incorporated into this Agreement as Appendix ____.

33.2 Work Year Configuration

(NOTE: Choose the appropriate YRE configuration.)

33.2.1 45-15 and 60-20

Unit members shall be on duty the equivalent of one hundred eighty (180) days, which shall include one hundred seventy-five (175) instructional days, four (4) parent conference days and one (1) preparation day at the beginning of the track term.

33.2.1 Concept 6 and Modified Concept 6

Unit members shall be on duty the equivalent of one hundred sixty-five (165) days, which shall include one hundred sixty-three (163) instructional days and two (2) preparation days at the beginning of the track term.

33.2.1 Orchard Plan

Unit members shall be on duty the equivalent of two hundred twenty (220) days, which shall include two hundred fifteen (215) instructional days, four (4) parent conference days and one (1) preparation day at the beginning of the track term.

33.2.2 Work Year for Specialists

33.2.2.1 Same Duty Days as Other Unit Members: For non-classroom unit members such as resource, special education, psychologists, counselors, nurses, migrant, music, art, P.E., speech and hearing, the District shall implement cross track schedules that allow all tracks equal access to specialists by assigning duty days different than that of other unit members.

33.2.2.1.1 The modified work year schedule shall adhere to four-day weeks and shall provide for at least one (1) vacation for four (4) weeks duration. The affected unit member and the appropriate site administrator shall mutually attempt to agree upon a schedule; if they cannot

agree, the dispute shall be sent immediately to the central administrative level of the grievance procedure.

33.2.2.2 Extended Duty Days for Specialists: For non-classroom unit members such as resource, special education, psychologists, counselors, nurses, migrant, music, art, P.E., speech and hearing, the District shall implement cross track schedules that allow all tracks equal access to specialists by increasing their number of duty days beyond that of other unit members.

33.2.2.2.1 The District shall offer extended day contracts up to a maximum of 210 days. Extended contracts shall be paid at the per diem rate and a separate salary schedule for each configuration offered shall be appended and incorporated into this Agreement as Appendix _____. The District shall determine the length of each contract offered. Every unit member shall have at least one four week vacation. The affected unit member and the appropriate site administrator will mutually attempt to agree upon a schedule; if they cannot agree, the dispute shall be sent immediately to the central administrative level of the grievance procedure.

33.2.3 Modified Work Year - Intersession

Unit members who agree to work intersession shall be given an extended-year contract. Contracts shall be offered on the basis of seniority. Intersession shall be defined as any program qualifying for summer school funding, including but not limited to, after hours programs, Saturday programs, or classes offered during off-track vacation periods. Hours of credited service for intersession shall be counted as 1.2 hours for every hour worked to allow for planning time. Extended contracts shall be paid at the per diem rate and a separate salary schedule for each configuration offered shall be appended and incorporated into this Agreement as Appendix _____.

TOPIC: INSTRUCTIONAL DAY

The Education Code allows for calendars of less than 180 days to a minimum of 163 days for YRE schools. The number of instructional minutes must be maintained at SB 813 requirements. It will be necessary to calculate the minutes of instruction and the minutes of planning time available to teachers by grade level depending upon the number of days of instruction offered under a YRE configuration. All instructional time during the day must be counted accurately, including minimum days. The California Department of Education has issued Program Advisories on this subject.

A split reading program in YRE Configurations with less than 175 instructional days makes a long day for pupils. Instructional considerations should be made before approving this approach.

Combination classes that overlap SB 813 minute grade requirements can require longer days for younger children. That is why they are prohibited.

The sample language provides for minimum days at the beginning and ending of a track. This allows for classroom preparation. The language also provides per diem pay for unit members working additional hours in classroom preparation.

SAMPLE LANGUAGE

33.3 Instructional Day

(NOTE: This section does not define the unit member's hours, only instructional time.)

33.3.1 Instructional Minutes For The School Day

Instructional minutes shall be as follows:

Kindergarten	_____	minutes
Grades 1 through 3	_____	minutes
Grades 4 through 6	_____	minutes
Grades 7 through 8	_____	minutes
Grades 9 through 12	_____	minutes

33.3.2 Split Reading

Split reading may be scheduled only upon a yearly affirmative vote of the unit members involved at the school site. That program will necessitate _____ minutes of instructional time and _____ minutes of pupil attendance.

33.3.3 Combination Classes

No combination classes shall be established that include more than one grade band as described in the instructional minutes of Section 33.3.1.

33.3.4 Minimum Days

Minimum days for pupils shall be held on the first and last day of every track cycle.

**TOPIC: INITIAL ASSIGNMENT,
TRANSFER/REASSIGNMENT/TRACK CHANGE**

There are two schools of thought on how initial track assignments should be made. Either method should incorporate the right of teachers to have their own children, who are pupils in the district, assigned to the same track and/or the right to transfer to a school that is not YRE.

One method is straight seniority, which CTA recommends. In this case, the site administrator develops the matrix of classes at each grade level in each track. Then teachers select a class by district seniority. This is the fairest method and the cleanest organizationally.

This system does not always give full latitude to the seniority system, because the administrator may be assigning specialty classes (GATE, English Language Learner, special education) to certain tracks and teachers will have to choose that track if they wish to stay with the program. If the administrator assigns all English Language Learners or special education to one track, there may be discrimination issues.

Seniority choice can result in teachers changing grade levels. Sometimes this happens because unit members try to match their spouse's or children's vacation schedules. Teachers in a building frequently accommodate each other in their choices.

Another method of assignment allows the site administrator to make the initial assignments of teachers to a grade/subject level and also assign the number of classes. Grade/subject level teacher teams then work out the track assignments with veto power given or not given to the site administration. If teams cannot reach resolution, the site administrator decides using limited criteria.

The sample language does not differentiate between transfers and reassignments. A transfer simply covers any changes in assignment, during or between school years. No one is given preference simply by already being assigned to a particular site. It is important that all unit members be notified about vacancies. Even if only one building is going year-round, a system of posting during the school year and mailing during the summer, provides proper notification to all unit members.

Limiting the reasons for involuntary transfers is especially important in a YRE setting. The district may make track changes of classes to accommodate community pressures. The sample language only allows involuntary transfers to meet legal requirements of ethnic balance and English Language Learners needs. Track transfers can result in a shortened or lengthened work year for unit members. Provide a special work assignment for a shortened work year and per diem pay for a lengthened work year if this happens. It is essential that unit members not suffer economic loss as the result of an involuntary transfer.

SAMPLE LANGUAGE

33.5 Initial Assignment

(NOTE: Choose between the "Seniority" method or the "District Assignment with Team Track Selection" method. Some language provided here is not consistent with the language of Article 13, Transfer and Reassignment.)

33.5.1 Seniority

33.5.1.1 The site administrator shall prepare the master schedule indicating the number of classes on each track at each grade/subject level. English Language Learners, special education, GATE, and other special classes shall be indicated and assigned to a track.

33.5.1.2 Unit members shall choose their grade/subject level and track assignment by employment seniority. This means that the unit member with the most employment seniority shall have the first choice of all the assignments in the building. Unit members must have the proper credential to teach the assignment they have chosen. Unit members who object to their track assignment shall notify the site administrator in writing of the track they wish to work. The site administrator shall review the unit member's objection and request and apply the following criteria to settle the objection:

Seniority with the District
Credentialing.

33.5.1.3 The District shall assign the children of unit members to the same track that the unit member is teaching.

33.5.1 District Assignment with Team-Track Selection:

- 33.5.1.1 The site administrator shall post the matrix of the master schedule, which indicates how many grade level/subject area classes are assigned to each track. All teachers shall have an opportunity to sign up for their track preferences. Preference forms shall be distributed to all unit members so that they may indicate their grade level/subject area preferences.
- 33.5.1.2 After reviewing the individual preference forms, the site administrator shall initially assign each unit member to a grade level/subject area.
- 33.5.1.3 Teaching teams shall be defined as all teachers in the building assigned to the same elementary grade level or middle and high school subject area. After five (5) days, teaching teams shall be established and shall meet to determine track assignments. The teaching teams shall report to the site administrator the results of their meeting.
- 33.5.1.4 Unit members who object to their track assignment shall notify the site administrator in writing of the track they wish to work. The site administrator shall review the unit member's objection and request and apply the following criteria to settle the objection: Seniority with the District Credentialing
- 33.5.1.5 If a unit member's children attend a YRE school in the District, the District shall assign the children to the same track that the unit member is teaching.

33.6 Voluntary Transfer/Reassignment or Track Change

- 33.6.1 Any position that does not have a unit member assigned to it shall be a vacancy. This includes, but is not limited to, openings due to resignation, promotion, assignment to a federal or state program, retirement, added positions, and openings due to leaves over nine weeks long. Such vacancies may occur during the school year or between school years, or at the same or different sites. A voluntary transfer is any teacher initiated change of assignment, including but not limited to, track changes and/or grade level/subject area changes at the same or different sites, occurring during or between school years. It also includes a change from traditional to YRE or a change from YRE to traditional.

- 33.6.2 All vacancies shall be mailed to unit members requesting notification at least twice each month. Vacancies shall not be filled for at least one month.
- 33.6.3 If a position becomes vacant mid-track, it shall immediately be considered a vacancy. A temporary teacher or long-term substitute may fill the position until the beginning of the next track, when the position shall be filled with the new transferee. If the notification period has not expired by the beginning of the track change, the position shall be filled as soon as possible by a new transferee.
- 33.6.4 The applicant with the longest District seniority shall be given the vacant position if she/he is properly certified. Preference, however, shall be granted to those unit members who have been involuntarily transferred as per Section 33.7 below.
- 33.6.5 Unit members who have voluntarily changed tracks during the school year and would be subject to loss of annual workdays shall be provided an opportunity to substitute teach sufficient days to fulfill the annual contractual obligation and thereby receive a full year of service credit for STRS retirement purposes. If a change of tracks results in a longer school year, the unit member shall have notice and be paid per diem for all days worked over the normal contract year.
- 33.7 Involuntary Transfer/Reassignment or Track Change
- 33.7.1 An involuntary transfer shall be defined as any District initiated change of assignment, including but not limited to, track changes and/or grade level/subject area changes at the same or different sites, occurring during or between school years. It also includes a change from traditional to YRE or a change from YRE to traditional.
- 33.7.2 No unit member shall be transferred for arbitrary or capricious reasons or without a basis in fact. No unit member shall be transferred to accommodate the extracurricular activities of the school. An involuntary transfer shall only be made for one or more of the following reasons:
- 33.7.2.1 To balance the teaching staff of a track, school, or schools in accordance with English Language Learner requirements.
- 33.7.2.2 To balance the teaching staff of a track, school, or schools in order to meet track comparability needs or state or federal programs guidelines.

33.7.2.2.1 To balance and equalize class size in a track, school, or schools because of changes in enrollment.

33.7.3 Once the District has determined that an involuntary transfer must be made they shall seek volunteers by mailing the notice for a three week time period to all affected unit members.

33.7.4 If there are no volunteers, the properly credentialed unit member with the least employment seniority shall be transferred.

33.7.5 Any teacher involuntarily transferred shall be granted a choice of _____ days pay or _____ days of paid service without teaching duties to prepare for the transfer.

(Note: Locals should decide on an appropriate number of days.)

33.7.6 If the involuntary reassignment requires a change of rooms, the site administrator shall arrange appropriate custodial assistance for the move.

33.7.7 No unit member shall be involuntarily transferred more than once in any two school years.

33.7.8 If less days are served due to unit member being involuntarily transferred from one track to another, the District shall assign mutually agreeable substitution days, at the unit member per diem rate, so that the unit member will receive her/his annual pay and retirement service credit for the year. If the involuntary transfer results in more days of service, the teacher shall have notice and be paid per diem for those additional days.

TOPIC: EXCHANGE DAYS

Unit members who work a year-round program can suddenly find themselves unable to attend social events that occur in the summer such as graduations, family reunions, weddings, CTA training institutes, and the NEA Representative Assembly. Exchange days allow a teacher who is or will be on-track to take time off for any length of time and for any reason by arranging with a teacher who is or will be off-track to trade with them. CTA recommends that there be no restrictions as to the reasons for taking exchange days.

Exchange days are universally praised by teachers and administrators. Administrators like it because they recognize that teachers will take the time off anyway and this provides a legitimate

solution. They also like it because there is a regular teacher in the classroom who knows both the school rules and the kids. Real teaching occurs and discipline is better because the pupils know the exchange teacher.

SAMPLE LANGUAGE

33.8 Exchange Days

- 33.8.1 Unit members, at any time that they are on-track, may voluntarily exchange days with an off-track unit member, without loss of pay, benefits, or sick leave.
- 33.8.2 Unit members shall notify the site administrator at least twenty-four (24) hours in advance who will be replacing the unit member, the length of the exchange, and the dates when the unit member will pay back the exchange.
- 33.8.3 Unit members shall have the responsibility for arranging the exchanges with other unit members.
- 33.8.4 Payback of the exchange is the responsibility of the unit members. Unit members who do not pay back exchange days shall be docked pay for the time owed.

TOPIC: SUBSTITUTING, STAFF DEVELOPMENT, COMMUNICATIONS, SERVICE

YRE gives teachers an opportunity to increase their salary by substituting when they are off-track. Unit members, including those not in the year-round program, should be given first call for substituting before day-to-day substitutes. Regular unit members should be paid a premium for substituting. They are knowledgeable of the schools, the school rules, and the children.

All staff development programs may need to be offered twice so that all teachers have the opportunity to participate. Teachers should not be required to attend any staff development, even if paid, if they are off-track.

YRE complicates the problems of staff communication. All teachers should have the right to equal access to information. Districts need to mail information to off-track unit members.

All unit members should be able to serve on any and all committees of a district. They should not be required to attend while off-track. If they do attend while off-track they should be compensated. They shall be kept informed while off-track.

SAMPLE LANGUAGE

(NOTE: These sections need to be placed in appropriate Articles of the contract.)

33.9 Substitution

33.9.1 YRE and traditional unit members who are off-track shall have the first opportunity to substitute at District sites. Unit members who substitute shall be paid their per diem rate. All unit members interested in substituting shall submit, in writing, a notification to the District listing the dates they are available for substitution.

33.10 Professional Staff Development

33.10.1 All unit members shall have equal access to professional staff development. All professional staff development programs shall be offered as many times as is necessary for all unit members to attend while on-track.

33.10.2 No unit member shall be required to attend professional staff development sessions when they are off-track. Unit members who voluntarily attend while off-track shall be paid per diem rates.

33.11 Communications

33.11.1 All bulletins and information given to unit members who are on-track shall be mailed to unit members who are off-track within a week of distribution to those on track.

33.11.2 Minutes shall be kept of faculty meetings and shall be mailed to off-track unit members within one week.

33.12 Committee, Task Force, and Peer Assistance and Review Service

33.12.1 YRE unit members shall have the opportunity to serve as consulting teachers or on District or building committees, and/or task forces.

- 33.12.2 YRE unit members who are off-track shall not be required to attend any meetings of any kind. Unit members who voluntarily attend while off-track shall be paid at their regular per diem rates.
- 33.12.3 All committees and task forces shall keep minutes and shall mail them within one week to off-track unit members who participate.

(NOTE: The enactment of education reform measures AB 1626, "Pupil Promotion and Retention", AB 1639 "Mandatory Summer School", and SB 2x, "High School Exit Exam", has created more supplemental instructional programs to work with students who need extra help to achieve the academic standards necessary to advance grade levels, and earn a high school diploma. Locals should include in their contracts reference to such supplemental programs which may be offered after school, on Saturdays, during intersessions, and during the summer. See also Article 32, Supplemental Instructional Programs, and Article 25, Salaries.)

33.13 Supplemental Instructional Programs

- 33.13.1 YRE and traditional unit members who are off-track shall have the first opportunity to work in any supplemental instructional programs, such as remediation classes, which may be offered by the District during intersessions.
- 33.13.2 Selection of unit members to work in off-track supplemental instructional programs shall be governed by the provisions of Article 32, Supplemental Instructional Programs.

TOPIC: AIR CONDITIONING, ROVER/ROTATION, MATERIAL STORAGE, INSTRUCTIONAL MATERIAL

Education Code Section 42250.1 provides that the State shall allocate funds appropriated by the Legislature to school districts operating YRE for the expense of air conditioning equipment and insulation materials. Preference shall be given to schools that are situated in climates that require air conditioning during June, July, and August and have a high degree of overcrowding. Districts must reimburse the State if they do not operate YRE or if they cease operation of YRE within a period of three (3) years. It is recommended that districts apply for air conditioning grants during the planning year so that it is in place by the beginning of the program. Bargain that the district provide air conditioning for YRE schools.

YRE usually allows four teachers to be housed in only three rooms. Teachers who have worked for many years in the same classroom frequently have a proprietary interest in their rooms and resent having to switch rooms when coming back on-track (rotation) or having someone in their

room when they are off-track (roving). Both systems are resented. Your Association will have to decide between one of the two methods.

Rotation: Teacher "A" is assigned a classroom when the year begins. When teacher "A" goes off-track, teacher "B" moves into teacher "A's" classroom. When teacher "A" returns, she/he is assigned to a different room. Thus, all teachers change classrooms after each break. Everyone moves three times a year in a 60/20 model and four times a year in a 45/15.

Roving: Three of four teachers have assigned rooms. When they are off-track the fourth roving teacher uses their room. When they return from break, they go back to their usual room and the "rover" moves again to the classroom of the teacher who is now off-track. The rover and their pupils move every 15 days under 45/15 and every 20 days under 60/20.

Rotation is the fairest as everyone moves. But, if given the choice, teachers will choose roving as there is a 75% chance that they won't be the one to move. The Rover usually ends up being the teacher who hasn't been hired yet.

It is best if the whole school uses the same system.

MATERIAL STORAGE

In either a Roving or Rotation system there is a need for storage space for teacher and pupil materials. Resistance to the YRE program will be lessened if teachers are guaranteed enough storage space and prompt delivery of their materials.

A number of companies make portable storage cabinets. These are large cabinets with wheels (order the largest wheels available) that can be moved from room to room with the teacher. Usually teachers will need more than one cabinet. Planning and Operational Grant money can be used to purchase these cabinets. Bargain for appropriate storage cabinets with teacher involvement in deciding what types of cabinets will be purchased.

Teachers in YRE Districts have suggested that language be bargained that prohibits teachers from being required to move the cabinets. They also recommend bargaining guarantees that the cabinets will be back in their rooms from the storage area the day the new track begins and not be removed until the day after the last day of the track. Consider preparation time in the proposal.

INSTRUCTIONAL MATERIALS

Districts order materials for a September opening. They forget the YRE building unless reminded. Textbooks and materials must be available the first day the first track begins. There must also be supplies available in June for the tracks that are still in session. Bargain these guarantees, with penalties, or the purchasing office simply won't take the effort to adapt to YRE.

SAMPLE LANGUAGE

33.13 Air Conditioning

- 33.13.1 Air conditioning shall be provided in all rooms, including classrooms, lunch, lounge, and work areas of any building used in the YRE program.

33.14 Rover/Rotation

(NOTE: Choose between Rover or Rotation language.)

33.14 Roving

- 33.14.1 If overcrowding requires that more than one unit member be assigned to a classroom, the Roving system shall be used. Probationary unit members shall not be assigned to a roving position.

- 33.14.2 Roving is defined as a system of room sharing where unit members going off-track release their room to a Roving unit member. When the unit member comes back on-track, they return to their original classroom, and the Roving unit member moves again. Because Roving is such a difficult assignment, the following considerations are given:

- 33.14.2.1 Kindergarten and combination unit members shall not serve as Rovers. Rovers shall be chosen on a voluntary basis. If there are insufficient volunteers, a unit member may be assigned as a Rover for a maximum period of one year.

- 33.14.2.2 Unit members serving as Rovers shall not be assigned bus, yard, or lunch duty. They shall be released from bulletin board responsibilities. They shall not be assigned any club or program responsibilities.

- 33.14.2.3 Rovers shall be provided storage space in each classroom they use.

- 33.14.2.4 If a Roving unit member is required to work extra hours related to a roving assignment, then the unit member shall receive her/his hourly rate of pay for such duty.

33.14 Rotation

- 33.14.1 If overcrowding requires that more than one unit member be assigned to a classroom, the Rotation system shall be used.

33.14.2 Rotation is defined as a system of room sharing where unit members going off-track release their room to a unit member coming on-track. Unit members coming on-track are assigned a different classroom than they had during the previous track. Unit members change rooms every time they return from break.

33.15 Material Storage

33.15.1 A minimum of two storage cabinets, with locks, shall be provided to all unit members working in the YRE program. Before purchasing the storage cabinets, the District shall consult with the unit members involved about the type of storage cabinets to be used. Minimum dimensions shall be 48 inches wide by 72 inches high by 22 inches deep with 8 inch casters. Unit members shall not be required to move the storage cabinets. The storage cabinets shall be in the unit member's assigned room by 7:00 a.m. of the day prior to the first day of each track opening. The storage cabinet shall not be removed before 5:00 p.m. of the day after the last day of the track.

33.16 Instructional Materials

33.16.1 Textbooks and instructional materials shall be available on the day before the first day of each track. Materials and supplies shall be available all year long.

TOPIC: RELEASE TIME AND AGENCY FEE

Many activities occur during summer months, including many Association activities such as the NEA Representative Assembly and CTA Institute and Presidents Conference. Association executive boards also use this time for planning. It is essential for the health of the Association to give equal opportunity to unit members teaching YRE. Under the provisions in Article 12, Association Rights, include additional days of release time for attendance at affiliate meetings, training sessions and other meetings of Association interest.

Maintaining Association membership may also be a problem in a YRE setting. Membership chairs are usually off-track part of the year. Association costs will be much higher under YRE due to postage, elections, recruitment, double training, and summer governance meetings. Agency Fee is the only way to solve these administrative problems. Bargain this the first year when the District wants the program to work. See Article 11, Organizational Security.

**TOPIC: CLASS SIZE, COMBINATION CLASSES,
PREPARATIONS, ACCESS TO SPECIALISTS**

When a district makes track assignments for pupils, they usually accommodate parent wishes. This can lead to very uneven class assignments. It is necessary to include language which equally distributes pupils. Specialist caseloads should not be increased because only three-fourths are on-track.

When small buildings go to a YRE program, they may not have four teachers at each grade level. This means that there will have to be a number of combination grade level classes. Teachers who have worked combination classes realize that this is a labor intensive program for teachers. Efforts should be made to have as few combination classes as possible.

When junior or senior high schools go to a YRE program, they find it very difficult to offer all courses to all pupils in every track. If they do, they may not have a chemistry or shop teacher for each track. It then becomes necessary for teachers to teach courses they have never taught before. Local Associations are caught in the middle between advocating equal access to all programs for kids, and finding teachers overburdened with too many preparations and subjects they may not be comfortable teaching. Consider bargaining extra preparation time for such teachers.

It is important that all pupils and teachers have equal access to specialists. These include art, music, physical education, speech and hearing therapists, counselors, psychologists, nurses, resource teachers, and others.

This can be accomplished through a longer contract year for specialists (220- to 240-day contracts) or through a modified work year (180 days divided into four-day weeks). Either will provide equal access. Modified work year does not cost extra. Longer contracts for specialists provide more service but cost more.

SAMPLE LANGUAGE

33.17 Class Size

Class size shall not exceed _____. In combination grade level classes, class size shall not exceed _____. For classes participating in the K-3 Class Size Reduction Program, the maximum class size shall be _____.

33.17.1 Pupils shall be distributed by grade level among all YRE tracks so that class size between teachers is equalized.

33.17.2 Class Size for Specialists shall not exceed the following, including all pupils assigned, regardless of track assignment. If extended year contracts are given to Specialists in YRE, their pupil case load may be proportionately increased.

SPECIALTY	CASE LOAD	MAXIMUM RATIOS
Counselors	_____	_____
Nurses	_____	_____
Librarians	_____	_____
Psychologists	_____	_____
Speech and Hearing Therapists	_____	_____

(NOTE: List all specialists that need case load maximums.)

33.18 Combination Classes

33.18.1 Combination grade level classes shall be kept at a minimum. Teachers of combination grade level classes shall be chosen on a voluntary basis. If there are insufficient volunteers, a unit member may be assigned to teach the combination grade level class for a maximum period of one year.

33.19 Preparations

33.19.1 Unit members shall not be required to teach more than ____ different preparations per term.

33.19.2 The District shall seek volunteers to teach more than the maximum number of preparations. If volunteers cannot be found, the District may assign unit members based upon least seniority credentialing. Unit members who volunteer or are assigned to teach more than the maximum number of preparations shall receive a pro rata amount of additional preparation time for each extra preparation and such time shall be paid at the unit member's per diem hourly rate of pay.

33.20 Access to Specialists

33.20.1 All classes in all tracks shall have equal access to specialists. These include, but are not limited to, art, music, physical education, speech and hearing therapists, nurses, counselor, psychologists, and resource teachers.

(NOTE: List appropriate specialists.)

TOPIC: LEAVES

Sick leave has traditionally been ten (10) days per year because teachers worked a ten (10) month work year. If unit members actually have an increase in the number of calendar days that they work in the school year, bargain an increase in the number of sick leave days at a rate of one (1) day for every twenty (20) days worked.

It is sometimes difficult for teachers to do graduate work on a year round schedule where summer school is not possible. A Sabbatical Leave for one track term may be the answer. When a track term of nine weeks (45/15) is added to two breaks before and after the track, it amounts to a total leave of 15 weeks. Districts who have not granted year-long sabbaticals may find it economically possible to offer track sabbaticals. Districts have operational grant money for YRE that is totally unrestricted, so this is not an impossible item to bargain.

If it is impossible to bargain a sabbatical leave, a leave without pay is another possibility. Since these leaves are without pay, a wider range of reasons should be allowed.

YRE allows creative opportunities for job sharing. For example, in 45/15 each teacher could work two of the four tracks.

SAMPLE LANGUAGE

33.21 Leaves

33.21.1 *Sick Leave*

Unit members working an extended work year shall be entitled to one additional sick day for every 20 days worked over 180 days.

33.21.2 *Sabbatical Leave*

At least ____ sabbatical leaves shall be granted per school year. Sabbatical leaves may be granted for one, two, or three tracks of a school year.

33.21.3 *Leaves Without Pay*

The District shall grant up to _____ leaves without pay per year. These leaves may be for one, two, or three tracks or a full school year as the unit member requests. Application for leave shall be submitted to the

District no less than four weeks before the requested beginning of the leave. In cases of emergency, the timeline shall be excused. No reason need be given for this leave. Unit members returning from leave shall be given the same assignment on the same track that they worked before the leave.

33.21.4 *Job-Sharing*

33.21.4.1 Job-sharing shall refer to two (2) unit members on regular contracts sharing one (1) teaching assignment. Job-sharing may include working one, two, or three tracks of a school year. Two unit members may share an assignment for a minimum of one (1) year. Job applications for a job-sharing assignment for the following school year shall be filed with the District no later than March 1. Applications shall not be denied except for just cause. The District shall approve or deny requests, and notify the applicants in writing, of its decision, by May 1. If a request is denied, the applicants shall be notified, in writing, of the specific reasons for the denial. Notwithstanding other provisions of this Agreement, job-sharing unit members' wages, benefits, and paid leaves shall be prorated relative to the actual time worked. In no event shall the total amount of health and welfare benefits for the job-sharers exceed the amount the District would have paid if the position had not been shared.

33.21.4.2 Each job-sharing unit member shall receive a salary schedule increment each year.

33.21.4.3 Upon request of the two unit members, a job-sharing assignment may be renewed provided the two unit members notify the District prior to March 1. In the event the two unit members fail to notify the District of their desire to continue the job-sharing assignment, or in the event the District does not approve the continuance of the assignment, the unit members shall be returned to full time assignments.

33.21.4.4 If a unit member on a regular contract is in a job-sharing assignment and elects to return after the first year to full-time teaching, the unit member will be returned to her/his original school and track. If a unit member on a regular contract is in a job-sharing assignment for more than one (1) year and elects to return to full time teaching, the unit

member will be assigned to the first available full time teaching position for which she/he is certificated and in conformance with the provisions of this Agreement.

TOPIC: SALARIES AND BENEFITS

Most YRE districts propose a twelve-month payroll. Conversion to twelve checks results in a smaller net per month which may affect the ability of members to meet monthly expenses. This can be handled by allowing teachers to choose between a ten-, eleven-, or a twelve-month payroll.

If only a twelve-month payroll is offered, it is important that the first check be cut for the month of July and paid on July 31, rather than the following month. This is recommended so that the annual salary comes from one fiscal year. If you delay until August 31, the last payroll of the year will be paid during the next fiscal year.

Most districts have open enrollment (when you can designate your choice of plans) in September. Usually, new employees are not enrolled in any benefit plan until open enrollment is over. YRE districts are usually those experiencing growth and, therefore, hiring new employees. It is improper to force your new unit members to work four months without insurance. Work with your carriers to move open enrollment to allow immediate enrollment of new employees.

SAMPLE LANGUAGE

33.22 Salary Schedules

33.22.1 The salary schedules are attached and incorporated into this Agreement as follows:

180 Day Contract	Appendix _____
200 Day Contract	Appendix _____
220 Day Contract	Appendix _____

33.22.2 All unit members (YRE and Traditional) shall choose between being paid their annual salary in ten (10), eleven (11) or twelve (12) equal installments. Unit members electing ten (10) pay checks shall be paid their first check of the school year on September 30th of each year. Unit members electing eleven (11) checks shall be paid their first check of the school year on August 31st of each year. Unit members electing twelve (12) pay checks shall be paid their first check of the school year on July

31st of each year. If a unit member returns to a traditional schedule, she/he may, at their option, remain on an eleven (11) or twelve (12) month payroll cycle.

33.23 Fringe Benefit Enrollment

33.23.1 Open Enrollment for fringe benefit programs shall be the month of September, except that all unit members and eligible dependents shall be enrolled in fringe benefit programs within 30 days of their first day of service.

33.24 Retirement Credit

33.24.1 Each teacher shall receive a full year's credit in the State Teachers Retirement System for completing a full track. Teachers who have transferred will also be entitled to earn a full year's credit as per transfer provisions in this Article.

LEGAL REFERENCES

A. Education Code Sections Cited

37670-37673 - Year-Round Scheduling
42239.5 - Pupils in Voluntary After School Programs
48070.5 - Pupil Promotion and Retention
48980 - Notification of Parents/Guardians
51205 - Pupils in Year-Round School
52120 et seq. - K-3 Class Size Reduction Program
60850 - High School Exit Exam

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Act
3543.2 - Scope of Representation
6700 - State Holidays
6803 - Year; half year; quarter year
6804 - Month
6805 - Week
6806 - Day

SPECIAL EDUCATION

ARTICLE 34

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ARTICLE 34

SPECIAL EDUCATION

Specific topics related to special education are listed in this section of the manual rather than under appropriate Articles. Associations should consider the subject as a whole, draft language for their needs, and then decide in which Articles the language should be placed. CTA's Negotiations & Organizational Development Department and Instructional and Professional Development Department can provide additional information concerning Special Education. Staff should contact either department.

TOPIC: LOCAL PLAN DEVELOPMENT

The Education Code provides that committees established for the development of a local special education plan include special and regular teachers selected by peers as well as parents selected by parents. CTA recommends that the selection process be conducted by the Association. The number and term of teacher committee members should be determined by local considerations, such as size of the district and scope of the program. These matters are subject to bargaining and the selection procedure should be proposed as the sole prerogative of the Association. The survey included in the sample language is for those Associations whose members want more input into the special education local plan.

SAMPLE LANGUAGE

34.1 Local Plan Development

- 34.1.1 When developing and/or updating a special education local plan (SELP), the District shall notify the Association of its intent to do so and shall inform the Association of the number of regular and special education teachers that need to be selected for the SELP Committee. The selection process for these unit members shall be conducted by the Association. Bargaining unit members shall be released from their regular duties for purposes of serving on the SELP Committee.
- 34.1.2 When developing and/or updating a SELP, the SELP Committee shall survey unit members whose duties would be impacted by the plan in order to determine their recommendations.

TOPIC: COMMUNITY ADVISORY COMMITTEE

A Community Advisory Committee (CAC) must consist of a number of representative groups including regular and special education bargaining unit members. The law provides that procedures shall be developed locally as to the number and terms (at least two year terms that are staggered) of such individuals. CTA recommends that the selection process be conducted by the Association. The number and term of teacher committee members should be determined by local considerations, such as size of the district and scope of the program. These matters are subject to bargaining and the selection procedure should be proposed as the sole prerogative of the Association.

SAMPLE LANGUAGE

34.2 Community Advisory Committee

- 34.2.1 Unit members shall serve on the District's Community Advisory Committee (CAC). The selection process for these unit members shall be conducted by the Association. Bargaining unit members shall be released from their regular duties without loss of compensation or compensated their hourly rate of pay for purposes of serving on the CAC Committee.

TOPIC: COUNTY OFFICE AGREEMENTS

The law requires that relevant provisions of contracts between a County Office and its employees governing wages, hours and working conditions shall supersede like provisions contained in a local plan. Although sample language is listed below, it is probably not necessary to include such language in a County Office Agreement.

SAMPLE LANGUAGE

(NOTE: This language, if it is used, would only be placed in Agreements between County Office Associations and their Districts.)

34.3 County Office Agreements

- 34.3.1 The terms and conditions of this Agreement shall supersede the provisions contained in any special education local plan for which the County Office provides services, and which affect unit member wages, hours, and working conditions.

TOPIC: REORGANIZATION RIGHTS

This language will reduce the likelihood of a district, under the guise of Special Education Local Plan Area (SELPA) reorganization, terminating, reassigning, or transferring unit members without regard for their employment rights. At the first sign of reorganization, the Association should contact CTA staff for assistance in filing a demand to bargain the impact.

SAMPLE LANGUAGE

34.4 Reorganization Rights

- 34.4.1 Prior to reorganizing a special education local plan area, the District shall meet and negotiate with the Association regarding its impact.

TOPIC: SPECIAL TRANSFER RIGHTS

This language would prevent districts from refusing to permit special education teachers to transfer to regular assignments. In light of the shortage of qualified special education teachers, and particularly if the employee was hired as a special education teacher, districts can be expected to resist such language. Such resistance will be in addition to the district's natural tendency to protect the power to assign employees to any position for which they are qualified.

SAMPLE LANGUAGE

(NOTE: The following language must fit with other transfer language in the Agreement. It is not meant to provide better transfer rights, but equal transfer rights for special education unit members.)

34.5 Special Education Transfer Rights

- 34.5.1 The District shall not deny to any unit member serving in a special education assignment the right to transfer to a vacant position for which the unit member has an appropriate credential and greater seniority than other applicants for the vacancy.

(NOTE: 34.5.1 is redundant if the Transfer Article in the Agreement has clear, unlimited transfer language.)

(NOTE: The following language must fit with other transfer language in the Agreement. The Association must decide whether it wants to provide preferential treatment to unit members serving in high stress positions before making this proposal. This proposal does not conform with standard CTA policy and recommendations regarding credentialing and seniority rights.)

- 34.5.2 The following provisions shall facilitate the voluntary transfer of unit members in high stress assignments:

- 34.5.2.1 Unit members whose health conditions warrant a change of assignment shall be given preferential consideration; however, the District shall not be required to assign more than 25% of the available openings to unit members qualifying under this provision.

- 34.5.2.2 Unit members having served in high stress positions, such as, but not limited to, Compensatory Education, Continuation, Opportunity, Special Education Day Classes, and remedial basic classes, shall be given preferential consideration in facilitating this provision.
- 34.5.2.3 Unit members seeking voluntary transfer under this provision shall submit the following information to the District by the first duty day in May of each year:
 - 34.5.2.3.1 Chronological history of those school years spent in high stress assignments;
 - 34.5.2.3.2 Specific schools/programs to which they would voluntarily transfer.
- 34.5.2.4 The District decision shall supersede the personal preference of site level managers in the implementation of this provision.

TOPIC: SCHOOL SITE COUNCIL REPRESENTATION

A District may be persuaded to adopt school site council representation language. If a committee exists for the development and implementation of the local plan for special education, it could serve as the vehicle for such persuasion. The Association may also utilize its consultation rights to obtain such an understanding from the district.

SAMPLE LANGUAGE

- 34.6 School Site Council Representation
 - 34.6.1 The District shall not approve any School Improvement Plan from a site with a special education program, unless the School Site Council which developed the plan included a unit member at that site, assigned to a special education position.

TOPIC: INDIVIDUALIZED EDUCATIONAL PROGRAMS (IEPs)

Many special education unit members complain about the extra time that is needed in the development of Individual Educational Programs (IEPs). Their classes are interrupted, their preparation time is taken away, or they have to put in extra hours beyond the contractual day to accomplish the formation of IEPs. Relief can be framed in several different ways, depending on the direction a local bargaining team wants to go.

Regular classroom teachers also become frustrated with the process because they receive the IEP without any input.

SAMPLE LANGUAGE

34.7 IEPs

- 34.7.1 The District shall provide unit members assigned to assist in the development of Individual Educational Programs with release time without loss of compensation. If IEPs are planned during instructional preparation time or after regular hours of employment, unit members shall receive their hourly rates of pay or be provided compensatory release time which may be accumulated and utilized at the unit member's discretion.
- 34.7.2 Unit members whose duties would be impacted by an Individual Educational Program shall be provided the opportunity to serve on the team responsible for developing, reviewing, and/or revising such program. The District shall provide the unit member with release time without loss of compensation. Unit members involved in the development of Individual Educational Programs during instructional preparation time or after regular hours of employment shall receive their hourly rates of pay or compensatory released time which may be accumulated and utilized at the unit member's discretion.
- 34.7.3 Unit members, whose service on Individual Educational Program teams requires them to conduct a pupil assessment, shall be released from their regular duties for that purpose without loss of compensation. During instructional preparation time or after regular hours of employment unit members shall receive their hourly rates of pay or compensatory released time, which may be accumulated and utilized at the unit member's discretion.
- 34.7.4 The District shall not assign an Individual With Exceptional Needs to the class of any unit member until 24 hours after that unit member has been provided with a copy of the Individual Educational Program of the incoming pupil.

- 34.7.5 The District recognizes that some Individuals With Exceptional Needs may not meet or exceed the growth projected in the annual goals and objectives of the pupil's Individualized Education Program. In such instances, a unit member's accountability shall be limited to having implemented the services provided by the District.
- 34.7.6 The District shall, when implementing any core program, take into account the impact on existing categorical and special programs and coordinate the programs accordingly.

TOPIC: FAIR HEARINGS

Because of the extreme cost involved in private school placement, it is important that unit members are prepared for hearings and assist the district in planning for such hearings.

SAMPLE LANGUAGE

34.8 Fair Hearings

- 34.8.1 When a unit member is required to participate in a fair hearing or other due process procedure, the District shall provide the unit member with release time without loss of compensation. If the fair hearing is held during instructional preparation time or after regular hours of employment, unit members shall receive their hourly rates of pay or be provided compensatory release time which may be accumulated and utilized at the unit member's discretion for the purpose of preparing for and participating in such hearing.
- 34.8.2 Counsel retained to represent the District in any such hearing shall consult with the unit member regarding preparation for the hearing.

TOPIC: INSTRUCTIONAL AIDE TIME

The funding formulas for special education instructional aides allow for flexibility on the part of the District in assigning them. Most special education teachers need instructional aides for at least the instructional time that they are with pupils.

SAMPLE LANGUAGE

34.9 Instructional Aide Time

- 34.9.1 The District shall provide not less than one instructional aide to assist each unit member assigned to a special education class during all of the instructional time for which the unit member is responsible. In the absence of the regular aide, a substitute aide shall be assigned.

TOPIC: CLASS SIZE

Consideration should be given to the number of sites, the distance between sites, and staff travel time required when establishing caseloads at the local level. Class size problems are Association-wide. Unless the District is wealthy, any resolution to the problem is probably going to be achieved in incremental steps. The best way to achieve class size provisions that really work is to do long-range planning, implementing a program over a period of years. Calculations on class size reduction are in the regular class size section of this manual.

SAMPLE LANGUAGE

(NOTE: Rather than using the language listed below, CTA recommends that Associations propose language as listed in Article 27, Class Size. This language is given as an additional resource should it be needed during the bargaining process.)

- 34.10 Mandated special education classes and/or specialist caseloads shall not exceed the following maximums which apply to all pupils for whom ongoing direct service or consultation is provided:

34.10.1 Special Day Classes

34.10.1.1	Pre-school	
	Intensive	8 pupils
	Non-intensive	10 pupils
34.10.1.2	K-12	
	severely handicapped	8 pupils
	orthopedically handicapped	8 pupils
	multi-handicapped	6 pupils
	language disordered	10 pupils
	learning handicapped	10 pupils
	emotionally disturbed	6 pupils
	hearing impaired	8 pupils
	non-categorical mixed	8 pupils
	visually impaired	10 pupils

34.10.1.3	Resource specialist	20 pupils
34.10.1.4	Designated instructional services	45 pupils
	Speech & language, including duplicated and unduplicated	45 pupils
	Adaptive P. E.	55 pupils
	Psychological services	
	Regular education	1000:1
	Severely handicapped	1:22 classes
	Resource specialist program, Special day classes	1:10 classes
	Hearing impaired	12 pupils
	Vision impaired	18 pupils
	Orientation and mobility	12 pupils
	Health/Nursing services	20:1
34.10.1.5	School Nursing Service:	
	Regular and special education K-6	1200:1
	Regular and special education 7-12	500:1
	Special education	100:1
34.10.1.6	All pupils constituting the caseload of a resource specialist assigned to a school which operates on a year round basis shall be enrolled in the same track(s) to which the resource specialist is assigned.	

TOPIC: PROFESSIONAL DEVELOPMENT

The Education Code mandates professional development for both general and special education teachers and mandates the process for the development and implementation of the professional development. More information is available under Article 21, Hours and Adjunct Duties, Article 28, School Improvement, and Article 30, Professional Growth.

SAMPLE LANGUAGE

(NOTE: This section would normally fit under the Hours Article and is intended as a source of additional ideas. Associations should consider the language listed below in light of other proposals it may make under the Hours and Adjunct Duties Article of the contract.)

34.11 Professional Development

- 34.11.1 The District shall annually provide two days of professional development programs for unit members whose duties are impacted by the special education local plan.
- 34.11.2 The professional development programs shall be designed by a committee, the majority of which shall be appointed by the Association. Unit members designated to design staff development programs shall be released from their regular duties for that purpose without loss of compensation.
- 34.11.3 Unit members participating in professional development programs shall be released from their regular duties without loss of compensation.
- 34.11.4 Unit members teaching in special classes and centers shall receive the same number of professional development days as other unit members at their school site.
- 34.11.5 The utilization of new instructional models shall not be required of unit members assigned to special education positions until after the District has provided released time for and offered appropriate training to unit members regarding the use of such models.

TOPIC: SPECIALIZED HEALTH CARE PROCEDURES

See Article 22, Safety.

TOPIC: FULL INCLUSION

Full inclusion exists when pupils with disabilities attend age-appropriate regular education classes in their home school, for the same number of instructional minutes as their peers, with appropriate support and funding. A SELPA/LEA (Local Education Agency) which intends to pursue full inclusion should lay the groundwork using its Community Advisory Committee to update its local plan. Any site to be impacted by full inclusion should organize a site team composed of the unit members referenced in the IEP of the impacting IWEN and the site administrator for the purpose of coordinating, supporting, and evaluating the implementation. Sites should be provided with SELPA/LEA funds to support planning and implementation of full inclusion. Unit members referenced in the IEP of any Individual with Exceptional Needs (IWEN) impacted by full inclusion shall be provided time during regular hours to prepare for implementing the

requirements of the IEP. A SELPA/LEA should not utilize full inclusion as a ruse to reduce the budgetary encroachment of the special education program. A SELPA/LEA should seek a waiver from the State Board of Education to maintain Instructional Personnel Service Units (IPSUs) for IWENs who are fully enrolled in the regular education so as not to lose special education support funding. The case load of Special Day Class (SDC) unit members waived to serve IWENs within a full inclusion program should be no greater than their case load when assigned to a SDC.

SAMPLE LANGUAGE

34.13 Full Inclusion

- 34.13.1 A Full Inclusion Planning Team consisting of the full inclusion special day class teacher and the general education teachers with identified full inclusion pupils shall be organized at each site with identified full inclusion pupils.
- 34.13.2 Each full inclusion site shall receive an additional allocation of funds to support planning and implementation of the full inclusion program as follows: \$800 per fully included pupil at grade levels K - 6; \$1,000 per fully included pupil at grade levels 7 - 12. The Full Inclusion Planning Team shall determine the utilization of such funds to support full inclusion at their site.
- 34.13.3 Release time of one day per month shall be allocated to unit members who are teachers of identified full inclusion pupils, to provide planning time with the full inclusion special day class teacher and other support personnel.
- 34.13.4 Unit members impacted by full inclusion should be provided specialized training necessary for successful implementation. Such training shall be at the unit member's request and with release time or compensation at the unit member's hourly rate of pay.
- 34.13.5 Three days of staff development/training shall be provided for unit members with identified full inclusion pupils. Such staff development/training shall be on release time or compensated at the unit member's hourly rate of pay.
- 34.13.6 Each full inclusion site shall be supported with full inclusion special day class teachers with instructional aide time assigned to them for allocation among the pupils in relation to each individual pupil's IEP goals.
- 34.13.7 The implementation of a Full Inclusion Program shall not be utilized as a tool for a reduction in staff.

- 34.13.8 The class size/case load assigned to a full inclusion special day class unit member shall not exceed ten pupils.
- 34.13.9 The determination of the size of classes with fully included pupils shall take into consideration any extraordinary demands on physical space, unit member contact, and/or unit member supervision.
- 34.13.10 Any unit member who will be impacted by full inclusion shall receive prior notification.
- 34.13.11 Unit members whose number of annual duty days is extended in order to implement a full inclusion program shall be compensated at her/his daily rate of pay for those days.
- 34.13.12 Unit members shall not be required to accept assignments in the full inclusion program.
- 34.13.13 The District shall not deny to any unit member assigned to a full inclusion class the right to transfer to a vacant position for which the unit member has an appropriate credential and greater seniority than other applicants for the vacancy.

LEGAL REFERENCES

A. Education Code Cited

- 44903.7 - Local special education plan development; certificated employee rights
- 45342 - Instructional aide positions; titles
- 51745.6 - Ratio of independent study pupils to certificated employees responsible for independent study
- 56001 - Provision of programs
- 56001 - Provision of programs; operative date of section
- 56031 - Special education
- 56100 - Duties
- 56170 - Local plans; election
- 56171 - Local plans; duties
- 56190 - Establishment; advisory capacity
- 56191 - Membership; appointment; responsibility
- 56192 - Composition
- 56194 - Authority; responsibilities
- 56220 - Written agreements by entities participating in local plan
- 56221 - Adoption of policies; entities operating programs and services
- 56222 - Cooperative development and updating
- 56240 - Staff development programs; coordination with other programs

- 56243 - Legislative intent; regular classroom teachers; training
- 56245 - In-service training programs; learning disabilities
- 56302 - Identification and assessment of needs; planning of instructional program; identification procedures
- 56320 - Educational needs; requirements
- 56322 - Persons conducting assessment; competency; determination
- 56339 - Special education and related services; instructional program provided in regular education program
- 56340 - Meetings to develop, review and revise individualized education programs
- 56341 - Individualized education program team; review of individualized education program; electronic recording of meetings; legislative intent
- 56342 - Duties of individualized education program team; review by local governing board; time limit; waiver
- 56345 - Individualized education program; contents of statement
- 56347 - Individualized education programs; knowledge of content of programs by teachers; provision of copies of programs; confidentiality
- 56400 - Special education local plan area; application to operate demonstration program; resources; criteria; goals; review of application
- 56728.7 - Public school programs for exceptional needs pupils; establishment; pilot programs

B. Government Code Sections Cited

- 7573 - Special education and related services

C. Miscellaneous

5 Cal. Code of Regs. Section 80032.2: Special Education Training for Teachers and Administrators

20 U.S.C. 1401 et seq. - "Education of the Handicapped Act"

ENGLISH LANGUAGE LEARNERS (ELL)

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ARTICLE 35

ENGLISH LANGUAGE LEARNERS (ELL)

The California Department of Education records indicate that in 1999 there were 1,406,166 English Language Learners in public schools. In the past decade, K-12 English Language Learner student population has more than doubled, going from 742,599 to 1.4 million students. Ninety percent of English Language Learners speak one of four languages: Spanish, Vietnamese, Hmong and Cantonese. Eighty-one percent are Spanish speakers.

ELL programs in districts impact unit members in a variety of ways, including transfers, inservice training, and professional issues.

CTA has a comprehensive policy on Bilingual Programs. In part, it states:

Teachers within bilingual programs shall assume the same professional rights and responsibilities and be treated in the same manner as other certificated staff members with regard to seniority rights, tenure, salary, professional rights and responsibilities, academic freedom, and all other matters crucial to maintaining a high level of professional status.

CTA also has a comprehensive policy on Salaries and Fringe Benefits. In part, it states:

CTA is opposed to differentiated staffing programs.

These two policies support the long-fought-for single salary schedule concept, which prevents discrimination and favoritism. It is one of the cornerstone concepts that provide equal pay to women and men in the teaching profession. From time to time, some districts propose differentiated staffing for teacher shortage positions. CTA has resisted such proposals in defense of the single salary schedule concept in an effort to make all teaching salaries competitive.

CTA, however, is not opposed to extra pay for extra work. This concept may be found in much of the sample language in this manual. The sample language provided here gives LEP teachers the opportunity to develop a LEP program in their districts which is created and maintained by teachers. For this extra work, extra pay would be provided.

SB 1969 (Chapter 1178, Statutes of 1994) provides that:

- * Permanent teachers, as of January 1995, may teach in SDAIE classrooms after completing a 45 hour staff development training program.
- * Permanent teachers, as of January 1995, who have been teaching for nine (9) or more years — and who certify that they have experience or training in teaching ELL students — may also teach ELD in a self-contained classroom after completing a 45-hour staff-development training program.
- * Permanent teachers, as of January 1995, with less than nine (9) years classroom experience may teach ELD in a self-contained classroom after completing a 90-hour staff-development training program (45 in SDAIE and 45 in ELD).
- * Three (3) semester unit — or four (4) quarter unit — university classes in SDAIE and/or ELD may be substituted for the 45 staff-development hours. Additionally, the 45 staff development hours may be counted as three (3) semester or four (4) quarter unit courses for teachers who wish to pursue the CLAD or BCLAD.

SB 1969 is a temporary means of providing additional training to experienced teachers. The training, barring extension by the legislature, must have been completed before January 1, 1998.

Since the passage of SB 1969, CTA has been involved at every step to ensure its proper teachers who were permanent on or before January 1, 1995, and who have completed the 45 hours of targeted staff development to teach the subjects of their basic credentials to ELL pupils in a Specially Designed Academic Instruction in English (SDAIE) program. Additionally, it allows teachers who were permanent on or before January 1, 1995, with nine years' experience, including certificated LEP experience, who have completed the 45 hours of targeted staff development, to teach English Language Development (ELD) in a self-contained classroom. Teachers who were permanent on or before January 1, 1995, but who have taught less than nine years, or have taught nine or more years but cannot certify teaching experience and/or training with LEP students, who completes an additional 45 hours (total of 90 hours) of staff development may be assigned to teach ELD in a self-contained classroom. An additional three (3) years may be utilized to complete this staff development requirement after the 45 hours in SDAIE training. It also allows teachers to use the staff development to satisfy part of the 150 hours of professional growth required to maintain an active credential. This legislation sunset on January 1, 1998.

In August of 1995, the Commission on Teacher Credentialing issued *Guidelines for Staff Development Programs for Teachers of English Learners* as California Code of Regulations Title 5, Sections 80680 through 80690.1. Under these new guidelines, teachers affected by SB 1969 need to complete staff development programs, which may be provided by their school districts. These staff development programs may be offered by the school district or other approved organizations.

CTA is developing a training program to provide teachers an opportunity to qualify as providers of English Language Development (ELD) and Specially Designed Academic Instruction in English (SDAIE) in accordance with the provisions of SB 1969. After the program is piloted and perfected, it will be subjected to an approval process required by the Commission on Teacher Credentialing.

Teachers affected by new certification requirements related to language acquisition are being advised to declare in writing their intention to pursue SB 1969 training. Under the newly adopted regulations, such a declaration should be sufficient to qualify for provisional assignment. Local Associations should check with their CTA staff person as to the content of such a letter of intent.

Under federal and state laws and guidelines, teachers without the appropriate certification (Language Development Specialist (LDS), English as a Second Language (ESL) authorization, Bilingual Specialist, Bilingual Emphasis, Bilingual Crosscultural Credential (BCC), Crosscultural Language and Academic Development (CLAD), or Bilingual Crosscultural Language and Academic Development (BCLAD)) are not allowed to teach English Language Learners in SDAIE or ELD in self-contained classrooms. Increased enforcement of these requirements would force many experienced teachers to divert their energies from classroom instruction to completing additional university course work on their own time and at their own expense. Associations should seek to incorporate into contracts only the minimum level of CTC guidelines for the documented experience requirement for teachers with nine years' experience. Districts may increase this guideline if it is not bargained as the requirement.

As with other special positions, do not allow the district to force a teacher into a program just because they have a credential for the program. Maintain transfer rights. This may be done by keeping silent on the subject (ELL teachers are in the unit and regular transfer provisions apply to them as to all other teachers) or specifically list the right.

This recommended language proposes to cut bureaucratic waste by providing only services that directly touch children. It is suggested that Associations seek waivers of any regulations or law that require administration. Seek to have unit members administer the program for extra pay.

SAMPLE LANGUAGE

(NOTE: The language recommended here suggests main ideas that need to be covered in any ELL proposal. Bargaining teams need to meet with unit members regarding the specifics of these main ideas. Some bargaining units may wish for a high degree of control of the educational program, such as running the program without administrative oversight and distributing the money saved as compensation for teachers doing this extra work after their regular classroom assignments. Other teachers may be comfortable in their assignments without such control.)

35.1 Unit members serving in English Language Learners positions, including ELD/SDAIE, shall have the opportunity to participate in the determination and evaluation of the components of the District's ELL program.

(NOTE: Additional language will need to be developed to implement the concept of "participate." Local bargaining teams need to discuss this subject and define the process in their proposal.)

35.2 Unit members shall have the opportunity to participate in the ongoing diagnosis of pupils.

35.3 Unit members shall be given input into the selection of state recognized student assessment instruments.

35.4 Pupil progress shall be evaluated annually by qualified certificated personnel utilizing unit member input. Unit members shall be provided an amount of pupil-free time during their regular workday to complete the pupil evaluations specified herein.

35.5 Pupil reclassification criteria shall be determined with unit member input and state-recognized assessment instruments. Unit members shall be provided an amount of pupil-free time during their regular workday to complete the pupil reclassification criteria specified herein.

35.6 Unit member selected computer equipment and programs, which supplement the primary language in the content area, shall be provided to ELL pupils.

35.7 Unit members shall be provided with appropriate and sufficient instructional materials for ELL pupils.

35.8 The District shall maintain the Commission on Teacher Credentialing guidelines for experience documentation as the documentation required by the District.

35.9 The District shall provide staff development programs in accordance with California Code of Regulations Title 5 Sections 80680 through 80690.1 which have been approved by the Association. For the purposes of this section, the District shall meet

and plan with Association representatives for the implementation of these staff development programs.

- 35.10 Unit members required to complete course work and staff development training for ELL related credentials, or certificates shall be fully reimbursed for the costs of such training. Reimbursement shall include tuition to an accredited college or university, cost of inservice programs, and mileage to attend class.
- 35.11 If the District requires a letter of intent from a unit member related to an ELL assignment, such letter format shall be approved by the Association before the letter is submitted to the unit member to sign.
- 35.12 The District shall not deny to any unit member serving in a ELL assignment the right to transfer to a vacant position for which the unit member has an appropriate credential or certificate and greater seniority than other applicants for the vacancy.

(NOTE: Section 35.12 is redundant if the Agreement has clear, unlimited transfer language.)

- 35.13 All unit members working with ELL pupils shall have a full-time aide.
- 35.14 LEP pupils shall be weighted as 1.2.

(NOTE: See Article 27, Class Size.)

- 35.15 Unit members required to complete training, outside their regular workday, needed for CLAD, BCLAD or SB 1969 certification shall be compensated at their pro rata rate of pay.

(NOTE: Teachers in California may be provisionally assigned to work with English Language Learners if they agree to pursue or are in the process of pursuing appropriate certification. Unit members should be advised not to sign contractual agreements that are contingent upon the attainment of SB 1969, CLAD or BCLAD certification. If a unit member enters into such an agreement, there should be specific language specifying that the district will pay any and all costs associated with certification [e.g. course work, training, materials, travel, testing and CTC fees].)

- 35.16 Unit members who accept provisional assignments to work with English Language Learners shall be given not less than five (5) years to complete SB 1969 certification, (should the SB 1969 program be extended beyond January 1, 2000) and not less than seven (7) years to complete BCLAD certification. Additional years may be granted by mutual agreement among the unit member, the Association and the District.
- 35.17 Unit members who, upon being hired by the District, sign an agreement, as a condition of employment, to obtain SB 1969, CLAD and/or BCLAD

certification shall have all the rights specified in Sections 35.10, 35.15 and 35.16 above. In addition, such unit members shall be reimbursed for all expenses for the purchase of required materials, travel, testing and CTC fees related to obtaining the agreed upon certification.

(NOTE: A local that has contract language which limits the number of different course preparations to which a unit member can be assigned, should treat a course requiring SDAIE instructional techniques as a separate and additional course preparation.)

LEGAL REFERENCES

A. Education Code Sections Cited

11320.1 - Distance Learning Pilot Projects for English As A Second Language Learners
44253.1- 10 - Credential Requirements for Teaching ELL Students (includes SB 1969)
44380 - Alternative Certification

B. Government Code Sections Cited

17500
17580
17810

COUNTY OFFICES OF EDUCATION

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ARTICLE 36

COUNTY OFFICES OF EDUCATION

COUNTY OFFICES OF EDUCATION contracts generally have the same provisions as regular K-12 contracts except that some Articles must contain special provisions to accommodate unique programs. These special provisions are discussed below. County Office programs primarily consist of special education, juvenile court schools, alternative education, special schools such as specialized high schools for the arts, head start, ROP, and other categorical programs.

Teaching assignments are usually offered for ten (10) month positions in programs such as special education. Twelve (12) month teaching assignments are usually offered in programs such as juvenile court schools. The Association should construct two separate salary schedules for such differences so that unit members will receive proper credit with the State Teachers Retirement System. Both types of schedules should reflect the same daily rates of pay. Extended hours may be an issue, especially if teachers are serving in classrooms operated by other school districts. In the case of extended hours, the contract should specify pro rata per diem hourly rates of pay for unit members working beyond a regular County Office work assignment. Teachers working twelve (12) month assignments should have provisions increasing the number of sick days and other like benefits for additional service during a school year.

Transfer provisions may need attention because of the distances some transfers might involve in a County Office work assignment. The normal concept of worksite or school in a County Office contract may need to be modified to include specific geographic regions or administrative areas because of the sparsity of unit members in County Offices.

County Office Associations should consider the language presented in the various chapters of the manual and adapt provisions to fit the unique needs of their specific County Office. Associations are urged to consult with CTA staff when drafting County Office language.

What follows are specific issues that County Office bargaining teams need to address and include in certain Reference Manual contract articles as they are incorporated into the County Office contract.

ARTICLE 2 RECOGNITION

Although the law permits County Offices to keep certain non-teaching unit members such as nurses, counselors, and psychologists on temporary status, language granting permanent status to these unit members can be incorporated into the Recognition Article. This may be a difficult issue, but the local chapter may be able to organize around the issue to push the County Office toward an agreement.

ARTICLE 3 DEFINITIONS

"District" is the County Superintendent of Schools or the County Board of Education, whichever is appropriate.

(NOTE: Generally, if the County Superintendent is elected independent of the County Board, then the County Superintendent is the "District." If the County Superintendent is appointed, then the County Board is the "District".)

ARTICLE 11 ORGANIZATIONAL SECURITY

Because of the scattered employment locations of County Office local association members, add language requiring the County Office to distribute membership material to new bargaining unit members, and distribute membership cards and related membership material to returning unit members. The County Office can distribute these materials by U.S. mail, or any other efficient means at its disposal.

ARTICLE 12 ASSOCIATION RIGHTS

Again, because of the scattered employment locations of County Office local association members, add language granting a larger number of Association release days so that Association leaders can get around to see all members. Also, because many County Boards of Education meet during the workday (unlike K-12 School Boards that generally meet in the evenings), add language granting release time for a number of Association leaders to attend the County Office Board meetings.

ARTICLE 13 ASSIGNMENT, TRANSFER AND REASSIGNMENT

Because of the large geographical area served by many County Offices of Education, add involuntary transfer language that restricts such a transfer to within a certain number of miles from the unit member's current employment location. As an alternative, any involuntary transfer beyond a certain number of miles from the unit members current employment location results in the County Office paying, at the specified mileage rate, for additional miles driven to the new worksite.

Because County Offices generally offer a wide variety of programs both within the special education area, and the court and community schools programs, add to the assignment and transfer sections language requiring that a unit member must have

recent experience in the program to which the unit member will be assigned or transferred. Many County Office unit members have multiple credentials, and even though the unit member may hold a credential appropriate to an assignment, the unit member may not have any experience working in that program.

ARTICLE 14 REDUCTION IN FORCE

Of special interest to County Office associations is the issue of "take backs", when a school district within the county decides to directly offer a special education program currently provided by the County Office, and thereby take back a group of special education students from the County Office. Such a loss of students could result in the loss of one or more bargaining unit positions. What results is a special kind of reduction in force that needs to be addressed in this contract article.

Education Code Section 44903.7 defines certificated employee rights whenever this type of "take back" occurs, which then requires some reorganization of the special education program within the county. Local chapters should add language to this article referencing Education Code Section 44903.7, and all of the rights included therein on behalf of bargaining unit members who may be impacted by the reorganization.

An additional issue is that the rights specified in Education Code Section 44903.7 deal with the special education program only. No similar rights exist in law should a "take back" occur in a non-special education area such as a community day school. Local chapters should add language to this article granting certain rights to unit members impacted by the take back of a community day school program. Such rights could include priority to fill vacancies in other County Office positions, release time to seek other employment, and severance pay.

ARTICLE 15 EVALUATION

Within the evaluation procedures section (15.1), make certain that the definition of the unit member's "primary evaluator" is clear and unambiguous. Because County Office unit members often work with students in facilities operated by a local school district or other agency, it should be clearly defined that the unit member's evaluator is the unit member's supervisor in the County Office program, and no one else.

Within the public complaints section (15.4), make certain that any complaint lodged against a County Office unit member is processed through the complaint procedures delineated in the County Office contract. Again, because County Office unit members work with students in many different facilities operated by school districts or other agencies, complaints should be referred to the County Office, and not processed by another agency.

County Office unit members often find themselves working in secure facilities such as county jails and juvenile halls. These facilities have numerous security systems, including video surveillance cameras and monitors. Include language in the evaluation procedure section prohibiting the use of video systems, and any videotape derived from such systems for unit member evaluation purposes. See also Article 22, Safety, Section 22.1.7.

County Office unit members may work at multiple locations belonging to other agencies, and may end up working with students in small "left over" spaces. To make sure that itinerant County Office unit members have proper work areas and facilities at all locations at which they work, add language to the teaching conditions section (15.7) of this article ensuring proper space, facilities, ventilation, furniture and supplies necessary to carry out the instructional program.

ARTICLE 17 TEMPORARY UNIT MEMBERS

Because of teacher shortages, particularly in special education and other specialized areas that comprise the bulk to County Office programs, many County Offices must hire unit members who are not fully credentialed, and work under provisional credentials, waivers or emergency credentials. As a result, these unit members are kept on temporary employment status until they receive full certification. In order to expedite the time it takes to move these unit members to permanent status, add language to this article stating that unit members who have been employed on temporary status for two or more years with the County Office, and subsequently receive full certification, shall be moved to permanent status immediately upon receiving full certification. This language would avoid the necessity of these unit members having to complete a probationary status year after already completing two or more years on temporary status.

ARTICLE 21 HOURS AND ADJUNCT DUTIES

Some County Office unit members may work a full-year calendar of 220 to 260 days. Therefore, in the work year section (21.7) of this article be sure to cover the issue of vacation time. Language should be added specifying the number of paid and/or unpaid vacation days, whether unit members have limited or unlimited accrual of vacation days, provision for unit members to redeem vacation days for cash and seniority rights should there be a conflict among unit members over desired vacation days.

Because many County Office unit members work at sites belonging to school districts or other local agencies, the issue of the work year calendar can be confused. The County Office contract contains a bargained work year calendar that may differ from the calendar in a school district where a County Office unit member conducts his/her program. Add language to the work year section of this article clearly specifying the number of required workdays for County Office unit members, regardless of work location. County Office unit members should not be required to work more days than

other unit members do simply because of work location. It may be necessary to establish different calendars for different work locations, as long as the number of required workdays is consistent among calendars.

ARTICLE 23 LEAVES

Add a specific provision for a new type of leave of absence whereby a County Office unit member shall be granted a leave for one or more years to take a similar position in a school district within the county. At the end of the leave period, the unit member would have the same return rights to a County Office position as other unit members returning from leave. This type of "opportunity" leave would be important at a time when local school districts are considering "taking back" programs currently offered through the County Office. County Office unit members would have an opportunity to work in a school district prior to having to make a decision when a "take back" occurs. See the discussion under Article 13, Assignment, Transfer and Reassignment, above.

ARTICLE 27 CLASS SIZE

Add to this article class size maximums for community day school classes suggested at no more than 12 students, and court school classes suggested at no more than 10.

LEGAL REFERENCES

Education Code Cited

- 1240 - County Superintendent of Schools - Powers and Duties
- 1294 - County Superintendent of Schools - Classification as a Permanent Employee
- 1316 - County Superintendent of Schools - No loss of salary as a result of transfer from County
- 1510 - County Superintendent of Schools - General Fund
- 2550 - County Superintendent of Schools - Revenue Limits
- 1000 et seq. - County Board of Education - Generally
- 14050 - County Superintendent of Schools - Budget Approval
- 42630 - County Superintendent of Schools - Warrants
- 44843 - County Superintendent of Schools - Employment Contracts
- 44903.7 - Local Special Education Plan Development - Certificated Employee Rights
- 48915 et seq. - County Board of Education - Student Supervision, Expulsion Appeals
- 56000 et seq. - Special Education - Generally
- 56207 - Transfer of educational programs and services
- 74104, 74134, 74153 - County Superintendent of Schools - District Organization and Reorganization Petitions

CHARTER SCHOOLS

ARTICLE 37

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ARTICLE 37

CHARTER SCHOOLS

CHARTER SCHOOLS were created by The Charter Schools Act of 1992. The legislation established a procedure to create not more than 100 Charter Schools in California, which would receive public funding but would generally not be subject to the Education Code. The legislation authorized a school district governing board or a county board of education, in response to a petition signed by a specified percentage of teachers, to grant a revocable charter authorizing operation of a Charter School for up to five (5) years subject to renewal for additional five-year periods. The legislation permitted a school district to convert all of its schools to Charter Schools, if a petition is approved by the state board of education and the superintendent of public instruction. The legislation prohibited conversion of a private school to a Charter School.

In May 1998, AB 544 was enacted. The law, which became effective as of January 1, 1999, increased the maximum number of Charter Schools to 250 for the 1998-99 school year and allowed an additional 100 Charter Schools per year thereafter. The legislation also repealed the previous cap of ten (10) charters in any single school district.

The new Charter School legislation also revoked the prior language granting much of a school district's discretion in granting charters. School districts or County Offices are now required to grant a charter unless it makes a written factual finding that: 1) the charter presents an unsound educational program; 2) the Charter School proponents are unlikely to successfully implement the charter program; 3) the petition does not contain the required number of signatures; 4) the petition does not contain an affirmation of the requirement of the Education Code Section 47605(d) (non-sectarian practices, non-discrimination, admission not according to residence except attendance area preference); or 5) the petition lacks the essential elements of a charter petition (such as the description of the educational program, measurable pupil outcomes, etc., described in Education Code Section 47605(b)(5)(A-N).

For start-up schools, petitions may be signed by parents of pupils equal to one-half of the number of pupils expected in the Charter School or teachers equal to one-half the number of teachers

expected to be employed at the Charter School. For conversion of an existing public school, the petition must be signed by 50% of the permanent teachers at that site.

Petitions must prominently state that a signature means the parent is "meaningfully interested" in having his or her child attend the Charter School or the teacher is "meaningfully interested" in teaching at the charter. The proposed charter must be attached to the petition.

The school district's governing board denial of a petition can be appealed to either the county board of education or the State Board of Education. The same standards of authorization apply to the appeal agency. If either fails to act within 120 calendar days, the governing board's petition denial shall be subject to judicial review. Education Code Section 47605(j).

Each Charter School must comply with the conditions of its charter petition, including achieving identified educational objectives, health and safety standards, and racial and ethnic balance. School districts are prohibited from requiring any pupil to attend or any employee to be employed by a Charter School. Charter Schools must be nonsectarian and may not discriminate on the basis of ethnicity, national origin, gender, or disability; they may not determine admission based on the residence of the pupil within their attendance area. Admission to a Charter School is to be determined by a random public drawing, with preference extended to pupils residing in the district and pupils currently attending the Charter School. Education Code Section 47605(d)(2).

The legislation permits Charter School employees to participate in the State Teachers Retirement System under certain conditions. Charter School teachers are required to hold certificates or other documents equivalent to that which teachers in other public schools must hold. These documents must be maintained on file at the Charter School and are subject to inspection by the chartering authority. Education Code Section 47605(l).

The Charter School petition can be reviewed as the Charter School employee "Bill of Rights". Without documenting all rights and benefits for Charter School teachers in the petition, such rights will not exist. Emphasis should be placed on the need for teachers to retain their rights as bargaining unit members with all of the benefits and protections provided by the collective bargaining agreement, California and federal laws applicable to public school employees including Government Code, Sections 3540-3549.3 (Educational Employment Relations Act), and applicable California Education Code Sections.

The Charter School petition should also reference the qualifications for employment such as an appropriate California teaching credential, a description of the rights of any employee of the school district upon assuming an assignment in a Charter School, and of any rights of return from a Charter School to the school district, as well as the inclusion of the association in any procedures to amend the Charter School petition. Teachers should be advised not to sign a charter unless all provisions of the charter are carefully defined, including association, employee and student rights.

Charter Schools have a right to use, at no charge, facilities not being used or rented by the school district. The Charter School "shall be responsible for reasonable maintenance of those facilities." Education Code Section 47614.

The legislation requires that Charter Schools petitioners provide information to the school district governing board regarding the proposed operation of the school, including the "manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school and upon the school district". Petitioners are also required to provide a proposed first-year operational budget, including start-up costs, and cash flow and financial projections for the first three years of operation.

The legislation provides that for purposes of the California Constitution a Charter School is under the authority of the public schools and constitutes a school district for the purposes of the Proposition 98/111 minimum funding guarantee. A Charter School will receive operational funding (non-capital) equal to the total funding that would be available to a similar school district serving a similar pupil population but it may not be funded as a necessary small school or a necessary small high school, nor may it receive revenue limit funding that exceeds the statewide average for a school district of a similar type. Education Code Section 47613.5.

Districts may charge for actual costs of supervision of Charter School to a maximum of 3% if the Charter Schools obtain rent-free facilities from the district and otherwise to a maximum of 1% of the revenue of the Charter School. In addition, the Charter School may purchase administrative or other services from the district or other chartering agency. Education Code Section 4613.7.

The legislation permits a Charter School to be operated by, or operate as, a non-profit corporation. The school board is entitled to a representative on the non-profit board. Where charters are operated by non-profits, the chartering authority shall not be liable for the debts of the Charter School. Education Code Section 47604(a)(b)(c).

The legislation imposes a state-mandated local program by requiring school district governing boards to review and respond to charter petitions within a specified time period.

The legislation requires the Charter School to promptly respond to inquiries (including inquiries regarding financial records) from the chartering authority of the Superintendent of Public Instruction. Education Code Section 47604.3. The Charter School is also required to consult on a regular basis with parents and teachers regarding the Charter School's educational programs. Education Code Section 47605(c)(2).

Fiscal mismanagement is a ground for the chartering agency to revoke the charter. Education Code Section 47607(b). The chartering agency is required to give notice and provide an opportunity to correct prior to revocation unless it is a severe health or safety threat. Section 47607(c). The legislation also allows the State Board of Education, upon recommendation of the Superintendent of Public Instruction, to take appropriate action including revocation of a school's charter if it finds gross financial mismanagement, illegal or improper use of Charter School funds, or substantial and sustained departure from proper educational practices. Education Code Section 47604.5

In addition, AB 434, which takes effect on January 1, 2000, mandates that Charter Schools conform to the minimum instructional minutes, state testing program, independent study and ADA audit requirements imposed on regular K-12 schools.

Associations that have a Charter School or schools forming within their district are advised to contact CTA staff for assistance. The chapter has the right to negotiate the impact of a Charter School petition on the bargaining unit by communicating a demand to bargain as soon as the Association becomes aware of any Charter School petition being considered by the school board. A sample "Demand to Bargain Letter" is provided at the end of this section. CTA has a variety of publications including the Charter School Staff Handbook Briefing Materials and Training Guide, designed to assist locals in helping teachers design charters that will not jeopardize employee rights while giving schools the freedom to create innovative programs for pupils.

The CTA recommended language for Charter Schools involves a guarantee that all unit members and future unit members of a Charter School are covered by the contract. If a significant number of employees at the Charter School wish to amend the collective bargaining agreement for their school, then they would petition the Association and the District for a site specific contract amendment. The contract amendment process guarantees that employees will have the right to enforce any extraordinary provisions, which apply only to their worksite, as well as regular contract provisions. See Article 28, School Improvement, for specific language on waivers. The recommended language also includes a provision to provide the Association with sufficient time to review a Charter School petition prior to the District's approval.

In 1999, AB 681 was enacted which requires that a Charter School petition declare whether the Charter School shall be deemed the exclusive representative of the employees of the Charter School for purposes of the Educational Employment Relations Act (EERA). AB 631 gives Charter School teachers the right to organize and bargain under the EERA. Therefore, if it is not possible to achieve the recommended sample language given below, Charter School teachers may organize a new bargaining unit, and negotiate a new contract under the provisions of the EERA. Contact your local CTA staff for assistance.

SAMPLE DEMAND TO BARGAIN LETTER

TO:

FROM:

RE: Demand to Bargain Charter School Issues

The _____ Association hereby demands to bargain the decision to establish any Charter School, changes in working conditions to be implemented at any Charter School, changes in working conditions affecting non-Charter School employees as a result of any Charter School, and the impact of any proposed Charter School on bargaining unit members. The decision to establish a Charter School will affect bargaining unit members in many areas within the scope of bargaining including, but not limited to, the following:

1. Transfer rights of unit employees to Charter School positions.
2. Assignment rights of unit employees who choose not to be employed in Charter School.
3. Return rights of unit employees who are employed by the charter school, including seniority and salary schedule credit.
4. Right of Charter School employees to participate in STRS.
5. Terms and conditions of employment of Charter School employees if Charter School employees remain employees of the District and, therefore, within the certificated employee bargaining unit.
6. Layoffs that may be necessitated if new employees are hired by the charter school to teach students currently taught by bargaining unit members who choose not to work in the Charter School.
7. Contracting out of bargaining unit work.

The _____ Association also demands to consult regarding standards for approving Charter School petitions to the extent that the petitions impact educational objectives and curriculum.

SAMPLE LANGUAGE

- 37.1 This Article is intended to provide Charter School employees with rights under the Collective Bargaining Agreement, to provide the Association time to review a Charter School petition prior to the District's approval, and to provide Charter Schools a mechanism for a site specific amendment(s) during the term of this Agreement for the purposes of school improvement.
- 37.1.1 All Charter School employees shall be employees of the District granting the charter and shall be included under the Collective Bargaining Agreement between the District and the Association, and shall be covered by the provisions of the Educational Employment Relations Act.
- 37.1.2 At the time the District is aware of the circulation of a charter petition, the District shall so notify the Association.
- 37.1.3 Within ten (10) days of receipt of a completed Charter School petition, the District shall send a copy of such petition to the Association.
- 37.1.4 Prior to the District's approval of a Charter School petition, the Association be provided not less than thirty (30) days in order to review said petition.
- 37.1.5 Upon notification to the Association, the District shall consider waivers to this Agreement. The notification shall contain a list of provisions of this Agreement to be waived, and the waivers, along with the effective date and duration of the waivers.

Comment: It is helpful for waivers to have a specific beginning and ending date, an evaluation proves to determine the effectiveness of the waivers and a process to extend such waivers should it be desired. The Association must be involved in monitoring such waivers. See Article 28, School Improvement, for more detailed information on waivers.

- 37.1.5.1 If the District and the Association ratify the proposed waivers, the District and the Association shall inform the unit members at the Charter School worksite and the District shall distribute copies of the waivers to all unit members at the Charter School worksite and the Association.
- 37.1.5.2 All waivers shall, upon ratification by the parties, be fully incorporated into this Agreement.

(NOTE: Waivers of board policy and law are found in Article 12, Association Rights. Provisions and procedures for waivers of contract provisions are found in Article 28, School Improvement.)

LEGAL REFERENCES

A. Education Code Cited

- 46201 - Instructional Minutes
- 47600 - Title of act ("Charter Schools Act of 1992")
- 47601 - Legislative intent
- 47602 - Limits on number of Charter Schools; conversion of private schools to charter schools prohibited
- 47603 - Construction of part; funding or assistance
- 47604 - Charter Schools as a non-profit
- 47605 - Petition; public hearing; charter granted or denied; statement and conditions; performance standards and conduct; admission; restrictions; review panel
- 47606 - School district converting all schools to Charter Schools; conditions; approval by joint action of superintendent of public instruction and state board of education
- 47607 - Charter term; renewal; material revision of charter; revocation
- 47610 - Compliance with charter petition; exemptions
- 47611 - Participation in State Teacher's Retirement System
- 47612 - Apportionments; appropriations; school district
- 47613 - Charter School operational funding
- 47614 - Charter School use of facilities
- 47615 - Distribution of Charter School information
- 47616 - Review; report
- 51747 - Independent study
- 60600 - State testing programs

B. Government Code Sections Cited

- 3540 et seq. - EERA

TECHNOLOGY AND RELATED
CONTRACT PROVISIONS

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ARTICLE 38

TECHNOLOGY AND RELATED CONTRACT PROVISIONS

SAMPLE LANGUAGE

38.1 The District shall provide each unit member with legally purchased and licensed software for each computer workstation and/or network necessary for the support of educational programs provided by the District, such as programs for classroom management, student data, attendance, grading, record keeping, curriculum based software and other software tools to support instruction.

38.2 The District shall provide protections on the use of student records to prevent unauthorized access to such information.

- 38.3 The District shall provide all services necessary to maintain the safe and effective functioning of all networks, communication equipment and lines, computers, peripherals, cables and other devices under the supervision of unit members.
- 38.4 The District shall assure that all students and the parents/guardians of such students, given access to District computers and/or the Internet, sign an *Acceptable Use Agreement* (included herein) defining rules of proper and appropriate use of the computer equipment and Internet access prior to being allowed to use District computer equipment and software.
- 38.5 There shall be a joint committee made up of _____ members, the majority of which shall be selected by the Association and the District shall appoint the remaining members. The committee shall be responsible for designing the conditions of the "Acceptable Use Agreement".
- 38.6 Upon written request by the bargaining unit member, the District shall provide unit members with all training necessary to fulfill both their contractual commitments and classroom obligations. The District shall provide training appropriate to the individual teacher's needs as well as his or her grade level and courses taught. No employee shall be evaluated on skills prior to the District providing appropriate training.
- 38.7 The District shall assure that no students are assigned to a computer-based class in excess of the number of computer workstations. In no case shall the class size for computer-based classes or those with technology enhancements exceed the class size of comparable classes lacking computers or technological enhancements.
- 38.8 In recognition of the fact that technological devices and software are changing rapidly and that no contract provision can foresee the nature of these changes, the District and the Association agree to form a Technology Oversight Committee to make non-binding, non-precedent setting recommendations to the Superintendent or his/her designee and the Association President or his/her designee proposing appropriate actions to deal with such technological changes. These recommendations shall not involve any discipline of unit members. The Association and the District agree that recommendations are to relate only to the issues at hand and are not to apply to future circumstances, which must be examined on their own merits.
- 38.8.1 The Committee shall be composed of three Association appointees, three District appointees and one mutually agreed upon member.
- 38.8.2 The Committee shall conduct a technology and technology-related needs assessment.
- 38.8.3 The Committee may recommend training or additional training for unit members to be granted supervision rights for technology using students or equipment.

- 38.8.4 The Committee may recommend equipment, network access and software selection and use as well as revision or alteration of procedures for computer use or for student supervision.
- 38.9 Employees shall have the right to use E-mail (or whatever website) to communicate with other employees of the District and other individuals and/or organizations within the scope of their professional responsibilities. Bargaining unit members who have signed the "Acceptable Use Agreement" shall not be disciplined for unsolicited receipt of inappropriate material.
- 38.10 The Association shall have the use of the District E-mail (or whatever website) to communicate with their unit members.
- 38.11 The District shall not distribute evaluations or information of a confidential or personal nature related to unit members through E-mail or any unsecured media.
- 38.12 The District shall provide each teacher with an amount, i.e., one-half day, etc., of release time at the end of each grading period, i.e., quarter, trimester, for unit members to enter final grades and comments on the electronic grade card system. Unit members shall not be liable for any breach of student confidentiality caused by electronic maintenance of student records.
- 38.13 The District shall provide adequate training for teachers to utilize the electronic attendance accounting system. Unit members shall not be held liable for any breach of student confidentiality caused by the electronic maintenance of student records.
- 38.14 Distance Learning
- 38.14.1 It is the intent of the parties to offer a variety of classes that would otherwise not be available to pupils except through Distance Learning. Distance Learning may be provided to pupils under circumstances mutually agreed upon between the District and Association. When a Distance Learning class is started, a certificated teacher shall teach the class.
- 38.14.2 For the purposes of this Agreement, Distance Learning means the use of electronic devices and media, including television and computer educational programs and material used in the education of pupils, parents, community and staff.
- 38.14.3 Assignments to Distance Learning positions shall be voluntary.
- 38.14.4 Distance Learning unit members shall have a regular preparation period.

- 38.14.5 The maximum number of pupils assigned to any Distance Learning class shall be consistent with Article 27, (Class Size).
- 38.14.6 Unit members shall be provided on a voluntary basis with initial and on-going training in education technology during release time or at their daily or hourly rates of pay. The District shall offer such inservice to all interested unit members for the purpose and implementation of education technology and Distance Learning.
- 38.14.7 Videotaping of instruction to be televised later shall be made only with the unit member's prior written approval.
- 38.14.8 Additional compensation for broadcast, rebroadcast, use or sale of Distance Learning material shall be subject to written mutual agreement between the Association and the District.
- 38.14.9 Distance Learning unit members shall have total control over any and all videotapes of any televised instruction.
- 38.14.10 Unit members, whose instructional presentations are videotaped or who create the ideas or materials for use in videotapes or who participate in the production of videotapes, publications or other educational material, including computer programs, shall be given royalty rights if the District decides that it is of commercial value and produces it for profit. Additionally, such unit members must give permission if such presentations are used for other purposes such as inservice education, and support of new teachers.
- 38.14.11 Evaluations of unit members assigned to Distance Learning classes shall be in accordance with the evaluation procedures in this Agreement.
- 38.14.12 When electronic means are unavailable, the District shall provide, at District expense, U.S. Mail and/or parcel service for the purpose of transporting documents, homework, class work, tests and materials between the originating site and the sites to which pupils are assigned.
- 38.14.13 The District agrees that it shall hold harmless all unit members and the Association from any and all actions, suits, claims, damages, judgments, or other forms of liability which any person or entity may have or claim to have, now or in the future, arising out of or by reason of a unit member's involvement in Distance Learning or the Association's execution of this Agreement.

ARTICLE 38 ATTACHMENT

SAMPLE ACCEPTABLE USE AGREEMENT

DISTRICT SCHOOL

SCHOOL/STUDENT-USE CONTRACT

Ethical use Agreement for Technology Equipment and Resources

Students, please read this document carefully. When signed by you, it becomes a legally binding contract. We must have your signature and that of your parent/guardian before we can provide you with an access account.

Listed below are the provisions of this contract. If any use violates these provisions, access to the information service may be denied, and you may be subject to disciplinary action.

Terms and Conditions of this Contract

Agreement: In exchange for the use of the _____ computer network, I understand and agree to the following:

1 Personal Responsibility:

As a representative of this school, I will accept personal responsibility for reporting any misuse of the network to the principal. Misuse can come in many forms, but it is commonly viewed as any messages sent or received that indicate or suggest pornography, unethical or illegal solicitation, racism, sexism, inappropriate language and other issues. I will not engage in "hacking", or any type of inappropriate intrusion into or disruption of any other computer or computer system.

2. Acceptable Use:

The use of my assigned account must be in support of education and research and with the educational goals and objectives of _____. I am personally responsible for this provision at all times when using the electronic information service.

- a. Use of other organization's networks or computing resources must comply within rules appropriate to that network.*
- b. Transmission of any material in violation of any United States or other state organizations is prohibited. This includes, but is not limited to: copyrighted material, threatening or obscene material or material protected by trade secrets.*

- c. Use of commercial activities by for-profit institutions is generally not acceptable.
- d. Use of product advertisement or political lobbying is also prohibited.
- e. Access to online services that provide information considered to be pornographic or immoral is also prohibited.

3. *Privileges:*

The use of the information system is a privilege, not a right, and inappropriate use will result in a cancellation of those privileges. Each person who receives an account will participate in a discussion with a _____ faculty member as to proper behavior and use of the network. The principal will decide what is appropriate use and her/his decision is final. The principal may close an account at any time if necessary. The administration, staff, or faculty of _____ may request the school deny, revoke, or suspend specific user accounts.

4. *Netiquette (Network Etiquette):*

You are expected to abide by the generally accepted rules of network etiquette. These rules include, but are not limited to the following:

- a. **BE POLITE:** Never send, or encourage others to send abusive messages.
- b. **USE APPROPRIATE LANGUAGE:** Remember that you are a representative of our school and District on a non-private system. You may be alone with your computer, but what you say and do can be viewed globally. Never swear, use vulgarities, or any other inappropriate language. Illegal activities of any kind are strictly forbidden.
- c. **PRIVACY:** Do not reveal home addresses or personal phone numbers.
- d. **ELECTRONIC MAIL:** Electronic mail (E-mail) is not guaranteed to be private. Everyone on the system has access to all mail. Messages relating to, or in support of, illegal activities must be reported to the authorities.
- e. **DISRUPTIONS:** Do not use the network in any way that would disrupt use of the network by others.

5. *Areas of Use:*

The use of _____ computer should be for the purpose of (in order of priority):

- a. Academic support
- b. Communication
- c. General Information

Games, whether online, or CD-ROM, or on diskettes, are not acceptable uses of the system unless specifically designated by a teacher or staff member as academic support.

Students may not copy or remove District installed software. Students may not install software on District computers.

6 *Services:*

_____ makes no warranties of any kind, whether expressed or implied, for the service it is providing. _____ will not be responsible for any damages you suffer while on this system. These damages include loss of data, as a result of delays, non-deliveries, miss-deliveries, or service interruptions caused by the system on your errors or omissions. Use of any information obtained via the information system is at your own risk. _____ Specifically denies any responsibility for the accuracy of information obtained through its services.

7. *Security:*

Security on any computer system is a high priority because there are so many users. If you identify a security problem, notify the teacher at once. Never demonstrate the problem to other users. Never use another individual's account without written permission from that person.

8. *Ethical Use:*

Plagiarism of ideas of information will be grounds for disciplinary action. Theft or privacy of software and/or vandalism will result in cancellation of privileges. Vandalism is defined as any malicious attempt to harm or destroy data of another user to any other agencies or networks that are connected to the system. This includes, but is not limited to, the uploading or creation of computer viruses. Any vandalism will result in the loss of computer services, disciplinary action, and legal referral.

REQUIRED SIGNATURES

STUDENT

I understand and will abide by the provisions and conditions of this contract. I understand that any violations of the above provisions may result in disciplinary action, the revoking of any user account, and appropriate legal action. I also agree to report any misuse of the information system to _____.
Misuse can come in many forms but can be viewed as any messages sent or received that indicate or suggest pornography, unethical or illegal solicitation, racism, sexism, inappropriate language, and other issues described above. All the rules of conduct described in the District publication entitled "Guide for Parent and Students" apply when I am on the network.

Student's Name (please print) _____

Student's Signature _____ *Date* _____

REQUIRED SIGNATURES

PARENT OR GUARDIAN

As the parent/guardian of this student, I have read this contract and understand that it is designed for educational purposes. I understand that it is impossible for _____ to restrict access to all controversial materials, and I will not hold the school responsible for materials acquired on the network. I also agree to report any misuse of the information system to the principal. Misuse can come in many forms but can be viewed as any messages sent or received that indicate or suggest pornography, unethical or illegal solicitation, racism, sexism, inappropriate language, and other issues described above.

I accept full responsibility for supervision if and when my child's use is not in a school setting. I hereby give my permission to issue an account for my child and certify that the information contained on this form is correct.

Parent's or Guardian's Name (please print) _____

Signature _____ Date _____

SPONSORING TEACHER

I have read this contract and agree to promote this agreement with the student. Because the student may use the network for individual work or in the context of another class, I cannot be held responsible for the student's use of the network. As the sponsoring teacher, I agree to instruct the student on acceptable use of the network and proper etiquette. I also agree to report any misuse of the information system to _____. Misuse can come in MANY forms but can be viewed as any message sent or received that indicate or suggest pornography, unethical or illegal solicitation, racism, sexism, inappropriate language, and other issues described above.

Teacher's Name (please print) _____

Signature _____ Date _____

LEGAL REFERENCES

A. Education Code Sections Cited

- 44276 - Computer education; teacher training and performance standards; study
- 51870 - Legislative intent
- 51871 - Definitions
- 51872 - California planning commission for educational technology; establishment; membership, term of office
- 51873 - Educational technology committee; establishment; membership; compensation; conflict of interest
- 51873.5 - Education technology committee; duties
- 51873.7 - Additional staff services
- 51873.9 - Superintendent; duties
- 51874 - Local assistance grants; awards; evaluation procedures; criteria
- 51874.2 - Local assistance grants; technological use plans
- 51874.4 - Local assistance programs; support by act
- 51874.6 - School based adoption and adoption grants; funding; local planning criteria; state criteria; applications
- 51874.8 - Innovative research and development grants; purposes criteria; matching grants
- 51875 - Educational technology research and demonstration schools; funding purposes
- 51876 - Study of impact of educational technology on academic achievement; dissemination of information; grants
- 51876.5 - Annual evaluation of grants; report
- 51877 - Regional assistance programs; support by act
- 51877.5 - Network of instructional television agencies
- 51878 - Legislative findings and declaration
- 51878.5 - Special deposit fund account; use of funds collected from sale of educational computer software
- 51879 - Legislative intent; funding
- 51879.5 - Duration of article
- 58800 - Legislative intent to establish specialized high schools providing high technology training
- 58801 - Proposals for schools with specialized curricula; allocation of start-up funds
- 58801.5 - Funding for additional start-up costs
- 58802 - Model curricula; review, evaluation and report
- 58803 - Non-credentialed Teachers
- 58804 - Allocations from appropriate funds; revenue limits; calculation
- 60076 - Royalties or other compensation

B. Government Code Sections Cited

C. Miscellaneous

5 California Code of Regulations

55316.5 - Distance Learning at Community Colleges

55352 - Distance Learning at Community Colleges

55370 et seq. - Distance Learning at Community Colleges

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REFERENCES

The references listed here support the information and sample contract language presented in this manual. Some or all of these references are available in CTA UniServ offices, CTA Regional Resource Center offices and the CTA Legal Department.

CALIFORNIA CODE OF REGULATIONS, TITLE 5. EDUCATION, Vol. 6, (Barclays Law Publishers, San Francisco, CA)

The rules and regulations adopted to clarify and support Education Code provisions, and other education related statutes.

CALIFORNIA EDUCATION CODE SERVICE, CONSOLIDATED INDEX, (USA Publishing Company, San Pablo, CA)

A complete, and easy to use index to the Education Code.

CALIFORNIA PUBLIC EMPLOYEE RELATIONS (CPER), (Institute of Industrial Relations, U.C. Berkeley, Berkeley, CA)

A bi-monthly periodical that contains articles, analysis and reports on a variety of public sector labor relations issues.

CALIFORNIA PUBLIC EMPLOYEE RELATIONS (CPER) POCKET GUIDE SERIES, (Institute of Industrial Relations, U.C. Berkeley, Berkeley, CA)

A series of easy reference guides that contain introductory material, explanations of statutes and annotated lists of important Public Employment Relations Board (PERB) and court cases related to public sector employment.

Pocket Guide to the Educational Employment Relations Act
Pocket Guide to Public Sector Arbitration: California
Pocket Guide to Unfair Practices: California Public Sector
Pocket Guide to Workplace Rights of Public Employees

CALIFORNIA PUBLIC EMPLOYEE REPORTER, (LRP Publications, Horsham, PA)

Yearly volumes that contain the full text of California Public Employment Relations Board (PERB) Administrative Law Judge and Board decisions.

CALIFORNIA SPECIAL EDUCATION PROGRAMS: A COMPOSITE OF LAWS (California Department of Education, Sacramento, CA).

A single volume that contains the Education Code and Title 5 sections related to special education; also contains other California statutes related to special education.

CREDENTIAL HANDBOOK, (State of California, Commission on Teacher Credentialing, Sacramento, CA)

Contains all of the Commissions credentialing rules and regulations.

CTA ARBITRATION REPORTER, (LRP Publications, Horsham, PA)

A regularly updated binder containing summaries of school district, county office and higher education arbitration decisions and awards from throughout California.

SPECIAL EDUCATION (Frequently Asked Questions About Special Education) FAQ CTA Instruction & Professional Development Department

THE ADMINISTRATOR'S ASSIGNMENT MANUAL, (State of California, Commission on Teacher Credentialing, Sacramento, CA)

A slimmed down version of the Credential Handbook designed as a reference to ensure proper teaching assignment placement of credentialed teachers.

WEST'S ANNOTATED CALIFORNIA CODES, EDUCATION CODE, (West Publishing, St. Paul, MN)

Eleven volume set of the complete code.

Zerger, K., Janiak, P., Johnson, J., and Kay, W., CALIFORNIA PUBLIC SECTOR LABOR RELATIONS, (Matthew Bender & Company, N.Y., N.Y.; Oakland, CA; Albany, N.Y.)

A useful guide to, and discussion of public sector labor relations statutes, court decisions, and administrative agency rulings.