

Contract Reference

Manual

July 2019



FOREWORD

In the forty three 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 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. Articles will be available in separate files to maximize its usefulness. It will be periodically updated by the CTA Center for Organizing and Bargaining.

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 from the CTA Center for Organizing and Bargaining (C4OB) who wrote and compiled this latest revision. Credit also goes to members of the Instruction and Professional Development Department, Department of Legal Services, and Governmental Relations, for their contributions. Finally, a special thanks goes to Lindsey Tatnall, Associate Staff in CTA's San Marcos office and Gina Domenici in the Center for Organizing and Bargaining for all the work they did on the format and word processing.

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.

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, and other 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, results of one on one conversations and small group meetings, and Association goals and objectives. Proposals should be fashioned 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 forty three 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 some suggested considerations before making a proposal and 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.

CONTRACT REFERENCE MANUAL-TEACHER

(May, 2019)

FOREWORD

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Article I: 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

- I.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."
- I.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."
- I.3 This Agreement shall remain in full force and effect from _____ until _____.

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

- I.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.

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

3540.1(l) - Recognized organization

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

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)

Article 4: Negotiations Procedure

NEGOTIATIONS PROCEDURE provides a basic format for the parties to begin negotiations for a reopener or a successor Agreement. An Association should consult with CTA professional staff if considering a multiple-year 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.

SUGGESTED CONSIDERATIONS PRIOR TO INITIATING THE NEGOTIATIONS PROCEDURE

What does the law require?

- The EERA sets three (3) years as the maximum duration of an Agreement.
- The EERA codifies the right of the exclusive representative of public school employees to negotiate with the employer regarding wages, hours, and other terms and conditions of employment. These are mandatory subjects within the scope of bargaining, as are employer decisions that impact, or have an effect on, these subjects. Ground rules and specific bargaining methods fall within the mandatory subjects of bargaining. Consider these issues in consultation with CTA professional staff.
- In addition, the EERA grants certificated employees the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law. By mutual agreement, the parties are free to engage in the consultation process on matters outside the scope of representation. The governing board of a school district shall consult with local bargaining units in developing an LCAP. See Article 3I: Consultation.
- The EERA provides for a reasonable number of representatives of the exclusive representative the right to receive reasonable periods of released time without loss of compensation when meeting and negotiating and for the processing of grievances.

NEGOTIATIONS PROCEDURE ARTICLE

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 for contract reopeners. 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. Both parties shall possess an electronic copy of the Agreement.

LEGAL REFERENCES

Government Code: Chapter 10.7 - Educational Employment Relations Act - Meeting and negotiating in public educational employment

3540.1(h) – Meeting and negotiating

3543.1(c) – Rights of employee organizations

3543.2(a) – Scope of representation

3543.3 – Negotiations

3543.7 – Duty to meet and negotiate in good faith; time

California Code of Regulations Title 5 – LCFF Regulations

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

ARTICLE 6: NON-DISCRIMINATION

In light of several legal and policy developments, it is no longer recommended to negotiate non-discrimination provisions in collective bargaining agreements. Additionally, it is recommended that non-discrimination provisions be removed from existing agreements.

TOPIC: NON-DISCRIMINATION

California state law provides very strong protections for employees who are discriminated against on the basis of race, color, creed, sex, religion, disability and other protected characteristics. By including a non-discrimination clause we risk waiving our bargaining unit employees' right to access administrative agencies and the courts to litigate those claims. Arbitration of statutory claims can be disadvantageous to bargaining unit members and to our chapters. When an agreement mandates or permits arbitration of statutory discrimination claims, a union may not only waive an employee's right to access the courts, but may also waive an employee's right to a jury trial. Further, arbitrators are often not well-equipped to handle the complex analysis and application of statutory discrimination laws and are not bound to strictly apply the rules of evidence. Discovery is also more limited in arbitration, which can disadvantage an individual employee. Finally, as the caselaw discussed below makes clear, when discrimination claims are subject to grievance and arbitration procedures, a union risks being ordered to take every claim to hearing, resulting in financial and other burdens on the exclusive representative.

In 2009, the U.S. Supreme Court ruled in *14 Penn Plaza v. Pyett*, 129 S.Ct. 1456, that a union may waive an individual's right to pursue statutory discrimination claims in the courts if the CBA does the following:

1. Contains an express prohibition against protected characteristics under federal, state and local laws,
2. Specifically names the statute, and
3. Explicitly states that all claims arising under said statute are subject solely to the arbitration procedure.

The majority in *Penn Plaza* explained that CBA provisions meeting these criteria do not create a waiver of statutory rights, but merely waive an individual's right to access the courts, and suggested that the union's duty of fair representation would provide sufficient protection for individuals when their rights to a robust arbitration process were not adequately protected by the union.

Significantly, even CBAs that do not clearly and unmistakably waive an employee's right to access the courts, but simply allow for the option to arbitrate discrimination claims, can cause problems for employees and unions. In 2013, the California Court of Appeal concluded that a labor arbitration award, pursuant to a CBA, may bar the employee from bringing a common law claim alleging retaliation and wrongful termination in violation of public policy, if the arbitration award addressed the same cause of action. *Wade v. Ports American Mgmt. Co.* (Cal. Ct. App. 2013) 218 Cal.App.4th 648. The CBA at issue stated that "All grievances and complaints alleging

incidents of discrimination or harassment ... in connection with any action subject to the terms of this Agreement based on race, creed, color, sex ... or alleging retaliation of any kind for filing or supporting a complaint of such discrimination or harassment, shall be processed solely under the Special Grievance/Arbitration Procedures For The Resolution of Complaints Re Discrimination and Harassment Under the Pacific Coast Longshore & Clerk's Agreement....” The CBA’s grievance provision arguably did not meet the standard set forth by Penn Plaza, because it did not name any specific statute.

In *Wade*, the union submitted a grievance to arbitration, asserting that an employee was wrongfully terminated (1) despite his seniority over three remaining employees, (2) as a result of his prior filing of grievances alleging racially discriminatory practices by MTC employees and management, and (3) due to MTC’s “continue[d] [and] demonstrate[d] unfair discriminatory practices against minority employees.” The case proceeded to arbitration and all three grounds of the grievance were presented to the arbitrator and argued. After losing at arbitration, the employee filed suit in state court against his employer alleging retaliation and wrongful termination in violation of public policy. The Court held that the employee was barred under the doctrine of res judicata from bringing his claim for retaliation and wrongful termination in violation of public policy in superior court, because the arbitrator had previously resolved that issue against him.

The bottom line is that when non-discrimination provisions fail to make clear that statutory claims are not subject to arbitration, we risk waiving the right of bargaining unit members to pursue these claims in a judicial forum. In addition, because arbitrators may not be well-equipped to process and decide statutory discrimination laws, it is wiser policy to preserve the statutory rights of all employees to seek relief through administrative and court procedures, with the assistance of their own private legal counsel.

SAMPLE LANGUAGE

If an employer insists on negotiating non-discrimination language, the following language is recommended:

Article 6 Non-Discrimination

- 6.1 The employer acknowledges and agrees that it shall comply with all state and federal non-discrimination laws. The parties further agree that any employee who alleges violations of state or federal non-discrimination laws shall proceed with those claims in the appropriate administrative and/or judicial forum and that such claims are not subject to grievance and arbitration procedures.

Article 7: Savings

SAVINGS is boilerplate language in a contract used to protect the remainder of a contract if any portion is deemed contrary to law, whether by a change in statute or by a court with jurisdiction over the parties to the contract. Savings clauses must be read in conjunction with AGREEMENT, MANAGEMENT RIGHTS, and NEGOTIATIONS PROCEDURES because those articles may affect the parties' duty to bargain. It may be to the advantage of the association to have a closed contract for a specific period of time despite the change to the contract brought about by court decision or statutory change. Two sample language options are provided. Option 1 requires the parties to negotiate if a court invalidates a provision of the contract. Option 2 permits the parties to negotiate upon mutual agreement. Care must be exercised to consider external and internal factors, such as capacity and leverage, when choosing which option to pursue.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING A SAVINGS PROPOSAL

- Read the CBA carefully for language that modifies the general duty to continuously bargain in good faith. Such modifications are typically contained in zipper clauses, term of agreement, and management rights articles, however, those articles may have a different name such completion of agreement, negotiations procedures, maintenance of agreement or support of agreement.
- Statutory changes or court orders do not always take effect immediately. Sometimes there is a grandfathered provision and/or relief from the change taking effect until the end of a contracts term. Option 1 could require negotiations immediately regardless of any grandfather or relief provisions. Option 2 could limit the association's right to bargain.
- Consider that statutory changes often take effect on January 1 of the year following the year of the bill. Court decisions sometimes take immediate effect. More often than not, the change will usually not occur in conjunction with bargaining and/or when the association has the greatest leverage. Bargaining a contract provision stand-alone usually favors management because the association has less leverage.
- Consider the parties bargaining history. Do the parties bargain 3-year closed contracts? Do the parties always have multiple reopener provisions? If a change occurred today, what effect would the current CBA provisions have?

SAMPLE LANGUAGE

- 7.1 Improvements in contractual provisions 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 as of the date the statute went into effect.
- 7.2 Reduction or elimination of contractual provisions 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.

- 7.3 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.
- 7.4 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.

SAMPLE LANGUAGE OPTION 2

- 7.1 Improvements in contractual provisions 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 as of the date the statute went into effect.
- 7.2 Reduction or elimination of contractual provisions 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.
- 7.3 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.
- 7.4 Upon mutual agreement, the parties shall commence negotiations regarding matters related to the contractual provision held contrary to law by a court of competent jurisdiction.

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

Article 8: Professional Rights

Professional Rights 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. It includes PERSONNEL FILE, PUBLIC COMPLAINTS, PERSONAL AND ACADEMIC FREEDOM, CLASSROOM AIDES AND STUDENT TEACHERS, and TEACHING CONDITIONS

SUGGESTED CONSIDERATIONS PRIOR TO MAKING A PROFESSIONAL RIGHTS PROPOSALS

PERSONNEL FILES

- Does the contract limit the ability for the district use personnel files and public complaints in evaluation?
- Are there provisions that protect the unit member 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.
- Is there language to allow the unit member reasonable time to respond to material placed in the personnel file? It is recommended that there not be a time limitation on responses.
- Do unit members have access their personnel file so they can review it to ensure accuracy?
- Is there a limitation on who can access unit member's personnel file? Is the unit member allowed to know who has accessed their file and when?
- Is there a provision for a unit member to obtain copies of what is placed in the personnel file?

PUBLIC COMPLAINTS

- Is there a provision that guarantees that employees will be notified in writing of all public complaints?
- Does the contract provide for an employee to respond to or eliminate a complaint from District records if it is unjustified?
- Is there language to allow the unit member reasonable time to respond to complaints?

PERSONAL AND ACADEMIC FREEDOM

- Are there a provisions that guarantee to unit members, 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.
- Are there provisions that protect unit members from adverse actions based on disagreement regarding how professional obligations are met.

CLASSROOM AIDES AND STUDENT TEACHERS

- Are there provisions for unit members to be actively involved in all facets of their working relationships with student teachers and aides, and provides mechanisms for reassignment should the working relationship prove unsatisfactory.

TEACHING CONDITIONS

- Are there provisions that protect the unit member from adverse evaluation due to a unit member's work with aides, volunteers, and/or student teachers.
- Are there provisions that guarantee unit members will have the necessary equipment, materials and supplies to perform their duties.

PERSONNEL FILE

SAMPLE LANGUAGE

8.1 Personnel File

- 8.1.1 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 Evaluation Procedures.
- 8.1.2 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:
 - 8.1.2.1 Were obtained prior to the employment of the unit member involved.
 - 8.1.2.2 Were prepared by identifiable examination committee members.
 - 8.1.2.3 Were obtained in connection with a promotional examination.
- 8.1.3 Information of a derogatory nature, except material excluded in accordance with Section 8.1.2 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.

- 8.1.4 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.
- 8.1.5 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.
- 8.1.6 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

SAMPLE LANGUAGE

8.2 Public Complaints

- 8.2.1 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:
- 8.2.1.1 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 8.2.1.
- 8.2.1.2 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.
- 8.2.1.3 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.
- 8.2.2 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.

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

PERSONAL AND ACADEMIC FREEDOM

SAMPLE LANGUAGE

8.3 Personal and Academic Freedom

- 8.3.1 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.
- 8.3.1.1 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.
- 8.3.1.2 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.
- 8.3.2 Unit members must be employed, promoted, or retained without discrimination or harassment regarding their personal opinions or their scholarly, literary or artistic endeavors.
- 8.3.3 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.
- 8.3.4 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.

CLASSROOM AIDES AND STUDENT TEACHERS

SAMPLE LANGUAGE

Classroom Aides and Student Teachers

- 8.4.1 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.
- 8.4.2 The work of instructional and clerical aides shall be under the control and direct supervision of the unit member they are assigned to.
- 8.4.3 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.
- 8.4.4 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.
- 8.4.5 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.

TEACHING CONDITIONS

SAMPLE LANGUAGE

8.5 Teaching Conditions

- 8.5.1 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.

- 8.5.2 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.
- 8.5.3 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.
- 8.5.4 Unit members shall not be expected to use or purchase supplies or personal equipment for their assignment.
- 8.5.5 The District shall provide liability coverage for any personal materials and/or property of unit members while on District property.

(NOTE: Section 8.5.4 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?)

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
51200-51229 - Required Course of Study

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

Article 9: Management Rights / No Strike / Zipper Clause

Management proposals frequently include MANAGEMENT RIGHTS, NO STRIKE, and ZIPPER CLAUSES. CTA recommends that chapters 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.

SUGGESTED CONSIDERATIONS REGARDING MANAGEMENT RIGHTS, NO STRIKE, AND ZIPPER CLAUSE PROPOSALS

- Do any of the management rights listed in the proposal or current contract language constitute “clear and unmistakable” waivers of the employer’s duty to bargain with the Association? Consult with your assigned Primary Contact Staff.
- Do any of the terms in the management rights proposal or current contract language conflict with other provisions of the collective bargaining agreement?
- Do any of the terms in the management rights proposal or current contract language permit management to unilaterally control, determine or change any subject of importance to the Association or its unit members?
- The Association should not waive its right to strike under legally permissible circumstances by agreeing to a No Strike clause. Because such clauses are not a mandatory subject of bargaining, the Association may refuse to bargain over such language.
- Zipper clauses can be used as a shield by both parties to avoid demands to bargain outside the normal course of bargaining during the term of an agreement. As such, CTA recommends proceeding cautiously when dealing with zipper clause language and speaking to your Primary Contact Staff before taking any action.

LANGUAGE RECOMMENDATIONS

What follows is sample language that may be used, if necessary, for management rights articles; no strike clauses; or zipper clauses. Please keep in mind that no strike and general management rights clauses are not in the interest of the Association to propose such language. Consult with your Primary Contact Staff if management is proposing new articles or revisions to current language concerning management rights, no strike clauses or zipper clauses.

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 districts 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. 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 LANGUAGE

- 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.

NO STRIKE CLAUSE

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. CTA strongly advises against such a concession.

Certainly, an overly inclusive No Strike 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 local 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."

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.

ZIPPER CLAUSE

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 during the term of an agreement. It does not cede to the district the power to make unilateral changes in the status quo, but it can prevent the Association from asserting its right to bargain concerning new issues. Because both parties can use these clauses as a shield to protect it from a demand to bargain, CTA recommends consulting with Primary Contact Staff before taking any action concerning zipper clauses.

SAMPLE LANGUAGE

(Note: Check with your Primary Contact Staff before accepting or offering any zipper clause language, including the language below.)

9.3 Zipper Clause

- 9.3.1 By this Agreement, the parties resolve all outstanding bargaining issues. Except as provided elsewhere in this Agreement or by mutual consent, 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.

LEGAL REFERENCES

A. Education Code Sections

- a. 52060 – 52077 – Local Control and Accountability Plans

B. Government Code Sections

- a. Government Code, Chapter 10.7 - Educational Employment Relations Board
- b. 3540.1(h) - Meeting and negotiating
- c. 3543 - Rights of employees
- d. 3543.1(a) - Rights of employee organizations
- e. 3543.2 - Scope of representation
- f. 3543.5 - Unlawful practices
- g. 3543.5(b) - Denying employee organization's rights
- h. 3543.5(c) - Refusal to bargain

Article 10: Grievance Procedure

GRIEVANCE PROCEDURE is the Article that provides the enforcement mechanism for all other Articles of the negotiated Agreement. This provision sets forth a clearly defined procedure for resolving disputes arising out of a violation, misinterpretation or misapplication of a provision of the Agreement or of a board policy, rule, practice or regulation, including the right to fair and equitable treatment.

CONSIDERATIONS PRIOR TO MAKING A GRIEVANCE ARTICLE PROPOSAL

- A grievance article should include definitions of key elements such as grievance, grievant, day, and immediate supervisor.
- The definition of a grievance needs to be broad and apply to all articles of the contract without exception.
- Does our language support resolution at the lowest possible level and limit the number of steps to resolution? Are these steps defined clearly and is there a reasonable time limit between steps?
- Is there an issue with the District granting release time for the investigating and processing of grievances? The EERA Section 3543.1.(c) provides for “A reasonable number of representatives of an exclusive representation shall have the right to receive reasonable periods of release time without loss of compensation when meeting and negotiating and for the processing of grievances.”
- Does the contract need specific language allowing the Association to file a grievance on behalf of a group or class action, or allow for the consolidation of individual grievances into a group or class action grievance?
- Does the current language specifically allow Association representation at all levels?
- Are unit member grievances currently being kept separate from the unit member’s personnel files?
- Does the Association have control over the design of the grievance form?
- Binding arbitration is the optimal final step. Absent binding arbitration, the Association may pursue legal remedies by means of filing an Unfair Labor Practice Charge (UPC) to protect against the District unilaterally changing contract language or unilaterally changing a past practice. Advisory arbitration may be used for organizing purposes, however, advisory arbitration does not enforce the contract language or past practice.
- How is an arbitrator selected?
- Is there a process for dealing with the grievability of an issue?
- Are there provisions for expedited arbitration?

- As the exclusive representative, the Association should maintain the exclusive rights on all grievance processing including oversight authority on all resolutions. Do you have specific language that affords the Association the right to determine which grievances are taken to arbitration? Note: Does your Association have an unbiased internal process for making those decisions?
- Have you included payment language and does this language share the cost between the parties instead of letting the outcome of the arbitration determine which side will pay?
- Is there a monetary limit to a grievance settlement? Have you considered the consequences of including a monetary limit? Would a monetary limit undermine your grievance article?

SAMPLE LANGUAGE

10.1 Definitions

- 10.1.1 A "grievance" is a claim by one (1) or more unit members or the Association that there has been a violation, misinterpretation or misapplication of a provision of this Agreement; or of an existing District rule, policy, regulation, practice or law; or has been treated unfairly or inequitably.
- 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.
- 10.1.5 "Immediate Supervisor" is the lowest level managerial person who has the authority to resolve the grievance and grant the remedy sought.

(NOTE: Add any other definitions as may be necessary for the administration of this Article such as other definitions of day, and Association representative. 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 arise, from time to time, affecting the welfare or working conditions of unit members

and the Association. Both parties agree that these proceedings will be confidential.

10.3 Time Limits

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

10.3.2 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.

10.3.3 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.

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

10.4 Rights of Representation

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

10.5 No Reprisals

10.5.1 No reprisals of any kind will be taken by the District or by any unit 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.

10.6 Miscellaneous

10.6.1 The Association, either on its own behalf or on behalf of more than one affected unit member, may initiate a grievance at Level Two.

10.6.2 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.

- 10.6.3 The investigation and processing of grievances and arbitrations will be accomplished during the normal workday. 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.
- 10.6.4 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.
- 10.6.5 Forms for filing grievances, serving notices, filing appeals, making reports and recommendations, and other necessary documents shall be prepared by the Association. The forms shall be printed by the District and distributed by the District and the Association so as to facilitate operation of the grievance procedure.
- 10.6.6 Upon mutual agreement of the Association and the District, a grievance may be taken directly to arbitration.
- 10.6.7 At any time, a unit member may 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 District shall notify the Association immediately of the filing and 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.
- 10.6.8 If a grievance affects a group or class of unit members and the facts with respect to all persons alleged to be aggrieved are substantially the same and the issue(s) raised by the grievance are the same as to all unit members involved, the Association may initiate and submit such grievance directly to the Superintendent. The processing of such grievance shall commence at Level Two.
- 10.6.9 Grievances may be consolidated for purposes of arbitration by mutual agreement between the District and the Association.

10.7 Procedure

10.7.1 Informal Conference

An attempt may be made to resolve the grievance by an informal conference between the unit member, if the unit member desires to be present, and an Association representative, if the unit member so desires such representation, and the immediate supervisor.

10.7.2 Level One Immediate Supervisor

10.7.2.1 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 *with the grievant and/or designated Association representative* within three (3) days of receipt of the grievance *to discuss the grievance with the objective of resolving it*. 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.

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

(Note: The sample language does not include a time limit by which the grievant or the Association must file a grievance. A time limit is usually negotiated at the insistence of the District but it will restrict the Association's ability to advocate for their unit member, if unavoidable should be in excess of twenty (20) or preferably more days from the date the Association was made aware that a violation occurred.)

10.7.3 Level Two Superintendent

10.7.3.1 The Superintendent or her/his designee shall meet with the grievant and/or designated Association representative *to discuss the grievance with the objective of resolving it* within seven (7) days of receipt of the grievance appeal. *The Association may bring any other person necessary to resolve the grievance. The Superintendent or her/his designee shall provide a written disposition of the grievance, including the reasons therefore, to all parties of interest within three (3) days of such meeting.*

- 10.7.3.2 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 if a meeting is not held, 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. This mediation step may be inserted at an earlier level if desired.)

10.7.4 Level Three Mediation

- 10.7.4.1 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.
- 10.7.4.2 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.
- 10.7.4.3 The function of the mediator shall be to assist the parties to achieve a mutually satisfactory resolution of the grievance. 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.
- 10.7.4.4 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.
- 10.7.4.5 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.

10.7.5 Level Three (or Four) Binding Arbitration

- 10.7.5.1 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.

10.7.5.2 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 violates 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.

10.7.5.3 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.

10.8 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

Government Code Sections Cited

- 3543 – Rights of public school employees
- 3543.1 – Rights of employee organizations
- 3548.5 – Agreements; final and binding arbitration procedures

- 3548.6 – Agreements; final and binding arbitration pursuant to board rules
- 3548.7 – Agreements; proceedings for failure to proceed to arbitration
- 3548.8 – Arbitration award to be final and binding; enforcement

ARTICLE 11 ORGANIZATIONAL SECURITY

In light of *Janus v. AFSCME*, 585 U.S. ____ (2018), which struck down fair share fees, and SB 866, which clarified payroll deduction of dues, it is no longer recommended to bargain Organizational Security provisions. In fact, as was explained in the post-*Janus* C4OB/Legal advisories, it is recommended that all such provisions be considered void by law and/or severed from existing contracts, as well as removed from the CBA in future negotiations (see the Joint C4OB/Legal Advisories: *Janus v. AFSCME* and Senate Bill 866 (both issued on 7/6/2018 and available on www.ctasearch.org) for details on how to address this issue).

TOPIC: DUES DEDUCTION

SB 866 amends Education Code sections 45060 and 45168 to apply to all “public school employers,” making clear that dues deduction provisions apply to charter schools, as well as traditional public-school employers. As such, districts and charter schools must continue to honor and comply with payroll dues deduction authorizations, as specified in the employee’s authorization form or card.

As amended, Education Code sections 45060 for certificated PreK-12 employees, 87833 for Community College faculty, 45168 for classified PreK-12 employees, and 88167 for classified Community College employees, clarify that the authorization, terms, and revocation of dues deduction agreements are internal union matters, and that the employer’s role is largely limited to the technical processing of dues deductions as reported by the union.

Public school employers and community college districts are required to honor the terms of their employees’ written authorizations for payroll deduction. These authorizations are to be maintained by the union, not the employer. An employer must process payroll dues deductions for all employees whom the union reports as having written authorizations. A union may provide the employer with copies of the employees’ authorization agreements but is not required to do so unless there is a dispute about the existence or terms of the agreements.

SB 866 also clarifies the process for employee revocation of dues deduction authorizations. The amendments provide that: 1) a dues deduction authorization can only be revoked in writing; and, 2) any revocation must comply with the terms of the employee’s authorization. Further, the amendments clarify that the union remains in control of any revocation: revocation requests must be directed to the union; the union decides whether a revocation request is valid; and, employers must rely on the union’s decision as to whether the revocation is effective.

The bottom line is that the employer must honor the union’s list of bargaining unit members who have authorized dues deductions and the union’s determination as to whether an employee has properly revoked a prior authorization. In most cases this will not be an issue. Employers have long accepted electronic or paper lists and even emails with names for dues adds and drops.

However, as usual, some employers will seek to make this process more difficult than the law

now allows, requiring us to be diligent in enforcing these rights. In exchange for control over the dues deduction authorization process, unions are legally required to indemnify the employer against any claims made by an employee regarding payroll deductions made based on information provided by the union to the employer.

TOPIC: INDEMNIFICATION

SB 866 already establishes that unions are required to indemnify the employer for any claims made by an employee regarding dues deductions made based on information provided by the union to the employer. Therefore, it is not necessary to bargain indemnification. However, if an employer insists on including indemnification language that is more specific than contained in the Education Code, the following language is provided for reference.

SAMPLE LANGUAGE

11.1 Indemnification for claims made by an employee for dues deductions

- 11.1.1 The Association agrees to defend and indemnify the District for any unit member's allegations, claims, actions, suits, settlements, or judgments which arise out of payroll deductions made by District in reliance on information and notification provided to the District by the Association. In defending and indemnifying the District, the Association shall have the right to select legal counsel at its sole option and expense, to control litigation strategies and decisions, and to determine whether any action or proceeding referred to above shall or shall not be compromised, resisted, defended, tried, or appealed.

TOPIC: MAINTENANCE OF DUES

The employer is not a party to the annual maintenance of dues agreement between the member and the chapter. That agreement, contained in our membership form, is an internal union matter. Thus, maintenance of dues provisions need not, and should not, be contained in CBAs. If a CBA currently contains "maintenance of dues" provisions, we recommend that those provisions be removed in bargaining.

TOPIC: MAINTENANCE OF MEMBERSHIP

We also recommend that chapters remove any current contract provisions that require "maintenance of membership" in the union. CTA permits members to drop membership throughout the year, and we continue to permit this even as we implement the maintenance of dues requirement contained in our membership form.

LEGAL REFERENCES

A. Education Code Sections

45060, 45061, 45168, 45168.5, 87833, 87834.5, 88167, 88167.5 - Dues deduction

B. Cases

Janus v. AFSCME, 585 U.S. ____ (2018)

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. This provision guarantees to the Association the right to represent all unit members in their employment relations with the district. In addition to the Association's own internal secure methods of communication, under EERA Section 3543.1(b), the Association has the right to use the district means of communication such as mail, email, bulletin boards, and buildings as a method for more public communications and to promote the Association's accessibility and visibility. And with passage of AB 119 (July 2017), public employers are required to provide the exclusive representative access to its new employee orientations and specific contact/employment information about new hires and all employees in the bargaining unit.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING AN ASSOCIATION RIGHTS PROPOSAL

- Does the Association have access to the worksite for effective and efficient operations, direct communication with the membership and observation of the work environment?
- Does the district recognize the Association's right to access to all available economic and education information upon request for member representation in bargaining and contract maintenance?
- Does the proposal provide the Association the right to appoint unit members to district and joint committees? The selection for such committees is necessary to guarantee employee rights and accountability.
- Does the proposal include presidential and leader release time? Paid release time for union business reduces the Association's expenses allowing for greater focus on other areas such as member engagement and professional development. The California Education Code and the Government Code (with the recent passage of SB 1085 (Sept. 2018)) grants union officers and stewards *union-paid* leave to conduct union business, and the Educational Employment Relations Act (EERA) guarantees reasonable *employer-paid* release time to a reasonable number of union representatives to meet and negotiate and to process grievances. See Ed. Code §§44987, 45210, 87768.5, 89511-12; Gov. Code §§3558.8, 3543.1(c). Chapters, including those in a charter school setting, can negotiate employer-paid release time that is more generous than the minimums set forth in the EERA, Government Code, or the Education Code. A June 2014 PERB Decision supported the union's right to negotiate paid release time as within the scope of representation (*Centinela Valley Union High School District*, PERB Dec. No. 2378 (2014)).
 - Consistent with Education Code section 44963 (for certificated employees) and the EERA's inclusion of leave as a mandatory subject of bargaining (see Gov. Code §3543.2(a)(1) and supporting PERB rulings), a chapter and employer can agree that employer-paid release time will be provided to union representatives who, for example, participate in joint labor-management committees; serve on a benefits

trust; attend district meetings; work on the employer's community relations programs; assist with staff trainings; and attend new employee orientations.

- Does the proposal include AB 119 (new employee orientation access) considerations, such as the structure, time, and manner of union access to new employee orientations being determined through mutual agreement between the employer and the exclusive representative? In addition, does it require the employer provide at least ten days' advance notice of the new employee orientations (unless there is an "urgent need critical to the employer's operations that was not reasonably foreseeable")? See C40B and Legal Joint Advisory, Mandatory Access to New Employee Orientations (7/10/17) on www.ctasearch.org.

Other considerations related to new employee orientations:

- Does the union need more than 10 days' notice of the new employee orientation?
- Will the notice be in writing, via email, and to whom (president)?
- Will employee attendance be mandatory and paid by the employer?
- Will union literature and/or membership/dues deduction forms be distributed?
- If the orientation is not in person (e.g., via skype or the phone), what will be the structure of the meeting, on what media, and will the union literature be provided electronically?
- Will the employer be allowed to be present during the chapter's presentation or its time with the new employee(s)?
- Does it specify the amount of orientation time that the chapter may use (60 to 90 minutes, or more, is recommended)? Has your chapter prepared to use this time well?
- Will CTA-endorsed vendors be included in the orientation and is that provided for in the proposal?
- Will the chapter have access to audio/vision equipment during its presentation, if requested?
- Will chapter leaders need release time to attend, will it be provided, and under what conditions?
- Does the chapter have the right to file a grievance over a violation of this section of the contract (or the MOU covering these issues)?
- Does the proposal include SB 1085 (union-paid officer and steward leave) considerations, such as the procedures for requesting and granting leave?
- Beyond gaining our own access to bargaining unit member contact/employment information (for member engagement, bargaining, and other purposes) we also have a legitimate interest in protecting our members, to the extent possible, from third party requests for information. Therefore, we should consider:

- Does the proposal require the District to notify the Association and impacted unit members of third-party requests for unit member's contact information within a short period of time?
 - Will impacted unit members and the Association have a reasonable opportunity to object or raise potential concerns before the employer responds to the requester?
 - Is personal information such as home address, personal email, birthdates, and union membership status not subject to disclosure? See Legal Advisory CPRA Requests for Public Employees' Contact Information (July 2018) on www.ctasearch.org.
- Be wary of waiving Association rights provided by law, regulations, or policy.

SAMPLE LANGUAGE

- 12.1 The Association has the right under the Educational Employment Relations Act to represent unit members in their employment relations with the District. Nothing in this Agreement shall be construed as a waiver of such rights.
- 12.2 Representation: The Association shall have 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."
- 12.3 District Services
- 12.3.1 The Association shall have the right to use the District e-mail and regular mail service and Unit Member mailboxes including electronic mailboxes for communications to Unit members without interference, censorship, or examination of such communications by the District.
- 12.3.2 The Association office shall be a daily pick-up and delivery point for regular (non-electronic) district mail.
- 12.3.3 The Association shall have an electronic mailbox in the District's electronic mail system.
- 12.3.4 Unit members shall have the right to access private email accounts from District computers.
- 12.4 Bulletin Boards
- 12.4.1 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.

- 12.4.2 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 electronic bulletin boards at each Unit Member's workstation or classroom.

12.5 Use of Buildings and Equipment

- 12.5.1 The Association shall have the right to use District buildings, sites, and equipment during all reasonable hours for meetings and other Association activities.
- 12.5.2 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.

12.6 Access to Worksite

- 12.6.1 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 such activities or use does not interfere with classroom instruction.

12.7 Access to Information

- 12.7.1 The District, upon request by the Association, shall provide the Association, within five (5) days, all available information concerning the financial resources and staffing of the District. In addition, the District, upon request, agrees to provide any other information the Association deems necessary to fulfill its role as exclusive representative.
- 12.7.2 The following new bargaining unit member information shall be delivered to the Association president in digital Excel format, or in any other mutually-agreed upon digital format, and hard copy, no later than 30 days after the date of hire:

1. Name
2. Home Address
3. Phone Numbers – work, home and cellular
4. Personal (non-District) Email Addresses
5. School Site
6. Grade Level/Assignment
7. Date of Hire
8. Seniority Date
9. Full time Equivalent (FTE) status
10. Employment Status (i.e., Probationary, Permanent, Temporary, etc.)
11. Type of Credential (i.e., Clear, Preliminary, Short-Term Staff Permit, Provisional Internship Permit "PIP" or College Internship, etc.)

- 12.7.3 On an ongoing basis, once each month during the school year, the District shall deliver to the Association an updated list of all information required in 12.7.2 above, as well as an indication that any unit member is on a leave of absence.

12.8 New Bargaining Unit Member Orientation

- 12.8.1 Each time a person is newly employed in a position in the bargaining unit, the District shall inform them of their employment status, rights, benefits, duties and responsibilities, and other employment-related matters.

The District shall provide an annual new bargaining unit member orientation for all newly hired bargaining unit members to take place within seven (7) calendar days prior to the first day of classes, except when no new bargaining unit members are commencing employment at the start of a given year. Any bargaining unit member(s) hired after the start of the school year shall be provided an in-person orientation/onboarding meeting within twenty-one (21) calendar days from the date of hire. New bargaining unit members shall be paid their hourly per-diem rate, based on their annual salary, for the duration of these required orientation/onboarding meetings when orientations occur outside the contract year and/or day.

- 12.8.2 The District shall provide written notice of the date, time and location of all bargaining unit member orientations/onboarding meetings, by certified or electronic mail, to the Association president and vice president no later than twenty-one (21) calendar days in advance of the annual orientation meeting(s) or ten (10) calendar days in advance of other orientation/onboarding meetings that may occur throughout that year. In the event the District is unable to comply with the stated advance notice, the District shall, at the request of the Association, reschedule the orientation/onboarding meeting and provide the advance notice. If, however, the District provides proof that there was an urgent need critical to the employer's operations that was not reasonably foreseeable, the Association shall be provided as much notice as possible.

- 12.8.3 The Association shall be provided no less than ninety (90) minutes of uninterrupted time to communicate with bargaining unit members at all new bargaining unit member orientations/onboarding meetings. Such time will not be provided at the end of a meeting day unless the Association requests to be placed at the end of the agenda. District administration shall not be present during Association time, unless the Association requests specific administrators remain present.

- 12.8.3.1 The Association is entitled to invite California Teachers Association (CTA) endorsed vendors and CTA staff to the Association portion of new bargaining unit member orientations/onboarding meetings and will have access to District audio visual equipment for Association presentations.

12.8.3.2 The Association shall have District-paid release time to attend and participate in new bargaining unit member orientations/onboarding meetings for up to three (3) bargaining unit members, selected by the Association, if any orientation/onboarding meeting is held during contractual work hours.

12.9 Promotion of Harmonious Public Employment Relations – Association Time at Faculty Meetings

12.9.1 To promote harmonious public employment relations, the Association shall be entitled to a minimum of ten (10) uninterrupted minutes at the beginning of each faculty meeting at each school site to communicate with bargaining unit members. This Association time shall be for bargaining unit members only. District and/or school site administration shall not be present during Association time.

12.10 Appointment to District and Joint Committees

12.10.1 The Association shall select Unit Member representatives to all District committees.

12.10.2 The Association shall select Unit Member representatives to all Association/District joint committees.

12.11 Release Time

12.11.1 The Association President or designee shall be provided ___% release time at no loss of salary or other benefits.

12.11.2 Bargaining Team members shall be provided release time for negotiations and negotiations preparation at no loss of salary or other benefits.

12.11.3 Grievants, witnesses, and Association representatives shall be provided release time for grievance processing at no loss of salary or other benefits.

12.11.4 Unit members working year-round shall be provided release time to attend Association (including CTA and NEA) meetings and training sessions at no loss of salary or other benefits.

(Note: If a specific percentage of release time is negotiated with no loss of pay and benefits, this can be enforced)

12.12 Notice of, and Opportunity to Oppose, Third-Party Requests for Members' Information

12.12.1 The District shall notify the Association president and the impacted unit member(s) of any third-party request for unit members' contact information within two days of receipt of the request. This includes, but is not limited to, California Public Records

Acts requests for unit member disciplinary, evaluative, or other personnel-record information. The District will not release the request for seven duty days so that the Association and impacted unit member(s) have a reasonable opportunity to object to the disclosure of the requested information and/or raise potential concerns before the employer responds to the requester and publicizes the information.

- 12.12.2 The District shall not disclose to a third-party personal unit member information such as home addresses, personal email addresses, home phone or cell phone numbers, birthdates, family member names, and union membership status.

12.13 Waivers of Law, Regulation, and Policy

- 12.13.1 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. Barring such approval, the District shall not seek the waiver.

LEGAL REFERENCES

Government Code Sections Cited

- 3543.1 – Rights of Employee Organizations
- 3543.1(a) – Right to represent
- 3543.1(b) – Use of Facilities
- 3543.1(c) – Release Time for Negotiations and Processing Grievances
- 3555 – 3559 – Public Employee Communications
- 3558.8 – Union-paid Leaves of Absence for Union Stewards or Officers
- 6254.3 – Nondisclosure of Public Employees' Home Addresses, Phone/Cell Phone, and Birth Dates

Education Code Sections Cited

- 44963 – Power to Grant Leaves of Absence
- 44987, 45210, 87768.5, 89511-12 – Union-paid Leaves of Absence for Elected Union Officers

PERB Decision Cited

Centinela Valley Union High School District (2014) PERB Decision No. 2378

Court Decisions Referenced

- Sonoma County Employees' Retirement Ass'n v. Superior Court, 198 Cal. App. 4th 986, 1004, 1006, and n. 10 (2011)
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SUGGESTED CONSIDERATIONS PRIOR TO MAKING AN ASSOCIATION RIGHTS PROPOSAL

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 - 1. Name
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 - 3. Phone Numbers – work, home and cellular
 - 4. Personal (non-District) Email Addresses
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 - 6. Grade Level/Assignment
 - 7. Date of Hire
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 - 9. Full time Equivalent (FTE) status
 - 10. Employment Status (i.e., Probationary, Permanent, Temporary, etc.)
 - 11. Type of Credential (i.e., Clear, Preliminary, Short-Term Staff Permit, Provisional Internship Permit “PIP” or College Internship, etc.)

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3543.1(b) – Use of Facilities
3543.1(c) – Release Time for Negotiations and Processing Grievances
3555 – 3559 – Public Employee Communications
3558.8 – Union-paid Leaves of Absence for Union Stewards or Officers
6254.3 – Nondisclosure of Public Employees' Home Addresses, Phone/Cell Phone, and Birth Dates

Education Code Sections Cited

44963 – Power to Grant Leaves of Absence
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TBG Ins. Services Corp. v. Superior Court, 96 Cal. App. 4th 443, 451 (2002)

Article 13: Transfer and Reassignment

TRANSFER AND REASSIGNMENT is one of the most commonly grieved articles. Because of this, it is important to negotiate clear, enforceable contract language that protects members from favoritism, and retaliation, while also establishing criteria that seem fair to all members including those that possess special skills, certificate, or credentials such as English Language. Strict seniority and credentialing are recommended criteria for voluntary and involuntary transfers/reassignments because they are fair to all bargaining unit members over the course of their careers.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING A TRANSFER AND REASSIGNMENT PROPOSAL

- What does the law allow?
 - Does the law in any way limit our ability to negotiate voluntary transfer and reassignment rights for members?
 - California Education Code Section 35036 prohibits a collective bargaining agreement from assigning priority to incumbent teachers requesting transfer/reassignment over qualified applicants after April 15 of the school year prior to the school year in which the transfer would be effective.
- Does the current language include outdated references to, or requirements deriving from, No Child Left Behind?
- Has management abused any weaknesses in your current transfer and reassignment article?
- Do the criteria set forth in the proposal sufficiently limit management discretion over voluntary and involuntary transfers or reassignments?
- Is the proposed language clear and enforceable? Does it avoid language such as the following?
 - “Management will make its *best effort*...”
 - “An involuntary transfer or reassignment of a bargaining unit member may be initiated if and when an *educational need* arises.”
- Does the article define transfer, reassignment and vacancies broadly enough so that there aren’t any loopholes that management may exploit?
- Are the voluntary transfer/reassignment application timelines and procedures unnecessarily restrictive?

What follows is sample language for voluntary transfer/reassignment; involuntary transfer/reassignment; notification of assignment; vacancies; and teacher certification. Before making any proposals, review the language to be sure it fits with the needs of your bargaining unit and is in harmony with other sections in your current transfer and reassignment article.

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. 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 within the same worksite.
- 13.1.3 A unit member may submit a request for transfer or reassignment to the District at any time, whether or not a vacancy exists. A unit member may also submit a request for a transfer/reassignment 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.

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.

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.)

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

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, post in all worksites and share via electronic email with all unit members 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/reassignment 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, subject to the provisions of CA Education Code Section 35036.

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.

LEGAL REFERENCES

A. Education Code Sections

- 35035 – Transfer/Assignment (additional powers and duties of superintendent)
- 35036 – Transfer (restriction on priority to incumbents after April 15)
- 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 and reemployment; date of employment in case of certain terminations)

B. Government Code Sections

- 3543 – Rights of Employees
- 3453.2 – Scope of representation
- 3543.5(a) – Discrimination/Reprisals

Article 14: Work Preservation/ Reduction In Force / Subcontracting

REDUCTION IN FORCE negotiations is something that Associations hope they never have to deal with. 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.

Within the scope of representation remains 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. Procedures to be used are negotiable, to the extent that they do not conflict with Education Code.

Layoffs can occur for a variety of reasons. Declining enrollment, reduced funding and reducing 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.

Contracting out is another issue that may be related to reduction in force. The alleged cost savings of contracting out bargaining unit work is 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. It is strongly advised that the Association negotiate language to prohibit contracting out even if agreement cannot be reached on a reduction in force provision. Contracting out raises very complicated legal and organizational issues. Local chapters faced with contracting out problems should contact their local CTA staff for assistance.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING A REDUCTION IN FORCE PROPOSAL

- How does the layoff of employees impact the wages, hours, and other conditions of employment of both those employees who are laid off and those who remain? What language can be negotiated to preserve benefits and clarify return rights for staff that are laid off?

- Are there provisions for training or support that can assist a laid off employee to seek other employment within the district or in another district?
- In the event of a layoff, what internal procedures can the association adopt in order to ensure the district is rehiring laid off in the proper order as specified by the Administrative Law Judge (ALJ)

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 and the education code section that authorizes temporary status for each employee;

- 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 workload 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 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.
 - 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.

- 14.2.5 Unit members who are laid off shall be entitled to a preferred right to reappointment under the Education Code. In addition, part-time unit members who are laid off shall have priority to full-time vacancies over outside applicants

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

3543.2(c) – Scope of Representation - Layoffs

Article 15: Evaluation

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. Much of what is below is from the CTA Teacher Evaluation Framework, which is recommended as a guide to maximizing the evaluation of bargaining unit members.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING AN EVALUATION PROPOSAL

- What are the goals of unit members in reforming or refining your current evaluation system?
- What issues have arisen around the evaluation article since the last time it was revised?
- How does the evaluation system strengthen the knowledge, skills and practices of unit members to improve student learning?
- How well is the current evaluation system trusted by your unit members?
- Is the evaluation system useful at all stages of a unit member's career?
- Does the evaluation article contain language that applies to unit members assigned outside the classroom?
- How does the evaluation system make use of multiple measures?
- How does the evaluation system recognize and make use of both formative and summative methods?
- Is the evaluation system effective at enhancing formative improvement?
- What types of evidence is collected and how often it is collected?
- How are unit members involved in the decision-making and procedures for collecting evidence?
- How does the evaluation system make constructive use of feedback to improve practice?
- Does the evaluation system include opportunities for peer advice and support (including, but not limited to a PAR program)? If so, are those systems effective?
- How are standards attached to evaluation criteria? (CSTP for example)
- How are evaluators held accountable for being adequately trained and consistent in their calibration of agreed upon criteria?
- How are agreed upon evaluation tools regularly monitored for validity?
- Is there a provision for keeping evaluation data confidential?
- Is there a system in place for regularly monitoring the effectiveness and fairness of the evaluation system?

- Is there adequate training of unit members and evaluators so that all can understand and apply the agreed upon evaluation system?
- How will resources be provided to accomplish the goals of the evaluation system?

TOPIC: EVALUATION PROCEDURE

This provision establishes a procedure of systematic appraisal of an employee's work performance on a regular basis. All components of any comprehensive teacher evaluation system must be collectively bargained by each exclusive bargaining representative. An evaluation system must be bargained at the local level to ensure the buy-in and trust of all stakeholders and to ensure that local conditions are addressed. Certificated employees of a particular public school employer will have unique needs and student populations that must be considered in the bargaining process. The overall goal of the bargaining process is to establish an evaluation system that is fair, valid, robust, evidence-based, and designed to improve professional practice and instruction.

California law (Cal. Education Code Secs. 44660, et seq.) currently sets forth a basic framework, including some procedural minimums, for the evaluation of certificated employees. California law also provides that all evaluation procedures, and all matters reasonably related to the evaluation process, are mandatory subjects of bargaining between a public school employer and an exclusive bargaining representative (Cal. Gov. Code Secs. 3540 et seq.). Any teacher evaluation system will have many components, which range from identifying indicators of effective practice to identifying procedures for contesting an unfair or inaccurate evaluation. By developing and implementing all of these components through collective bargaining, the local employee representative can help ensure that evaluations will be valid, just, and provide educators with meaningful information for improving professional practice. An effective evaluation system must include both formative and summative indicators integrated with quality professional development and the necessary resources and support for teachers to improve their practice and enhance student learning.

FORMATIVE ASSESSMENT

Formative assessment focuses on the *process of increasing knowledge and improving professional practice*. The focus is on assessing ongoing activities and providing information to monitor and improve a teacher's learning, practice, and instructional methods. It provides teachers with feedback on how to improve their practice to promote student learning, and guides what types of professional development opportunities will enhance their practice. Most importantly, the assessments are not seen as single events, but rather a process by which knowledge about instruction continues to grow and adapt to the needs of students and the classroom context.

SUMMATIVE ASSESSMENT

Summative assessment focuses on *outcomes*. It summarizes the development of a teacher's practice at a particular point in time and may include multiple sources of

evidence about teaching and student learning, such as: portfolios, checklists, lesson-plans, observations, self-assessments, surveys, student work samples, development of student assessments, and the teacher's use of locally or teacher-developed assessments. Summative events should be based on standards that are developed jointly under the auspices of the collective bargaining agreement and used to make decisions on an educator's performance that inform personnel decisions.

ISSUES TO CONSIDER

Formative and summative assessments are central components to any comprehensive teacher evaluation system. It is important to define the purposes, uses, and procedures of all formative and summative assessments in a teacher's evaluation. Some questions to consider when making decisions on forms and uses of assessments are: *what types of evidence to collect, how often it is collected, how teachers are involved in the decision-making and procedures for collecting evidence, and who has access to student and teacher data.* Research and in-depth knowledge of teaching tells us that no one model fits each classroom, each school, or each district. However, we do know some best uses of formative and summative assessments.

Table I serves as a guide for making informed decisions around the purposes and uses of formative and summative assessments when creating comprehensive evaluation systems that are useful and meaningful to teachers.

Table I: Formative and Summative Assessments

Dimensions	Formative Assessment	Summative Assessment
Purpose	Used for growth and improved practice	Decisions about continued employment
Evidence	Various written or observable demonstrations of teaching and contributions to student learning	Multiple measures
Frequency	Ongoing and continuous	Periodic and scheduled
Reporting Structure	Collaborative, using flexible forms of feedback	Adherence to strict guidelines, forms, and timelines
Use of Evidence	Diagnostic – designed to improve practice	Designed to make a judgment
Relationship between Administrator and Teacher	Collegial – to encourage reflection and discussion	Prescriptive – to prescribe a course of action
Process	Teacher self-reflection, peer feedback, peer input, peer review, administrator feedback	Checks and balances
Adaptability	Open, exploratory, and integrated into practice; focused on practitioner development and practice	Precisely defined, limited to required documentation

Standards of Measurement	Allows flexibility and revision of documents in response to individual teaching and learning environments Individualized; multiple systems of demonstration and documentation; pursuit of excellence in one's own practice	Outcomes set (yes/no, met/did not meet); sorting or rating
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TOPIC: GUIDING PRINCIPLES

CTA members have developed principles that are essential to any effective and fair teacher development and evaluation system.¹ Careful review of this document provides those bargaining evaluation with valuable tools with which to review current evaluation language and practice.

TOPIC: EVALUATION PROCESS

Teachers provide the stable, nurturing, inspiring environment that makes it possible to reach each student individually. Teachers and the classroom environment are the foundation of a solid educational experience. Teachers need and want an evaluation system that strengthens their knowledge, their skills and their practices, and the goal of any teacher evaluation system should be to improve student learning.

To create meaningful evaluations for teachers, the too-prevalent “top-down” approach toward evaluation requires a change to a more interactive process between the teacher and the evaluator. In this joint endeavor, the teacher is an active participant, fully engaged and focused on learning and improving practice, while the evaluator is a knowledgeable partner providing comprehensive, consistent and timely feedback, information and guidance. The essential mutuality of this approach assigns responsibility and influence to both the teacher and the evaluator. By instituting such a process, an evaluation system can be relevant to teachers as they progress through the various stages of their careers and along the diverse pathways they may choose to pursue.

TOPIC: A MODEL OF AN EVALUATION PROCESS

In order to fully realize the goal strengthening unit members’ knowledge, skills and practices, the processes embedded in an evaluation system necessitate that the evaluation experience itself result in further learning. Because teachers have individual professional learning needs - dependent, in part, on interests, assignment, career stage and other factors - differentiated and personalized processes are indispensable to success. In the ideal model, teachers **Reflect** on their teaching and pedagogy, **Plan** for their growth and improvement, and **Act** on the feedback and engagement provided through the evaluation process.

Each step in the process above can include various formative assessment activities and instruments that help support the growth of the teacher and that may contribute to the summative evaluation. Although the findings from a summative evaluation will inform

employment decisions, the teacher growth and development that are the focus of the process retain primacy.

TOPIC: RECIPROCAL SYSTEM OF ACCOUNTABILITY

A quality, comprehensive teacher evaluation system resides within a larger context of mutual support, responsibility and accountability. This section of CTA's Framework provides useful background that can aid in negotiations.ⁱⁱ

TOPIC: STANDARDS FOR ALL CERTIFICATED ASSIGNMENTS

Bargaining provisions for all bargaining unit members, means establishing standards for those assigned inside and outside the classroom. This section of the Framework helps form that aspect of evaluation language.ⁱⁱⁱ

TOPIC: AVOID VALUE-ADDED MEASURES (VAM)

Some district administrators have touted value-added measures as accurate indicators of unit member effectiveness. These schemes should be avoided due to their inherent lack of reliability.^{iv}

TOPIC: GOALS, PRACTICES, PROCEDURES

Although the professional needs of Beginning Teachers and Professional Teachers are similar in many respects, there are some significant differences that may be useful to consider in designing and selecting goals, practices and procedures in evaluation processes. Existing evaluation systems may not contain all of these features, yet an integrated system of professional growth and evaluation designed to support and improve teaching and learning would embody these practices and procedures.^v

TOPIC: TRAINING OF TEACHERS AND EVALUATORS

To properly participate in an effective evaluation system, a deep understanding of its purpose and provisions is needed. Read more on how we should envision a robust training and accountability of all stakeholders.^{vi}

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, or at longer intervals up to every 5 years as allowed by code. 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 Goals practices and procedures to be used during the evaluation period.^{vii}
 - 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 Adequate training of all parties to evaluations as described below.

- 15.1.6.2 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.
- 15.1.6.3 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 a Peer Assistance and Review (PAR) program depends on such a clear definition. See Article 29, Peer Assistance and Review.)

- 15.1.6.4 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:
- 15.1.6.4.1 Specific recommendations for improvement.
- 15.1.6.4.2 District assistance to implement such recommendations.

- 15.1.6.4.3 Provision of additional resources, without cost to the unit member, to be utilized to assist with improvements.
- 15.1.6.4.4 Techniques to measure improvement.
- 15.1.6.4.5 Time schedule to monitor progress.
- 15.1.6.5 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 pupil progress toward 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 video 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 22.1.8 in Article 22, Safety.)

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

LEGAL REFERENCES

CA 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

CA Government Code Sections Cited

CA Gov. Code Sec. 3540
 CA Gov. Code Sec. 3543.2 - Scope of Representation

Miscellaneous

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

ⁱ **Guiding Principles** pg. 3, *CTA Teacher Evaluation Framework*.

ⁱⁱ **Reciprocal System of Accountability** pg. 4-5, *CTA Teacher Evaluation Framework*.

ⁱⁱⁱ **Standards for All Certificated Assignments** pg. 6, *CTA Teacher Evaluation Framework*.

^{iv} **Value-Added Measures** pg. 13, *CTA Teacher Evaluation Framework*.

^v **Goals, Practices, Procedures** pg. 15-16, *CTA Teacher Evaluation Framework*.

^{vi} **Training of Teachers and Evaluators** pg. 21, *CTA Teacher Evaluation Framework*.

Article 16: Discipline

DISCIPLINE may be a subject of bargaining if both parties can agree to a procedure. If the parties do not reach agreement the District cannot force the Association to carry this item to impasse and therefore may not unilaterally impose language. When no agreement is reached, the regular dismissal and suspension proceedings of Education Code Section 44944 apply. (See EERA Section 3543.2.b.)

SUGGESTED CONSIDERATIONS PRIOR TO MAKING A DISCIPLINE PROPOSAL

- The Association should not feel compelled to agree to any discipline language that it is opposed to because of the wording of EERA Section 3543.2.b, which makes it clear that both parties must reach agreement on discipline language or the default will be the regular dismissal and suspension proceedings of Education Code Section 44944.
- The Association should not agree to language on discipline unless binding arbitration applies to any disputes arising out of the article. The likelihood of a grievance concerning disciplinary action requiring arbitration is far greater than it is for disputes concerning other contractual provisions.
- Do not agree to inclusion of exceptions to progressive discipline that allow management to skip steps of progressive discipline due to “gross misconduct” or “certain misconduct.”
 - 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.
- Avoid the inclusion of a list of specific causes for which an employee may be disciplined. 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.

LANGUAGE RECOMMENDATIONS

If the parties agree to discipline language, it is important that the terms “just cause” and “progressive discipline” are included as preconditions to any disciplinary action. 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. 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.

Progressive discipline requires management begin the discipline of a unit member by the utilization of oral warnings, followed by written warnings and written reprimands. 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.

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 non-reelect 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

Article 17: Temporary Unit Members

TEMPORARY UNIT MEMBERS have limited employment rights under the Education Code. This provision sets forth additional criteria for reemployment based on strict seniority and credentialing because they are fair to all bargaining unit members over the course of their careers.

CONSIDERATIONS PRIOR TO MAKING A TEMPORARY UNIT MEMBERS PROPOSAL

- What criteria has the district been using to decide which temporary unit members to reemploy?
- Has management abused any weaknesses in your current temporary unit members article?
- Do the criteria set forth in the proposal sufficiently limit management discretion?

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 categorically funded 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 quarter with a list of all unit members in temporary assignments, including name, position, worksite, length of contract, and justification for their temporary status.
- 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)

Article 18: Probationary Unit Members

PROBATIONARY UNIT MEMBERS, most of whom are new to the teaching profession, need additional support during their first years of employment. The provisions in this article work in conjunction with the language in EVALUATION (Article 15) to ensure that these members receive the necessary assistance as they master the skills to be successful in their position.

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.

CONSIDERATIONS PRIOR TO MAKING A PROBATIONARY UNIT MEMBERS PROPOSAL

- What internal mechanisms does the district currently have to support these unit members?
- Are probationary unit members eligible to participate in the district's Peer Assistance and Review program?
- 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.

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.

(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.)

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)

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.

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. 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 Peer Assistance and Review Program (see Article 29).

CONSIDERATIONS PRIOR TO MAKING A TEACHER INTERNS PROPOSAL

- Do teachers who provide support to an intern receive a stipend for their extra work?
- How can the chapter monitor the employer's use of teacher interns to ensure that they do not displace current bargaining unit members?
- 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

Article 20: 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.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING A SPECIALIZED JOB CLASSIFICATION PROPOSAL

- CTA recommends that bargaining teams consider only drafting exceptions to regular contract language for particular job classifications where unique circumstances exist.
- Have you studied the contract, analyzed job categories and duties, and spoken to members to properly draft language that alleviates unique problems that unit members may face?
- Do you represent substitutes? How are they evaluated?
- Do the unit members work hours outside the traditional duty day? (example: Adult Education teachers may work at night)
- Do they work “split” shifts?
- Do your part-time hourly specialized positions have the right to transfer into full-time positions?
- Do the specialized positions require credentials which may not allow them to transfer into regular teaching positions?
- Is there a need for separate salary schedules or rates of pay, hours and transfer rights?
- How will members without Bachelor degrees move on the salary schedule?
- Will work experience count as years of service on the salary schedule for ROP/C or members with Designated Subject Credentials?

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

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."

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

44393 – California School Paraprofessional Teacher Training Program

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

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.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING AN HOURS AND ADJUNCT DUTIES PROPOSAL

- How will the local chapter ensure that district committees which have a potential impact on issues related to the classroom and daily unit member work are comprised of a majority of unit members?
- How will the local chapter ensure fairness and equity related to assignment of hours and adjunct duties across all job classifications?
- How many adjunct duties do your members consider reasonable?
Is it necessary to limit the number of additional hours unit members are required to work?
- Is it necessary to limit or rotate adjunct duties and if so, what kind of process will be used to ensure fairness?
- Are hours and work year comparable to other districts?
- Does the work year align with the needs of the unit members, their families, and students?
- Has district-provided staff development been meaningful and relevant for your unit members? If not, what process might you put in place to improve the relevance of these trainings?

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 _____ 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, staff development, IEP team meetings, meetings with parents and/or staff members, and/or planning and preparation for their assignment. At least _____ out of the total minimum days per month shall be reserved for individual planning and preparation.

TOPIC: WORKLOAD/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 Workload/Adjunct Duties**

- 21.2.1 Elementary school unit members shall have no more than _____ hours of pupil contact per week.
- 21.2.2 Middle and 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 middle or high school unit member shall not be assigned more than _____ different preparations within the _____ period teaching day without her/his consent.
- 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 _____ 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 Staff development.
 - 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 meetings.
 - 21.2.5.8 Committee work related to curriculum creation and modification.
- 21.2.6 Unit member duties listed in Sections 21.2.5.1 through 21.2.5.8 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 the Compensation Section 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.
- 21.2.8 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 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 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 prepared to provide sound educational experiences to their pupils.

SAMPLE LANGUAGE

- 21.3 Preparation Time
- 21.3.1 All middle and 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 per week 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 workspace 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

Local chapters should seek volunteers to serve on site or District 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 pro-rata hourly rate of pay.

- 21.4.3 Unit members who are selected to serve on school site councils pursuant to Education Code Section 65000 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.

TOPIC: PROFESSIONAL DEVELOPMENT

Professional development is a critical ingredient in enhancing quality teaching, resulting in improved student learning. It should involve teachers in identifying 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 context.

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.

SAMPLE LANGUAGE

21.5 Professional Development Activities

- 21.5.1 The Professional Development Committee (PDC) shall design and implement the staff development program offered by the District. All Professional Development activities shall be determined by, developed, and implemented through the PDC. 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.
- 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.

**TOPIC: INDIVIDUALIZED EDUCATIONAL PROGRAMS
(IEPs)**

This is a provision which sets forth compensation for employees required to participate in the IEP process.

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, staff development days, minimum days, and parent-teacher conference 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

Years when November 11 will fall on a Saturday or Sunday, the Veterans' Day holiday can be celebrated on Friday or Monday, respectively.

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 staff development, 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.
- 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.

LEGAL REFERENCES

A. Education Code Sections Cited

- 37220 - School Holidays
- 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 for high school
- 46142 - Alternative method of computing minimum school day
- 56001 et seq. - Provisions of the special education programs
- 56241 - Content of staff development programs
- 56243 - Training of regular classroom teachers
- 65000 - School Site Council

B. Government Code Sections Cited

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

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.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING A SAFETY PROPOSAL

- Is there a district safety committee in place to oversee general guidelines, reporting, training and other requirements of the law?
- Are there school site committees in place to take district committee recommendations to make sure they fit the needs of the local site?
- Is there a school site committee to address the development and enforcement of a student discipline policy?
- Are unit members included as voting members of the district and site committees?
- Do you regularly ask your members what safety concerns they have?
- Are there existing neighborhood and community programs already in existence to support safe schools?
- Have you considered police and fire protection, the condition, size and physical structure of the school building or worksite, and other factors unique to the work location?
- Both parents and teachers have the same objective in developing safety programs - safe schools. Have you considered involving parents in supporting your efforts to improve school safety as you develop bargaining proposals?
- How might the Association and the District address the social and emotional needs of unit members that result from school safety issues?"

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 conform to and comply with all health, safety and sanitation requirements imposed by local, state, or federal law or regulations adopted under local, state or federal law.

- 22.1.4 The Association shall appoint _____ representatives to the District Safety Committee established to implement an injury prevention program and a plan for district safety, emergency and disaster preparedness. Association representatives shall receive release time or their hourly rate of pay for committee work.
- 22.1.5 Each worksite shall have a Site Safety Committee composed of a majority of unit members. The committee shall develop and annually review its discipline, site safety, health, and emergency preparedness plan. The plan shall be distributed to employees at the site on an annual basis. The District Safety Committee shall provide each worksite with general procedures for safety with the site committee overseeing unique site issues. The committee shall 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.
- 22.1.6 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.
- 22.1.7 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, emergency toileting supplies, and other items which may be unique to a work location such as a portable ladder, bullhorn, AM/FM radio, 100 to 1000 feet of line (for use in smoke-filled halls or dark buildings), blankets, water, and food packages.
- 22.1.8 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 22.1.8 with Section 15.1.10.8 in Article 15, Evaluation.)

- 22.1.9 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

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 in accordance with Education Code section 48910.
- 22.2.2 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.
- 22.2.3 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.
- 22.2.4 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.
- 22.2.5 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.

TOPIC: PUPIL TRANSPORTATION

SAMPLE LANGUAGE

22.3 Pupil Transportation

- 22.3.1 No bargaining unit members shall be requested or required to transport pupils in private vehicles.
- 22.3.2 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

22.4 Specialized Health Care Procedures

- 22.4.1 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, credé, diapering, injections, ileostomies, colostomies, gastrostomies, tracheotomy, suction, oxygen administration, gavage feeding, draining, and head lice inspection.

- 22.4.2 No other bargaining unit members shall be requested or required to perform such specialized health care.
- 22.4.3 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.
- 22.4.4 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.
- 22.4.5 The District shall indemnify and hold harmless from all liability any unit member who performs health care services.
- 22.4.6 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

22.5 Asbestos Removal

- 22.5.1 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.
 - 22.5.1.1 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.
 - 22.5.1.2 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.
- 22.5.2 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.
- 22.5.3 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

22.6 School and Personal Property Liability Coverage

- 22.6.1 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.
- 22.6.2 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

22.7 Assault

- 22.7.1 Unit members shall immediately report cases of an attack, assault or physical threat 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 person(s) involved, and shall act in appropriate ways as liaison between the unit member, police and courts. The District shall not impose any sanctions against a unit member for reporting the incident to police.
- 22.7.2 The District shall provide professional development 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.
- 22.7.3 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.
- 22.7.4 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.

- 22.7.5 The District shall provide full support, including legal and other assistance, to unit members who may be assaulted while in performance of their duties.
- 22.7.6 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 22.7.6)

- 22.7.7 When absence or disability arises out of or from assault, unit members shall suffer no loss in wages, benefits or leaves.
- 22.7.8 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.

TOPIC: PHYSICAL AND EMOTIONAL SAFETY

SAMPLE LANGUAGE

22.8 Physical and Emotional Safety

- 22.8.1 The District shall provide a safe workplace that protects unit members from physical and emotional violence, sexual harassment, and other abuse.
- 22.8.2 This provision does not waive a unit member's right to other recourse through administrative agencies or courts and prior exhaustion of the grievance process is not required.

LEGAL REFERENCES

Education Code Sections Cited

- 32228.1 – School Safety and Violence Prevention Act
- 32228.2 – Minimum Allocation
- 44014 – Notification of Law Enforcement
- 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
- 49079 – Notification to teacher of pupils whose actions are grounds for suspension/expulsion

Government Code Sections Cited

- 3543.2 - Scope of Representation

Article 23: Leaves

LEAVES should be a contract article 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 leave rights. The Agreement should also clarify the status of unit members during and returning from leave, whether paid or unpaid.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING A LEAVES PROPOSAL

- What does the current law require and allow?
- Does the contract language address specific procedures to request and/or return from leaves?
 - Are the procedures equitable and easily understood?
 - Is permission or notification required for the leave?
 - What documentation is necessary and when is it submitted?
 - What are the qualifying reasons for each leave?
- Does the language address the employment status of the unit member while on leave?
- Are leaves appropriately coordinated? And who is responsible for the coordination of the leaves?
- Does the language address issues or grievances concerning the use of leaves?
- Does the language specifically differentiate between paid and unpaid leaves?
- How does the contract language address workload issues?
 - Is a substitute required?
 - If so, who is responsible for securing the substitute?
 - How does the absence impact other unit members?

LEAVE RIGHTS

This section makes clear that leaves provided by the Education Code are not waived by any provisions in 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 this Agreement does not waive any leave benefits provided by law or statute.
- 23.1.2 Unit members on a paid leave of absence shall continue to receive wages, health and welfare benefits, retirement credit, and such other rights and benefits 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 duration of the leave.

- 23.1.3 A Unit Member returning from any type of leave shall be entitled to return to the same position and assignment he/she had prior to the leave.

SICK LEAVE

Sick leave may be used for purposes of parental leave (to bond with or care for a biological child, adopted child, or foster child within one year of the birth, adoption, or foster placement) due to recent changes in Education Code section 44977.5. Associations should bargain changes in current Agreements if they do not permit the use of sick leave for purposes of parental leave.

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

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 workday 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 as defined in Article _____. In addition, sick leave may also be used for purposes of parental leave for reason of the birth, adoption, or foster care placement of a child. Sick leave that is not used shall accumulate from year-to-year without limit.
- 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.
- 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) workdays, 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) workdays specified herein shall be renewable at the beginning of each unit member's work year.

FAMILY CARE AND MEDICAL LEAVE

The federal Family and Medical Leave Act of 1993 (FMLA) and the California Family Rights Act (CFRA) 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.

It is encouraged to enforce FMLA/CFRA 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.

SAMPLE LANGUAGE

23.3 Family Care and Medical Leave

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 health condition, the 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 _____ of the Agreement.

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 therefore 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.
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 workday 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.

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.

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.

(NOTE: Include options for Association-only committees and joint District/Associations committees.)

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.
 - 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.
 - 23.4.1.6 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 that 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 being 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 15 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.

PERSONAL NECESSITY LEAVE/PERSONAL LEAVE

Personal necessity leave is provided by Education Code Section 44981. The code provides that unit members get at least seven (7) days per school year, which are drawn from unit members' accumulated sick leave, unless more are bargained in the collective bargaining Agreement (CBA). 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. An Association can also propose additional articles to the CBA that include Personal Leave with or without pay separate from the Personal Necessity Leave Article.

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.

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.

SAMPLE LANGUAGE

23.6 Personal Leave with Pay

23.6.1 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.

SAMPLE LANGUAGE

23.7 Personal Leave Without Pay

23.7.1 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.

23.7.2 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.

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

23.8 Sabbatical Leave

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

- 23.8.1.1 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.
- 23.8.1.2 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.
- 23.8.1.3 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.
- 23.8.1.4 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.

- 23.8.1.5 The District shall provide the Association with copies of the sabbatical leave form upon request.

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/memorial and conclude all related necessary business. Sometimes the number of days of bereavement may need to be taken in non-consecutive days or beyond the time of the death.

SAMPLE LANGUAGE

23.9 Bereavement Leave

- 23.9.1 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.

JURY DUTY/WITNESS LEAVE/VOTING LEAVE

Education Code section 44036 and Election Code 12312 allow unit members the opportunity to participate in their civic obligations. There are some restrictions and notifications that should be included in contract language. However, in some cases it might be in the best interest of the parties to reduce the use of these leaves during the school year and other work periods and provide incentives in order to meet the interest of both parties.

SAMPLE LANGUAGE

23.10 Jury Duty/Witness Leave/Voting Leave

- 23.10.1 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.
- 23.10.1.2 The unit member must provide to their immediate supervisor the court summons prior to receiving leave and reporting to court. Upon returning to work, the unit member must provide verification of appearance.

- 23.10.1.3 The District shall pay the unit member the substitute rate when the unit member reschedules his/her request to appear and provides written verification when occurring outside of the work year.
- 23.10.2 If a Unit Member's work schedule is such that it does not allow sufficient time to vote in any federal, state, or local election in which the Unit Member is entitled to vote, the District shall grant at least two (2) hours release time or arrange to allow sufficient time for such voting.
 - 23.10.2.1 The unit member must notify their immediate supervisor at least two (2) days before election day when using voting leave.

Unit members may be required to utilize other leave provisions while an industrial illness or while an injury is investigated. They may also be required to be seen by a physician of the District's choosing.

SAMPLE LANGUAGE

- 23.11 Industrial Accident and Illness Leave
 - 23.11.1 Section 44984 of the Education Code shall be supplemented as follows:
 - 23.11.1.1 A unit member shall be entitled to such leave without limitation as to the number of days of entitlement.
 - 23.11.1.2 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.
 - 23.11.1.3 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.
 - 23.11.1.4 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.
 - 23.11.1.5 The District's report of an industrial accident or illness shall be kept on file in the Business Office.

- 23.11.1.6 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.

MILITARY LEAVE

Many unit members may be recent veterans of military service or currently in Military Reserves. Recently, through Education Code section 45191.5, classified employees who are disabled veterans are eligible for additional sick days above any other entitlements for the first year to allow them to tend to disabilities. In addition, some districts may require unit members to make an effort to perform military duties outside of the school year.

SAMPLE LANGUAGE

- 23.12 Unit members who are attached to the military services and are called into temporary, active duty of any unit of the United States Reserves or the National Guard shall be granted (upon request) temporary military leave, pursuant to Military and Veterans Code Section 395. Furthermore, the temporary military leave shall be granted without loss of pay or accumulated sick leave provided such obligation cannot be fulfilled on days when school is not in session and provided further that the period of ordered duty does not exceed one hundred eighty (180) calendar days including time involved going to and returning from such duty.
- 23.12.1 A unit member on temporary military leave of absence who has been in the service of the District for a period of not less than one (1) year immediately prior to the day on which the absence begins shall be entitled to receive salary or compensation as an employee of the District for the first thirty (30) days of any such absence. Pay for such absence shall not exceed thirty (30) days in any one (1) fiscal year.
- 23.12.2 Any unit member who enters the active military service of the United States of America or the State of California during any period of national emergency declared by the President of the United States of America, or during any war in which the United States of America is engaged shall be entitled to military leave. Within six (6) months after such member honorably leaves such service or has been placed on inactive duty, the member shall be entitled to return to the position held by the member at the time of the member's entrance into such service at the salary to which the unit member would have been entitled had the member not been absent from the service of the District.

- 23.12.3 Any unit member that is considered 30% or more disabled by the United States Department of Veterans Affairs shall be entitled to leave of absence for illness or injury with pay of up to ten (10) days for the purpose of undergoing medical treatment for his/her military service-connected disability within the first year. This leave shall be in addition to any other leaves provided elsewhere in the agreement. Any unused leave shall be forfeited thereafter

DISABILITY APPLICANT LEAVE

SAMPLE LANGUAGE

23.13 Disability Applicant Leave

- 23.13.1 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.

JOB-SHARING

SAMPLE LANGUAGE

23.14 Job-Sharing

- 23.14.1 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.

- 23.14.2 Each job-sharing unit member shall receive a salary schedule increment each year.
- 23.14.3 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.
- 23.14.4 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.

INCENTIVE FOR REDUCED ABSENCES

SAMPLE LANGUAGE

23.15 Incentive for Reduced Absences

- 23.15.1 Unit members shall receive a yearly bonus for reduced absences as follows:
- 23.15.1.1 No more than four (4) total absences in a work year = \$_____
- 23.15.1.2 No more than three (3) total absences in a work year = \$_____
- 23.15.1.3 No more than two (2) total absences in a work year = \$_____
- 23.15.1.4 No more than one (1) total absence in a work year = \$_____
- 23.15.1.5 Zero (0) days absent in a work year = \$_____

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

- 23.15.2 Bonus payments shall be made in a single lump sum, no later than June 30, and such payments shall not be cumulative.
- 23.15.3 Unit members employed for less than a full work year shall receive a pro-rata bonus for which the unit member is eligible.
- 23.15.4 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
- 44977.5 - Parental 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
- 45191.5 - Veterans Leave
- 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

Election Code 12312-Voting Leave

Military and Veterans Code-395

Article 24: Health and Welfare Benefits

Health and Welfare Benefits represent a significant portion of the Unit Member compensation package. Such benefits tend to be among the top priority issues of concern to the rank and file. Accordingly, it is important for bargaining teams to have a clear understanding of some of the major concepts involved in benefits negotiations, including fee-for-service or indemnity plans, preferred-provider options, exclusive provider organizations, capitation plans, joint powers agreements, jointly managed employer/employee trusts, health-maintenance organizations and others. Any change in a material or significant area of health and welfare benefit coverage is a mandatory subject of bargaining under the EERA. Should your bargaining team be unfamiliar with the concepts outlined here, it is recommended you contact your CTA staff person to obtain training and consultation in this area.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING A HEALTH AND WELFARE PROPOSAL

- What are the requirements, penalties, and limitations of the Affordable Care Act (ACA)?
- What will the total premium be for medical, dental, vision, life, and disability insurance?
- What plans are available in the geographical area where a majority of the bargaining unit members live and work?
- How much will the employer contribute to the premium of each plan?
- Will premiums be set up in super composite, composite, or tiered rates?
- Who will be eligible for coverage?
- Will the plans include spouse, domestic partner, and family?
- How will the bargaining unit share costs?
- What are the administrative costs outside of the premium?
- When will open enrollment occur?
- How will open enrollment occur?
- When will the plans renew?
- When will rates be available for the following year?
- What source will be used to provide the health benefits?
 - Direct purchase
 - Broker/ Consultant
 - Self-Insured/Fully Insured
 - Employer/Employee Trust
 - Joint Powers Authority (JPA)
 - Other
- What are the rules governing the source?
 - What provisions are contained in the contract or resolution that could impact bargaining?
 - If you want to move the source of your health benefits to a different source when do you need to give notice?
- Will Flexible Spending Arrangements (FSA), Health Reimbursement Arrangements (HRA), and/or Health Savings Accounts with a High Deductible Health Plans be available?

INSURANCE COMMITTEES

Health care/insurance committees should be established in order to work with other bargaining units represented in the District. These committees work throughout the year and can make recommendations to the bargaining team, but the team should not relinquish bargaining authority to the committee. An equal number of participating bargaining units should be represented on the committee and all members should receive information at the same time in order to avoid disputes. These committees should jointly set short- and long-term goals and select all vendors, plans and programs to contain costs and improve quality of care.

THE AFFORDABLE CARE ACT

The Patient Protection and Affordable Care Act (PPACA), (commonly known as “Obama Care” or The Affordable Care Act (ACA)) has changed how we approach negotiating health benefits. It is important to know what is required by the ACA and what can trigger penalties for the employer and/or employees. Most provisions of the law have been implemented. However, misinformation and vague guidance is causing confusion at the bargaining table and disputes among health care/insurance committees.

The ACA requires employers with 100 Full-Time Equivalent (FTE) to offer health insurance to all full-time employees (30 hours a week and 120 days a year) and their dependents (up to age 26) or face a penaltyⁱ. This includes substitutes and all additional hours added to the employee’s assignment by the employer. Employers may attempt to reduce hours of employees in an attempt to avoid penalties. However, in most cases this is unnecessary as explained in the “NEA Fact Sheet Responding to Employer Threats to Contingent Faculty Members’ Hours.”ⁱⁱ

The health insurance offerings must include ten essential benefits, have an actuarial value of at least 60% on those benefits, and be considered affordable (employee contribution towards the premium is no more than 9.66% of household income on the lowest cost employee only option) in order to avoid penalties. However, before a penalty can be assessed under this provision the full-time employee offered an unaffordable option would need to opt out of the employer sponsored plan and receive a subsidy before a penalty can be assessed for each employee that qualifies. The Covered California, Health Insurance Companies and Plan Ratesⁱⁱⁱ booklet breaks down qualifying income levels in each of the nineteen regions in Covered California.

The ACA also placed limitations and restrictions on the use of IRC 125 Flexible Spending Arrangements and Health Reimbursement Arrangements. These supplementary products remain tax exempt however maximum contributions and the use of the money placed in these accounts are restricted by the ACA. The NEA Comparison Chart for Health Flexible Spending Arrangements, Health Reimbursement Arrangements, and Health Savings Accounts^{iv} may be used by bargaining teams to understand the differences and limitations with the products.

Another provision of the ACA that may have an impact on bargaining is the Excise Tax (Commonly known as the “Cadillac Tax”). Currently, it is set to go into effect Jan. 1, 2022 and applies to the insurance company or Third-Party Administrator (TPA) for high cost plans that exceed \$10,200 for employee only coverage and \$27,500. However, this controversial section

of the law^v could change and/or be eliminated over the next few years. Recently, it was delayed from going into effect by 2020. Employers have prematurely attempted to downgrade plan offerings and are trying to take other adverse actions prior to the issuance of the final rules by the I.R.S and Treasury Department.

PREMIUM RATE STRUCTURES

Super Composite and Composite premium rates are a way that a bargaining unit can share the costs of plan design selection and/or the addition of dependents to the employer sponsored health plan. Alternatively, tiered rates separate out the costs based on whether the employee is signed up for employee only coverage or coverage of the employee plus one or more dependents. This rate structure can have a very divisive effect on the bargaining unit and ~~are~~ is highly discouraged. However, some employers are attempting to change composite rates to tiered or refuse to negotiate composite rates at all due to the Excise Tax of the ACA described above. The CTA NODD (Now known as The Center for Organizing and Bargaining (C4OB)) “Bargaining Advisory on the Bargaining Implications of Moving from Composite to Tiered Health Insurance Premiums”^{vi} describes a strategy that may be utilized to counter these negotiating proposals from employers.

COMPARING MEDICAL PLANS

In addition to the changes outlined above, the ACA requires all medical plans to publish a Summary of Benefit and Coverage. This document allows insurance committees/bargaining teams to compare plan designs available within their school district and surrounding areas. Public entities such as school districts also have the ability to purchase medical benefits by law through CALPERS as a contracting agency. The Public Employees’ Medical and Hospital Care Act (PEMHCA)^{vii} prohibits CALPERS from denying any school district from participating in the regionally based medical plan offerings due to utilization, demographics, or other underwriting concerns. It is recommended that groups regularly compare the current or proposed medical plan offerings to premiums and plans available through CALPERS. The result could provide teams with leverage in negotiating medical plans. The C4OB has created a tool that is available through your CTA staff person in order to facilitate the process.

SAMPLE LANGUAGE

24.I Health Insurance Committee

- 24.I.I The District and the Association are committed to maintaining a quality health and welfare program. The parties agree to a good faith effort and commitment to maintain a program, which is comprehensive and cost-effective. In an effort to analyze, understand, and reduce costs, an Insurance Committee shall be established and shall meet on a regular basis. The Insurance Committee shall be comprised of up to (number of representatives) representatives selected by the Association and no other employee group will have more than (equal number of representatives) representatives.

The responsibility of the Insurance Committee is to review the cost trends in the jointly selected carriers, program structure, and the benefit plans. The Insurance Committee shall have the authority to analyze how the current carriers, program structures, and benefit plans are impacting costs, and to explore options which may reduce costs or rates of increase in costs. All relevant information requested by the Committee that pertains to the Committee's responsibility shall be provided within a reasonable time frame and shared directly with the Committee. This Committee is an advisory body only and any changes recommended shall be forwarded to the respective bargaining teams in order to reach a final agreement.

24.2 Health Benefits Plan

- 24.2.1 The District shall provide all Unit Members, their eligible dependents, and domestic partners with a fully paid health benefits plan, including all Essential Benefits as defined by the Patient Protection and Affordable Care Act. The plan shall be provided by (name of insurer) and the specific coverage identified as (some identifying code or name).
- 24.2.2 The District shall pay the total premium for the health benefits plan for all retirees, their eligible dependents, and domestic partners; such coverage to be available for all Unit Members retiring on or after reaching age fifty-five (55).

24.3 Dental Insurance

- 24.3.1 The District shall provide all Unit Members, their eligible dependents, and domestic partners with a fully paid dental plan, including orthodontic coverage. The plan shall be provided by (name of insurer) and the specific coverage identified as (some identifying code or name).
- 24.3.2 The District shall pay the total premium for the dental insurance plan for all retirees, their eligible dependents, and domestic partners; such coverage to be available for all Unit Members retiring on or after reaching age fifty-five (55).

24.4 Vision Insurance

- 24.4.1 The District shall provide all Unit Members, their eligible dependents, and domestic partners with a fully paid vision care plan. The plan shall be provided by (name of insurer) and the specific coverage identified as (some identifying code or name).
- 24.4.2 The District shall pay the total premium for the vision care plan for all retirees, their eligible dependents, and domestic partners; such coverage to be available for all Unit Members retiring on or after age fifty-five (55).

24.5 Life Insurance

24.5.1 The District shall provide all Unit Members, their eligible dependents, and domestic partners with a fully paid (decreasing or straight) term life insurance policy. Such policy shall provide additional coverage for accidental death. The plan shall be provided by The Standard and the specific program identified as (some identifying code or name).

24.5.2 The District shall pay the total premium for the life insurance plan for all retirees, their eligible dependents, and domestic partners; such coverage to be available for all Unit Members retiring on or after reaching age fifty-five (55).

24.6 Income Protection

24.6.1 The District shall provide a percentage of income benefits for one (1) year. The plan shall be provided by The Standard and the specific coverage identified as (some identifying code or name).

24.7 Duration of Benefits

24.7.1 Unit Members who are employed for an entire school year shall be eligible for benefits under the District's benefit program for a full 12-month period. Unit Members who are initially employed subsequent to the first day of the work year shall be eligible for coverage from the first day of active employment through the remainder of the 12-month period.

24.7.2 Unit Members who terminate their employment prior to the close of the work year shall be provided benefits through the last day of the payroll period in which the termination occurred.

24.7.3 Should a Unit Member's employment terminate following the last day of the work year and before the beginning of the ensuing work year, such Unit Member shall be entitled to continue District paid coverage under all insurance plans until the beginning of the ensuing work year.

24.7.4 Unit Members who are absent due to illness and who have exhausted their accumulated paid leaves shall continue to receive District paid benefits for a period not less than twelve (12) months beyond the first one hundred (100) work days following the exhaustion of sick leave.

24.7.5 Unit Members working fifty percent (50%) or more of a full-time assignment shall be entitled to full benefits coverage. Unit Members working less than fifty percent (50%) are entitled to pro-rata benefits contributions by the District based upon the percentage of a full-time assignment to which the part time Unit Member is assigned.

24.8 Employee Assistance Program Plan

- 24.8.1 The Employer shall provide unit members and their eligible dependents, including domestic partners and their dependents, access to an employee assistance program plan.
- 24.8.2 The plan provider shall be (name of insurer) and the specific coverage shall be (identifying code/name or specifics).
- 24.8.3 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.
- 24.8.4 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.

24.9 IRC 125 Plan and Health Reimbursement Accounts

- 24.9.1 The District shall maintain an IRC 125 Plan and/or Health Reimbursement Arrangement and shall contribute an amount equal to the cost of fully paid family PPO health plan, family dental, family vision care, disability and long-term care insurance. The District contribution amount shall be increased each year by the increased cost of the premiums.
- 24.9.2 All unit members must enroll in a health, dental and vision plan.
- 24.9.3 The IRC 125 plan and or Health Reimbursement Arrangement shall allow a unit member to expense certain benefits provided by the plan on a pretax basis. The following voluntary programs shall be offered, and unit members may participate in any or all by contributing, through payroll deduction, the actual cost of these programs:
 - 24.9.3.1.1 Qualifying medical expenses
 - 24.9.3.1.2 Term and Whole Life Insurance
 - 24.9.3.1.3 Elder Care
 - 24.9.3.1.4 Child Care
- 24.9.4 The District and the Association shall jointly select the various insurance vendors and individual plans health, vision and dental insurance. They shall also select vendors and the third-party administrator for the voluntary programs offered under the 125 Plan and/or health reimbursement arrangement.
- 24.9.5 The District shall pay the fees associated with the general administration of the IRS 125 Plan, health reimbursement arrangement and the mandated insurance programs.

- 24.9.6 A good faith effort shall be made to contract only with a fee base vendor that does not solicit, sell or represent insurance products other than the benefits under the IRS 125 plan and/or health reimbursement arrangement.

LEGAL REFERENCES

Patient Protection and Affordable Care Act Sections Cited

Title I, Subtitle D, Part I Section-1302, Subtitle F, Part I Section-1501, Section 5000A, Part II Section 1513
Title IX, Subtitle A, Section 9001

Education Code Sections Cited

44041, 87040 – Payroll Deductions
Government Code Sections Cited

3543.2 - Scope of Representation

All ancillary documents referenced in this Contract Reference Manual Article can be found at CTASearch.org.

ⁱ Federal Register, Vol. 79, No. 29, Wednesday, February 12, 2014. Department of the Treasury, Internal Revenue Service, 26 CFR Parts 1, 54, and 301; Shared Responsibility for Employers Regarding Health Coverage; Final Rule.

ⁱⁱ NEA Fact Sheet Responding to Employer Threats to Contingent Faculty Members' Hours, March 22, 2013.

ⁱⁱⁱ Covered California, Health Insurance Companies and Plan Rates for 2016, (preliminary rates) July 27, 2015.

^{iv} NEA Comparison Chart for Health Flexible Spending Arrangements, Health Reimbursement Arrangements, and Health Savings Accounts As of May 8, 2015.

^v Treasury--Notice 2015-52 on Excise Tax--July 30 2015 with highlights.

^{vi} CTA NODD Bargaining Advisory: Bargaining Implications of Moving from Composite to Tiered Health Insurance Premiums, 2/16/15.

^{vii} Backgrounder: Public Employees' Medical and Hospital Care Act (PEMHCA) and Contracting Agencies, prepared by Richard Krolak, Ph.D., 8-28-07.

Article 25: Compensation

COMPENSATION for education employees has long been a subject of study by CTA. This Article incorporates the compensation 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.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING A SALARY PROPOSAL

- What does the law require? Have uniform salary schedule requirements been considered (EC § 45028)?
- Will compensation be counted towards CalSTRS Defined Benefit Program or Defined Benefit Supplemental Program (i.e. ongoing or one-time)?
- Is the salary schedule properly indexed? Does the proposal improve indexing and symmetry of the schedule or create hole or peaks in random cells? See SALARY SCHEDULE PHILOSOPHY below.
- How does the salary proposal impact compensation comparability with the local comparability group, statewide or districts with similar revenue profiles? Does district budget comparability improve in bargaining unit spending as with the local comparability group, statewide or districts with similar revenue profiles?
- Is the salary proposal “on-schedule” or an “off-schedule” or one-time bonus? Is the proposal an “across-the-board” percentage increase or flat dollar amount?
- When will the salary proposal be implemented? Fully retroactively, partially retroactive, immediately without retroactivity, prospectively?

IMPACT OF PUBLIC EMPLOYEES’ PENSION REFORM ACT OF 2013 AND CREDITABLE COMPENSATION FOR CALSTRS

PUBLIC EMPLOYEES’ PENSION REFORM ACT OF 2013 (PEPRA)

AB 340, the Public Employees’ Pension Reform Act of 2013 (PEPRA), established a class of members in CalSTRS known as “2%@62” members (new members hired on or after January 1, 2013). PEPRA defines what type of compensation is creditable to CalSTRS and further defines how that compensation is credited for the 2%@62 members. The most significant impact to 2%@62 members is compensation that is paid in a lump sum is not creditable to CalSTRS and thus the member receives no credit for that amount. This includes off-schedule bonus, stipends, education stipends or any other form of compensation that is not paid in the month in which the member performed the service.

CREDITABLE COMPENSATION

On January 1, 2015, Creditable Compensation Regulations (27200 - 27600) were established to bring uniformity with the treatment of compensation for CalSTRS 2%@60 members (CalSTRS members prior to January 1, 2013). Provisions outlined in the Creditable Compensation Regulations are also found in PEPRA (see above). Creditable compensation delineates what type of compensation is creditable to CalSTRS and where the compensation is credited

(Defined Benefit account (DB) or Defined Benefit Supplemental (DBS) account). To ensure that compensation will be credited to the members DB account it must be:

- 1) Paid by an employer to an employee for the performance of creditable service
- 2) Explicitly characterized as salary on a contract, salary schedule or employment agreement
- 3) Used as a basis for future increases
- 4) Paid without a requirement by the employer for proof of expenditure (not a reimbursement).

The exception to this is remuneration in addition to salary that is credited to the DB account that is paid to all unit members in the class of employees. This applies to possession or attainment of a certificate, license, special credential or advanced degree, career or service longevity (for complete list look at CalSTRS Regulations 27401).

Compensation that is paid a limited number of times will be credited to the DBS account (i.e. off-schedule bonus, for 2%@60 members only).

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 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 a BA plus 60 semester units, be at least twice the minimum. Salary schedules should also provide that personnel with a Master's, Doctorate degree, or National Board Certification receive appropriate additional compensation.

Salary schedules are used by school boards 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 permanent 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 teacher with permanent status 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 \$85,000 at the maximum step, which is step 9, and district "B" pays at the \$90,000 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 1.00 and another step is calculated at 2.00, 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	1.00	1.05	1.11	1.17	1.24
2	1.05	1.11	1.17	1.24	1.31
3	1.11	1.17	1.24	1.31	1.38
4	1.17	1.24	1.31	1.38	1.45
5	1.24	1.31	1.38	1.45	1.53
6	1.31	1.38	1.45	1.53	1.62
7	1.38	1.45	1.53	1.62	1.70
8			1.62	1.70	1.80
9				1.80	1.90
10					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.

SALARY SCHEDULE ANALYSIS

CTA Negotiations and Organizational Development Department has developed Salary Schedule Analysis (SSA), a computer program designed to analyze salary schedules, health benefit costs, total compensation and comparability. Access to SSA is available through CTA staff.

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.

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.

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 in less than a full-time assignment shall be compensated on a prorated basis. 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.)

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. Keep in mind that for STRS creditable compensation purposes members must receive wages in or after the month the wages were earned. For example, wages earned in 11 months due to a modified year-round schedule cannot be paid in only 10 months or the compensation may not be creditable. It is permissible to have more pay months than months worked such as a 10-month work year paid in 12 months for the convenience of the member.

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.)

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 in-service (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.

ANNIVERSARY AND LONGEVITY INCREMENTS

Although CTA advises a shorter salary schedule that allows a unit member to reach the maximum salary in the shortest amount of time, some locals and districts have chosen to add anniversary and/or longevity increments (see SALARY SCHEDULE PHILOSOPHY above) to the salary schedule. 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 inter-changeable. 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; those within and outside the district. For purposes of CalSTRS credit, anniversary and longevity increments are best incorporated into the salary schedule itself.

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 this Article.

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.

Note: Due to the legislative changes from Public Employees' Pension Reform Act (PEPRA) (applies to those members that are new to the CalSTRS system on or after 1 January 2013, known by CalSTRS as "2%@62" members) limits what compensation in addition to salary is creditable to CalSTRS. For compensation in addition to salary to be reportable, it must be paid in the period that the compensation was earned. For example, if a coaching assignment is from August to December, but the stipend is paid at the end of the season, then that compensation is not reportable to CalSTRS for the 2%@62 members. But if that compensation is reported in each of the months that service was performed then that compensation is reportable to CalSTRS typically to the Defined Benefit Supplemental Account (DBS). Any compensation that is paid as one-time for the 2%@62 member is not reportable to the retirement system (off-schedule bonus).

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 the Assignment, Transfer and Reassignment Article.

- 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 to 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.

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. 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 Summer School/Supplemental Instructional Programs and Year-Round Articles.

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 the Hours and Adjunct Duties Article 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 the Hours and Adjunct Duties Article.)
- 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.

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.)

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.

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.

INCENTIVE PAY

Incentive pay may include signing bonuses for particular teaching positions and locations or credential areas that are hard to fill as well as "merit" related pay. Because signing bonuses for particular positions and credentials are not open to all bargaining unit members, CTA

discourages their use. CTA opposes merit pay models, including those based on student test scores.

LEGAL REFERENCES

A. Education Code Sections Cited

- 44041 – Salaries (rights and duties)
- 44395 – 44396 – National Board Certification
- 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)

B. Government Code Sections Cited

- 3543.2 - Scope of Representation

Article 26: Retirement

Negotiating retirement provisions can be an excellent method to not only recognize an employee's longevity, but also to solve issues such as, overstaffing, reducing the cost of the salary schedule, or incentivizing potential retirees to notify the district of their retirement earlier. There are many creative approaches to retirement that a bargaining team can pursue.

Prior to bargaining a retirement incentive or provision, it is important to pinpoint what the bargaining team is trying to achieve.

Is the goal of the retirement incentive to;

- Downsize staff with little or no layoffs?
- Decrease the cost of the salary schedule? If so, how much money would this save? How would money that was saved by the incentive be used?
- Provide an incentive for early notification for pending retirements?
- Provide an opportunity for retirees to continue district health benefits until they reach Medicare eligibility?

Other items to think about:

- Is the retirement incentive an ongoing or one-time program?
- How do members qualify for the incentive? Years of service, age, or a combination of both?

Many bargaining teams fail to cost out retirement proposals. This can lead to misunderstandings at the bargaining table and could put the Association at a disadvantage for bargaining. Not knowing the true cost of a proposal could place the Association in a position of giving up money that it might otherwise have made available for bargaining. If a District presents a cost analysis of any retirement program or incentive, 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. Retirement savings failure happens when districts hire too many replacements or hire replacements at starting salary positions greater than beginning salaries.

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. In addition, not all individuals who would qualify for a retirement incentive are at the highest step and column. An average salary should be calculated for those who qualify for the incentive. It is important that the Association verify the assumptions used by the district for these calculations, as they may be inflated/deflated. Using incorrect assumptions

can make the potential retirement incentive not look viable or underestimate the available savings.

Listed below is an example of a basic calculation required for estimating cost savings from retirements:

1. Cost per teacher at an average entry-level is \$79,481 which includes an average entry level at BA + 45 units, Step 3 of \$56,101, mandated driven costs of (STRS, Medicare, worker compensation, and unemployment insurance) of about 23.85%* of salary which is \$13,380 and a District benefit contribution of about \$10,000.
2. Cost per teacher at the average salary of those who qualify for the incentive is \$127,658 which includes salary of \$95,000, mandated driven costs of about 23.85%* of salary which is \$22,658 and a District benefit contribution of about \$10,000.
3. The Difference between an average entry-level bargaining unit member and an average salary of unit members who qualify for the incentive is \$48,177.
4. Subtract from the average savings per member in #3 from the cost of the retirement incentive program. This is the amount that could be incurred for the administration of the program by an outside company. The amount subtracted depends upon the program and vendor.

*** the cost of mandated driven cost is increasing and is expected to max out in 2020-21 at 23.85%. To obtain accurate mandated cost, request the information from the district.**

This calculation would yield a savings 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. As the newly hired employees advance on the salary schedule over that (5) five-year period, the savings generated reduces.

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.

Another option available is a supplemental early retirement plan. This plan is typically administrated by an outside company and provides a percentage of the members' final salary in an annuity. The member is able to choose the length of time that they receive the annuity – 5 years, 10 years, 15 years, or a lifetime. This plan can be effective when trying to incentivize employees to retire earlier than they planned. This allows districts to maximize the amount of people who are retiring. This plan is particularly effective when a district is experiencing declining enrollment and must lay-off employees.

It is important 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. A one-time retirement incentive should be memorialized in a Memorandum of Understanding (MOU).

REDUCED WORKLOAD PROGRAM

The Reduced Workload Program 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.

Education Code 22713 outlines the requirements in the law regarding the Reduced Workload Program. This program must be negotiated with the employer prior to being available to unit members. The following provides an overview of the education code:

- The governing board of a school district, community college district or a county superintendent of schools may establish regulations that allow an employee who is a member of the Defined Benefit Program to reduce his or her workload from full time to part time, and receive the service credit and all of the benefits the member would have received, as if the member had been employed on a full-time basis.
- Requires that regulations shall include, but may not be limited to, the following:
 - Unit Members must request entering the Reduced Workload Program
 - The Reduced Workload Program must be in effect prior to the beginning of the school year.
 - Members shall have been employed on a full-time basis under the Defined Benefit Program and have a minimum of 10 years of credited service prior to the reduction in workload. Additionally, the member shall have five years of full-time employment immediately preceding the reduction in workload.
 - The member may not have had a break in service during the five years immediately preceding the reduction in workload. For purposes of this subdivision, sabbaticals, other approved leaves of absence, and unpaid absences from the performance of creditable service for personal reasons from full-time employment do not constitute a break in service.

- The member shall have reached 55 years of age prior to the reduction in workload.
- The reduced workload shall be performed for a period of time, as specified in the regulations, up to and including 10 years. The period of time specified in the regulations may not exceed 10 years.
- The reduced workload shall be equal to at least one-half of the time the employer requires for full-time employment.
- The member shall be paid the pro rata share of the compensation the member would have been paid had the member not reduced his or her workload.
- Prior to the reduction of a member's workload under this section, the employer, in conjunction with the administrative staff of the State Teachers' Retirement Plan and the Public Employees' Retirement System, shall verify the member's eligibility for the reduced workload program.
- For each school year the member's workload is reduced pursuant to this section, the member shall make contributions to the Teachers' Retirement Fund in the amount that the member would have contributed if the member had performed creditable service on a full-time basis and if that service was subject to coverage under the Defined Benefit Program.
- For each school year the member's workload is reduced pursuant to this section, the employer shall contribute to the Teachers' Retirement Fund at a rate adopted by the CalSTRS board as if the participating employee worked in a full-time basis.
- A member who retires or otherwise separates from service prior to the end of the school year shall be in violation of this section and the member's service credit for that period of the contract shall computed in accordance with Section 22701.
- A member may terminate the agreement only if the employee takes one of the following actions:
 - Terminates service.
 - Retires from service under the Defined Benefit Program.
 - Continues to perform service pursuant to this section under a new arrangement to perform creditable service for at least one-half of the time the employer requires for full-time employment in accordance with Section 22138.5.

- Returns to full-time employment.

CALSTRS RETIREMENT INCENTIVE PROGRAM

The Retirement Incentive Program effective January 1, 2004, formerly called the Golden Handshake Program, was authorized by AB 1207 – Corbett in 2004. The legislation makes permanent the provision that grants two additional years of service credit to retiring members of the Defined Benefit Program employed by participating school districts and community colleges. Districts must prove that there will be a net savings to the district if this incentive is offered.

1. Provides two additional years of service credit added to the member's retirement benefit calculation.
2. Requires that districts are able to pay the full cost of the benefit and demonstrate that providing it will result in a net savings to the district. The savings does not need to be for each participant, but rather of all of the employees who retire under this provision. The Districts can pay the cost of the benefit either immediately or annually over a maximum of an eight-year period. An additional fee is assessed if a payment plan is selected.
3. Requires that the governing board take formal action by adopting a resolution to offer the benefits to all eligible employees.
4. Specifies a retirement "window" period of 60 to 120 days for those employees who are going to take part in the retirement incentive. The window period of retirement must be stated in the resolution that is passed by the governing board.
5. Requires that the additional two years of service granted under this section does not count towards eligibility for benefit enhancements.
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 return to work in active CalSTRS service within five years of retirement forfeit the additional service credit.

RETIREE HEALTH BENEFITS

Many school districts in California provide retiree health benefits from the time the employee retires (typically age 55) until Medicare eligibility at age 65. This is often referred to as "gap insurance" or "bridge to Medicare." This provision provides retirees who are eligible to retire

earlier than age 65 the ability to continued coverage under their medical plan until they are Medicare eligible.

A diminishing amount of school districts offer lifetime health benefits to retirees. These provisions provide health benefits for employees for life at or close to the level they received as an active employee. At Medicare eligibility, the employer purchases a supplemental plan to maintain the employees benefit level. Many districts and associations have made financial decisions to phase out this provision due to cost.

Some districts provide a sliding scale of coverage depending upon service in the district. The following is an example of a sliding scale based on service in the district.

- 10 years of service = 50% District paid premium
- 11 years of service = 55% District paid premium
- 12 years of service = 60% District paid premium
- 13 years of service = 65% District paid premium
- 14 years of service = 70% District paid premium
- 15 years of service = 75% District paid premium
- 16 years of service = 80% District paid premium
- 17 years of service = 85% District paid premium
- 18 years of service = 90% District paid premium
- 19 years of service = 95% District paid premium
- 20 years of service = 100% District paid premium

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.

Article 27: Class Size

CLASS SIZE is one of the most important professional issues on the bargaining table. The lower the class size, the higher the cost to the district. There are many considerations prior to the Association submitting a class size proposal. Associations must not only consider the impact that higher or lower class size has on the educational program and district finances, but also the requirement of the Local Control Funding Formula for receipt of the K – 3 Grade Span Adjustment funding.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING A CLASS SIZE PROPOSAL

- What does the law require?
- What programs may be impacted if there was an increase/decrease to class size?
 - Class size proposals must be sensitive to the educational needs of many different programs, such as limiting performance classes (Music, Band, Drama, etc.).
- If the class size language establishes a ratio or maximum, what happens when it is reached?
 - Class size ratios measured by grade levels within a school or maximums by individual classrooms are much easier to enforce within the contract than looking at an entire district.
- Does the class size language address unit members who may be itinerant teachers or teachers who serve as resources to a classroom?
- Does the class size language contain any penalties that may be circumventing the intention of class size limits?
 - Language that may inadvertently undermine the Association's goals must be carefully considered (i.e. language that assesses a monetary penalty by paying additional money to teachers when their classes go over maximums). Allowing the District a less expensive avenue to increase class sizes, when the goal of the Association was to decrease class sizes, may defeat the intended purpose of reducing class size.

CALCULATING THE INCREASE/DECREASE TO CLASS SIZE

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
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 = \$585,000 Number of Pupils = $900 \times 30 = 27,000$	ASSUMPTIONS: Average Salary = \$65,000 Average Fringe Benefit = \$15,000 Statutory Costs @ 14% = \$9,100 <i>includes STRS, Unemployment, Workers' Compensation, Medicare</i> Total Average Cost = \$89,100
CALCULATION: $27,000 / 29 = 931$ Total Teachers Needed $931 - 900 = 31$ Difference in Number of Teachers $31 \times \$89,100 = \$2,762,100$ Cost of Additional Teachers $\$2,762,100 / \$585,000 = 4.72\%$	
The equivalent of a 4.72% salary increase across the board would be needed to lower class size by one pupil. Generally, the cost is between 4.5% and 5%. Districts with smaller class sizes or special programs where class size is low are costlier 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 part of the overall negotiations and can provide leverage to achieve other goals.	

Associations also need to be aware of penalties that may be assessed to a district's Local Control Funding Formula apportionment at P-2 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:

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. ***These Education Code requirements are not to be confused with K-3 Grade Span Adjustment funds and the associated requirement to reduce class sizes or have an alternatively bargained agreement.***

K-3 GRADE SPAN ADJUSTMENT

Currently under the Local Control Funding Formula, districts receive a 10.4% increase to the LCFF base grant if they meet one of the following conditions:

- If a school site's average K–3 class enrollment was more than 24 students in the 2012-13 fiscal year, make progress toward maintaining, at that school site, an average K–3 class enrollment of not more than 24 students.
- If a school site's average K–3 class enrollment was 24 students or less in the 2012-13 fiscal year, maintain, at that school site, an average K–3 class enrollment of not more than 24 students.
- Agree to a collectively bargained alternative to the statutory K–3 GSA requirements.

Most elementary and unified school districts that provide services to grades K-3 will desire the additional funds from the K-3 Grade Span Adjustment. It is also generally in the Association's interest to reduce class sizes. However, the additional funds may not be sufficient to fully fund all costs associated with reducing class sizes in grades K-3 to the level required in the Local Control Funding Formula in the time specified. This is when districts may endeavor to reach a collectively bargained alternative agreement. It is important to remember that the K-3 GSA requirements may not be waived by the Superintendent of Public Instruction or the State Board of Education. Therefore, local associations should carefully consider the conditions under which agreeing to an alternative is favorable for the association including if, how, and when class size will eventually reach the 24-student school site average.

If the Association chooses to agree to a collectively bargained alternative, it is recommended that it be memorialized using a side letter or memorandum of understanding with a specific duration and expiration date instead of part of the main collective bargaining agreement. Upon expiration, the district will be required to make all progress necessary in the law toward the 24-student school site average to continue to receive the K-3 GSA funding or reach a subsequent collectively bargained agreement.

If the existing collective bargaining agreement contains class size language that predates the K-3 class size requirement under the K-3 Grade Span Adjustment funding in the LCFF (June 2013) and is maintained in a successor agreement, some districts have claimed that this qualifies as a collectively bargained alternative agreement. Associations should be clear in the CBA if it is the intention for the class size language to waive the student to teacher ratio for purposes of K-3 GSA funding or not.

For more details on the K-3 Grade Span Adjustment requirements, see the CTA Bargaining Advisory LOCAL CONTROL FUNDING FORMULA: K-3 Grade Span Adjustment (GSA).

LANGUAGE RECOMMENDATIONS

The particular language on class size provided 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 ELEMENTARY CLASS MAXIMUM

TK/K (one unit member per classroom)	_____
TK/K (team teaching classroom)	_____
TK/K (under K-3 Grade Span Adjustment)	_____
1 – 3	_____
1 – 3 (under K-3 Grade Span Adjustment)	_____
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	_____
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 SUPPORT PERSONNEL STAFFING CASE LOAD MAXIMUM RATIOS

Counselors

Nurses	_____	_____
Librarians	_____	_____
Psychologists	_____	_____
Speech Therapists	_____	_____
_____	_____	_____

LEGAL REFERENCES

A. Education Code Sections Cited

41376 - Class Size
41378 – Kindergarten Class Size
42238.02 – LCFF K-3 Grade Span Adjustment
55612, 56517 – Special Education Class Size
56324 – Credentialed nurse and psychologist services available to each site

B. Government Code Sections Cited

3543.2 - Scope of Representation

Article 28: Peer Assistance and Review

PEER ASSISTANCE AND REVIEW (PAR) programs were established in the Education Code in 1999, replacing the California Mentor Teacher Program, and incorporated its funding into the new program. With the establishment of the Local Control Funding Formula in 2013-14, funding for Peer Assistance and Review was shifted into the base grant.

CONSIDERATIONS PRIOR TO MAKING A PEER ASSISTANCE AND REVIEW PROPOSAL

- How do management and the association currently support unit members whose performance is determined to be unsatisfactory by the evaluation process (Article 15)?
- Release time and/or stipends for Joint Committee members, consulting teachers, and participating teachers are integral to the operation of an effective Peer Assistance and Review program. Are the association and management willing to commit the financial resources that are necessary?
- If stipends are paid for additional work, they should be included in Compensation (Article 25).
- A strong Peer Assistance and Review article will not correct issues arising from weaknesses in the evaluation process.
- CTA provides training for Joint Committee members and Consulting Teachers through the Instruction and Professional Development (IPD) department and the Center for Organizing and Bargaining (C4OB).

SAMPLE LANGUAGE

28.1 The Association and the District are continuously striving to provide the highest possible quality of education. 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: 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.)

28.1.1 Joint Committee (JC)

- 28.1.1.1 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 regarding 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.)

- 28.1.1.2 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.

- 28.1.1.3 The Joint Committee shall be responsible for the following:

- 28.1.1.3.1 Providing annual training for the Joint Committee members.
- 28.1.1.3.2 Establishing its own rules of procedure, including the method for the selection of a Chairperson.
- 28.1.1.3.3 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.)

- 28.1.1.3.4 Selecting trainers and/or training providers.
- 28.1.1.3.5 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.)

- 28.1.1.3.6 Sending written notification of participation in the PAR Program to the Referred Participating Teacher, the Consulting Teacher and the site principal.
- 28.1.1.3.7 Making available the panel of Consulting Teachers for selection by the Participating Teacher.
- 28.1.1.3.8 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.)

- 28.1.1.3.9 Distributing, at the beginning of each school year, a copy of the adopted Rules and Procedures to all bargaining unit members and administrators.
- 28.1.1.3.10 Establishing a procedure for application as a Consulting Teacher.
- 28.1.1.3.11 Determining the number of Consulting Teachers in any school year, based upon participation in the PAR Program, the budget available and other relevant considerations.
- 28.1.1.3.12 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.
- 28.1.1.3.13 Evaluating annually the impact of the PAR Program in order to improve the program.
- 28.1.1.4 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.
- 28.1.1.5 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.)

28.1.2 Participating Teachers (PT)

(NOTE: 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.)

- 28.1.2.1 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 due to 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 28.1 of this Article].)

- 28.1.2.2 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.

- 28.1.2.3 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.

- 28.1.2.4 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.

- 28.1.2.5 The Participating Teacher has the right to be represented throughout these procedures by the Association representative of his or her choice.

28.1.3 Consulting Teachers (CT)

- 28.1.3.1 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:

- 28.1.3.1.1 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.)

- 28.1.3.1.2 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.)

- 28.1.3.1.3 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.)

- 28.1.3.2 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:

- 28.1.3.2.1 A reference from a building principal or immediate supervisor.

- 28.1.3.2.2 A reference from an Association representative.

- 28.1.3.2.3 A reference from another classroom teacher.

- 28.1.3.3 All applications and references shall be treated with confidentiality.

- 28.1.3.4 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.)

- 28.1.3.5 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.)

- 28.1.3.6 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.
- 28.1.3.7 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.)
- 28.1.3.8 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.)

- 28.1.3.9 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.

- 28.1.3.10 The Consulting Teacher shall conduct multiple observations of the Participating Teacher during classroom instruction and shall have both pre-observation and post-observation conferences.
- 28.1.3.11 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.
- 28.1.3.12 The Consulting Teacher shall continue to assist the Referred Participating Teacher until s/he 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.
- 28.1.3.13 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.
- 28.1.3.14 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.

LEGAL REFERENCES

Education Code Sections Cited

44500 et seq. - Peer Assistance and Peer Review Program for Teachers
44504 - Mentor Teacher Program repealed as of 7/1/2001

Article 29: Professional Learning

PROFESSIONAL LEARNING that is teacher driven is essential to help educators more ably address the learning needs of every student and to help develop, refine and expand pedagogical repertoire, content knowledge and the skill to integrate both. CTA believes it is the right of all certificated staff to participate in meaningful teacher driven professional development. Every effort should be made to identify and support research-based strategies to improve student learning, programs, schools and the professional practice of teaching. Teachers must be supported in their efforts to focus on student learning. For guiding principles on professional learning, please refer to the CTA Organizational Handbook 2018-2019: Policies – *Professional Excellence*

SUGGESTED CONSIDERATIONS

- What does effective professional learning look like?
 - Effective professional development is closely tied to current instructional assignments and circumstances and to new state programs and mandates, the California Standards for the Teaching Profession (CSTP) and is consistent with current research, and is based on the needs of students and school programs as determined by the on-site educators.
 - For professional development to be effective there must therefore be continued, systematic, coherent attention to the needs of both individual educators and the schools in which they work.
- It shall include appropriate short-term and long-term follow-up, and shall be evaluated by those who participate in the professional development program.
- Basic to any effective professional development is a clear commitment by district and site administrators to work in a collegial relationship with teachers and other site personnel and to provide the necessary resources for the successful implementation of any program.
- Appropriate areas of professional development may include but are not limited to:
 - New content knowledge and instructional techniques in curriculum content areas.
 - Implementation of new state frameworks, programs or instructional materials.
 - Teaching methods which reflect the latest research
 - Analysis of student learning and evaluation of student progress.
 - Cultural and/or ethnic background of district/local students.
 - Effective strategies for meeting the needs of all English language learners.
 - Training focused on the needs of diverse students and students who are at risk of dropping out of school.
 - Major district or school priorities.
 - Health conditions and special needs of students.
 - The use of technology and its integration into the curriculum.

TOPIC: PROFESSIONAL GROWTH/DEVELOPMENT

Professional growth/development consists of activities undertaken by an individual educator to improve himself/herself. Such activities shall be determined by the individual and shall be unrelated to evaluation. Such activities shall be aligned with the California Standards for the Teaching Profession (CSTP) and California Student Academic Content Standard. To ensure all professional growth/development provided or selected by professional educators is the highest quality, it shall be aligned with the objectives outlined in Learning Forward's Standards for Professional Excellence (revised 2010).

SAMPLE LANGUAGE**29.1 Professional Growth/Development**

- 29.1.1 In order for professional growth/development to be successful, teachers shall be primarily involved in determining what content will be delivered, where, by whom, how the content will be provided, and what incentives, resources and support will be dedicated to it.
- 29.1.2 Teachers shall also be primarily involved in implementing and evaluating its content. If the proposed program is district-wide, teachers or other certificated personnel representing the majority teacher/educator Association shall have the major decision-making responsibility. A majority of teachers shall determine, implement and evaluate the content.
- 29.1.3 Educators have different needs and different learning styles as well as teaching styles, and will benefit differently from, and utilize differently, any given professional development offering. Therefore, professional growth/development should be engaged in on a voluntary basis. Each educator shall be the final determiner of the methods which are most effective for him or her, and shall be evaluated on the achievement of individual goals rather than on the utilization of any specific method.
- 29.1.4 Evaluation of any specific professional growth/development program shall focus on the usefulness of the program itself to participating educators rather than on whether the educator chooses to implement a specific method.
- 29.1.5 For any professional growth/development which is offered beyond the contracted working day the educator shall receive pro rata pay for the extra time involved.
- 29.1.5 For year-round multi-track schools, any given professional growth/development offering shall be presented at least twice during a school year so that educators in all tracks have the opportunity to participate. Any proposals related to

calendar or salary schedules shall be bargained with the exclusive bargaining representative.

TOPIC: PROFESSIONAL DEVELOPMENT LEAVE

This section of Article should cross reference to any leave article agreed to in the contract. Often referred to as sabbatical leave, this section is intended to codify the value of ongoing professional learning.

SAMPLE LANGUAGE

29.2 Professional Development Leave

29.2.1 All professional educators should be eligible for a fully paid professional development leave after seven (7) years of full time certificated employment.

29.2.1.1 Unit members shall receive up to one year of paid professional development leave.

TOPIC: PROFESSIONAL LEARNING COMMUNITY (PLC)

The Association believes a Professional Learning Community (PLC) is based on participants reaching consensus on their mission, values, norms and goals. Educators need more opportunities to participate in extended learning opportunities and productive, collaborative Professional Learning Communities. Building enough time into the educator's current work day for ongoing, sustained, educator-driven professional development is essential. This allows educators to analyze data in the development of high quality curriculum, instruction, and assessments to increase their influence over crucial areas of school decision-making.

SAMPLE LANGUAGE

29.3 Professional Learning Community

29.3.1 Consistent with mission, values and norms, unit members shall self-select which PLC best meets their professional learning goals

29.3.2 Unit members who are a part of a defined PLC shall collaboratively decide with other members of the PCL the discretion to direct their learning during contractual work hours. This may be during collaborative planning time or professional development time designed for this purpose.

29.3.3 Extended PLC learning opportunities outside the normal contractual hours shall be agreed upon by the PLC members and funded by the District at the unit members' pro-rata daily rate of pay.

TOPIC: TEACHER SUPPORT PROVIDERS

The intent of teacher support provider programs is to encourage teachers currently employed in the public schools to continue to pursue excellence within their profession and to provide incentives to teachers of demonstrated ability and expertise to remain in the public school classroom. Teacher support providers should be available to any teacher. Should the Association and the district agree to a teacher support provider program other than Peer Assistance and Review then constructing language suggested below should apply.

SAMPLE LANGUAGE

29.4. Teacher Support Providers

- 29.4.1 All teachers meeting the legal qualification shall have the opportunity to participate in teacher support programs.
- 29.4.2 No additional certification shall be required to become a teacher support provider
- 29.4.3 The exclusive representative shall determine the procedures for selecting teacher members of any selection committee(s).
- 29.4.4 Any stipend received by the teacher support provider is intended to be regarded as additional pay for additional responsibilities, not merit pay.
- 29.4.5 A major focus of teacher support provider programs shall be to support and guide assigned teachers.
- 29.4.6 The support providers' duties shall not be administrative.
- 29.4.7 Teachers shall determine the needs to be met in the implementation of teacher support provider programs.
- 29.4.8 The exclusive representative shall bargain qualifications, selection process, duties, term of service, compensation, and the provision for implementation of teacher support provider programs.
- 29.4.9 Veteran teachers to continue to advise/assist/support all new teachers especially during the first two years of service to the district and to their sites.

LEGAL REFERENCES

- A. Education Code Sections:
 - a. 44277-44279
 - b. 44666-44668

Article 30: Consultation

CONSULTATION provides Association and unit members a process to provide input into the educational program decisions made by the District. Meaningful discussion may occur between the parties over issues outside the scope of regular negotiations. Consultation subjects include, but are not limited to, the definition of educational objectives, content of courses and curriculum, the selection of textbooks, and the development of the Local Control Accountability Plan (LCAP). Consultation may be used if a District is considering the restructuring of its grade configurations or any number of other professional issues. A contract article creating site-based decision-making is within the scope of bargaining (see article on School Improvement). Consultation does not supersede the Associations right to negotiate the impacts and effects of changes to wages, hours and working conditions that occur as a result of programmatic decisions made by the employer.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING A CONSULTATION PROPOSAL

- What does the law require? Education Code 3543.2(a)(3) expressly grants the exclusive representative of certificated personnel the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks. The governing board of a school district shall consult with local bargaining units in developing an LCAP.
- Consider negotiating consultation procedures to articulate the process of consultation between the Association and the district prior to the need to engage in consultation.
- Consultation rights follow the same process under the EERA with the exception of the impasse procedure.

CONSULTATION ARTICLE

SAMPLE LANGUAGE

- 30.1 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, the development of the Local Control Accountability Plan 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.
- 30.2 The District shall provide written notice to the Association that action on any matter of consultation, as defined herein and by the Educational Employment Relations Act (EERA), is being considered. Such notice shall be given to provide sufficient time for the parties to meet and consult in good faith.
- 30.3 The Association may exercise its right to consult on proposed Board action(s) by initiating a demand to consult on the subject(s). The Association may also initiate the consult process on any matter within the scope defined by the EERA.

- 30.4 Upon the Association exercising 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.
- 30.5 The District shall give full consideration to such presentations made by the Association prior to arriving at a decision of policy or course of action.

CONSULTATION PROCEDURES

SAMPLE LANGUAGE

- 30.6 The parties shall jointly manage a consultation committee.
- 30.6.1 The committee shall be composed of nine members: three District members and six Association members.
- 30.6.1.1 The District members shall be the Superintendent or designee, one principal, and one other certificated management representative.
- 30.6.1.2 The Association members shall be the Association President or designee, and one Association member from each of the following grade span assignments: K-3, 4-5, 6-8, and 9-12, and one additional Association appointee.
- 30.6.1.3 Each party shall select their own committee members within the categories delineated in 30.6.1.1 and 30.6.1.2.
- 30.6.2 The chair of the committee shall rotate each year between the District and the Association.
- 30.6.3 The committee shall meet at least four times each school year.
- 30.6.4 The committee shall discuss and decide the definition of educational objectives, the determination of the content of courses and curriculum, the selection of textbooks, and the development of the Local Control Accountability Plan.
- 30.6.4.1 The decision of the committee shall be by majority vote.
- 30.6.4.2 In the event that there is no majority vote for a particular issue, the Superintendent shall present the issue, including the options discussed by the committee, for decision by the school board at the next regularly scheduled school board meeting.
- 30.6.5 Decisions of the committee shall be reduced to writing and maintained by the parties. The committee decisions shall be enforceable under the grievance

procedure of the parties' collective bargaining agreement.

- 30.6.6 The committee shall not make decisions which violate the collective bargaining agreement between the parties.

LEGAL REFERENCES

A. Education Code Sections Cited

52060(g) – Consult with local bargaining units in developing the local control and accountability plan

B. Government Code Sections Cited

3543.2 – Scope of Representation

Article 31: Supplemental Instructional Programs

SUPPLEMENTAL INSTRUCTIONAL PROGRAMS were created by the state to address the need for additional instruction targeted to at-risk students. Supplemental instruction programs may be offered during the summer, before school, after school, on Saturday, or during intersession, or in any combination, but shall be in addition to the regular school day. *Education Code* is specific on defining which pupils shall be or may be offered such programs.

SUGGESTED CONSIDERATIONS

- When looking at current language, what does it say about intervention regarding high school graduation? What of elementary students at risk of retention?
- Does your current Local Control Accountability Plan (LCAP) address the design of these programs and if so, does it support your contract language?
 - The most common contract issues related to supplemental instruction include wages, hours, preparation time, leaves, and selection procedures.
 - There are distinctions of what the district *shall* and *may* do when it comes to curriculum and staff development. Examine the intent.

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.

- 31.1 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.
- 31.2 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.
- 31.3 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.
- 31.4 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.
 - 31.4.1 Regularly employed unit members of the District shall be given preference over outside applicants for summer school/supplemental instructional programs

placement.

- 31.4.2 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.
- 31.4.3 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.)

- 31.4.4 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.
- 31.4.5 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: a list of all applicants, credentials of each applicant, summer school seniority-rotation rank of each applicant, year that each applicant last taught summer school, and the assignment of those tentatively selected for summer school employment.

- 31.4.6 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.

31.4.7 The posting and notification of vacancies for all other supplemental instructional programs employment shall follow the provisions in Article 13, Section 13.4.

31.5 Class Size Limitations for Summer School and Instructional Programs

31.6 (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.)

31.6.1 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.

31.6.2 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.

31.6.3 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.

31.6.4 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

Education Code Sections Cited

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

37600-37620 – Continuous school programs

37630-37632 – Elements

37640-37644 – Finances

37670-37673 – Year-round scheduling

41835 – Continuous school programs

41976.5 – Summer school programs; substantially handicapped persons or graduating high school seniors

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
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
58806 – Summer school apportionments; enrollment count

Government Code Sections Cited

7906 – School Districts; Definitions (average daily attendance)
17615-17 – State Mandates

Article 32: Year-Round Education

YEAR-ROUND EDUCATION (YRE) language found in this Article is designed to be incorporated throughout an Agreement. YRE requires many changes in the way districts do business and the contract, as a whole, should reflect that. It is important to ensure 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.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING A YEAR-ROUND EDUCATION PROPOSAL

- Have you considered when “deep cleaning” and building maintenance can occur when classrooms are in use all year?
- Do you have adequate association release time to accommodate YRE bargaining unit members who wish to attend local, CTA and/or NEA conferences and meetings?
- Consider scheduling teacher staff development when all bargaining unit members can be together. 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. Are you being careful not to make unit members work during their off-track time?
- How will you ensure equal access to services provided by specialists? How will you protect the rights of specialist bargaining unit members so that they have appropriate time off? If their work year has been extended, should they be entitled to additional sick leave days in proportion to the extended work year?
- How will supplemental programs held during intersession be handled? How will assignments be made?
- If there aren't enough days in the year to meet necessary minimum instructional minutes, have you considered implementing Ed Code provisions that allow for a longer school day and shorter year? How will this affect work hours and STRS credit? The Education Code allows for calendars of less than 180 days to a minimum of 163 days for multi-track 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.
- Consider scheduling minimum days at the beginning and ending of a track.
- 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. Have you thought about how to place teachers on the same track as their own children who are pupils in the district or are in a year-round program?

TOPIC: WORK YEAR

Calendar configuration is very important in YRE districts. It often competes with salary and benefits as a high priority.

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%. YRE may save on facility construction. At the end of this article there is a list of common YRE plans and common definitions.

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	

TOPIC: INTERSESSION

SAMPLE LANGUAGE

32.1 The calendar is attached and incorporated into this Agreement as Appendix ____.

32.2 Work Year Configuration

(NOTE: Choose the appropriate YRE configuration.)

32.2.1 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.

32.2.2 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.

TOPIC: INSTRUCTIONAL DAY

SAMPLE LANGUAGE

32.3 Instructional Day

(NOTE: This section does not define the unit member's hours, only instructional time.)

32.3.1 Instructional Minutes for the School Day

Instructional minutes shall be as follows:

TK-Kindergarten	_____ minutes
Grades 1 through 3	_____ minutes
Grades 4 through 6	_____ minutes
Grades 7 through 8	_____ minutes
Grades 9 through 12	_____ minutes

32.3.2 Combination Classes

No combination classes shall be established that include more than one grade band as described in the instructional minutes of Section 32.3.1.

32.3.3 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

SAMPLE LANGUAGE

32.4 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.)

32.4.1 Seniority

32.4.1.1 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.

32.4.1.2 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 at the site. 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

32.4.1.3 The District shall assign the children of unit members to the same track that the unit member is teaching.

32.4.2 District Assignment with Team-Track Selection:

- 32.4.2.1 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.
- 32.4.2.2 After reviewing the individual preference forms, the site administrator shall initially assign each unit member to a grade level/subject area.
- 32.4.2.3 Teaching teams shall be defined as all teachers at the site 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.
- 32.4.2.4 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
- 32.4.2.5 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.

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

32.5 Exchange Days

- 32.5.1 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.
- 32.5.2 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.
- 32.5.3 Unit members shall have the responsibility for arranging the exchanges with other unit members.

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 per diem 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 should be kept informed while off-track.

SAMPLE LANGUAGE

(NOTE: These sections need to be placed in appropriate Articles of the contract.)

32.6 Substitution

- 32.6.1 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.

32.7 Professional Staff Development

- 32.7.1 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.
- 32.7.2 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 at their per diem rates.

32.8 Communications

- 32.8.1 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.
- 32.8.2 Minutes shall be kept of faculty meetings and shall be mailed to off-track unit members within one week.

32.9 Committee, Task Force, and Peer Assistance and Review Service

- 32.9.1 YRE unit members shall have the opportunity to serve as consulting teachers or on District or site committees, and/or task forces.
- 32.9.2 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.

32.10 Supplemental Instructional Programs

- 32.10.1 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.
- 32.10.2 Selection of unit members to work in off-track supplemental instructional programs shall be governed by the provisions of the Supplemental Instructional Programs article.

TOPIC: AIR CONDITIONING, ROVER/ROTATION, MATERIAL STORAGE, INSTRUCTIONAL MATERIAL

Multi-track 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.

It is best if the whole school uses the same system.

TOPIC: MATERIAL STORAGE AND FACILITIES

In either a Roving or Rotation system there is a need for storage space for teacher and pupil materials. Resistance to the multi-track YRE program will be lessened if teachers are guaranteed enough storage space and prompt delivery of their materials.

Teachers may need large cabinets with wheels that can be moved from room to room with the teacher. Bargain for appropriate storage cabinets with teacher involvement in deciding what types of cabinets will be purchased.

Teachers in multi-track 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.

SAMPLE LANGUAGE

32.11 Air Conditioning

- 32.11.1 Air conditioning shall be provided in all rooms, including classrooms, lunch, lounge, and work areas of any building used in the YRE program.

32.12 Rover/Rotation

(NOTE: Choose between Rover or Rotation language.)

32.12 Roving

- 32.12.1 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.

32.12.2 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:

32.12.2.1 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.

32.12.2.2 Unit members serving as Rovers shall not be assigned bus, yard, or lunch duty. Unit members shall not be assigned any club or program responsibilities.

32.12.2.3 Rovers shall be provided storage space in each classroom they use.

32.12.2.4 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.

32.13 Rotation

32.13.1 If overcrowding requires that more than one unit member be assigned to a classroom, the Rotation system shall be used.

32.13.2 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.

32.14 Material Storage

32.14.1 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.

32.15 Instructional Materials

- 32.15.1 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.

Note: Listed below are some YRE plans that have been used in the past.

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%.

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.

Off-Track: Vacation time for pupils and teachers.

Overlap Days: Days of instruction when all tracks are in session.

Rainbow: Unit members 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.

LEGAL REFERENCES

Education Code Sections Cited

37670-37673 - Year-Round Scheduling
42239.5 - Pupils in Voluntary After School Programs
48980 - Notification of Parents/Guardians
51205 - Pupils in Year-Round School

Government Code Sections Cited

3543.2 - Scope of Representation
6700 - State Holidays
6803 - Year; half year; quarter year
6804 - Month
6805 - Week
6806 - Day

Article 33: Special Education

SPECIAL EDUCATION means specifically designed instruction and related services, at no cost to the parent, to meet the unique educational needs of individuals with exceptional needs, whose educational needs cannot be completely met with modification of the general instructional program. Special Education provides a full continuum of program options to meet the educational and service needs of individuals with exceptional needs in the least restrictive environment.

Special Education is based on three important concepts: individualized instruction, a continuum of program options and services, and Least Restrictive environment (LRE). In order to meet the needs of all students with disabilities a continuum of services or placement options are necessary.

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.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING A SPECIAL EDUCATION PROPOSAL

- What does the law require?
 - Federal IDEA
 - State Education Code
- Who are the special education and non-special education unit members who provide services to students with IEPs who are potentially impacted by contract language in this section?
- Do you need a new article for special education or is what you're trying to accomplish already in your contract?
- Can you add language to other articles to meet the needs of your bargaining unit members serving students with IEPs?
- Is there enough time for collaboration and planning?
- Are your unit members impacted by the scheduling of IEP meeting times?

SPECIAL EDUCATION 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

33.1 Local Plan Development

- 33.1.1 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.
- 33.1.2 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.

COMMUNITY ADVISORY COMMITTEE

A Community Advisory Committee's membership includes parents of school children, school personnel and representatives of the public. This committee advises school administrators and local school boards of the plan for special education, assists with parent education and promotes public awareness of individuals with special needs.

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

33.2 Community Advisory Committee

- 33.2.1 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.

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.)

33.3 County Office Agreements

- 33.3.1 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.

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

33.4 Reorganization Rights

- 33.4.1 Prior to reorganizing a Special Education Local Plan Area, the District shall meet and negotiate with the Association regarding its impact.

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.)

33.5 Special Education Transfer Rights

- 33.5.1 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: 33.5.1 is redundant if the Transfer Article in the Agreement has clear, unlimited transfer language.)

INDIVIDUAL EDUCATIONAL PLANS (IEPs)

Many special education unit members are overwhelmed with the extra time that is needed in the development of Individual Educational Plans (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.

Unit members impacted by the IEP should be part of the IEP process to include timely notification of the IEP meeting and the ability to provide meaningful input. A unit member must be present in order to sign a document related to the IEP and districts should not expect a unit member to sign an IEP if they were not present at the IEP.

SAMPLE LANGUAGE

33.6 IEPs

- 33.6.1 The District shall provide unit members assigned to assist in the development of Individual Educational Plans 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.
- 33.6.2 Unit members whose duties would be impacted by an Individual Educational Plan 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 release time without loss of compensation. Unit members involved in the development of Individual Educational Plans during instructional preparation time or after regular hours of employment shall receive their hourly rates of pay or compensatory release time which may be accumulated and utilized at the unit member's discretion.
- 33.6.3 Unit members, whose service on Individual Educational Plan 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 release time, which may be accumulated and utilized at the unit member's discretion.

- 33.6.4 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.
- 33.6.5 The District shall, when implementing any core program, take into account the impact on existing categorical and special programs and coordinate the programs accordingly.

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

33.7 Fair Hearings

- 33.7.1 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.
- 33.7.2 Counsel retained to represent the District in any such hearing shall consult with the unit member regarding preparation for the hearing.

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

33.8 Instructional Aide Time

- 33.8.1 The District shall provide not less than one instructional aide to assist each unit member assigned to a special education class/resource specialist program 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.

Instructional aide time shall be consistent and equal in all special education classes/resource specialist programs.

CLASS SIZE AND CASELOAD

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. 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.)

33.9 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:

33.9.1 Special Day Classes (Students)

33.9.1.1	Infant	6
33.9.1.2	Pre-school Intensive	8
	Non-intensive	10
33.9.1.3	K-12 (Students)	
	Mild to Moderate	15
	Moderate to Severe	10
	Autism Specific	8
	Emotional Disturbance	6
	Deaf and Hard of Hearing	8
	Visually impaired	10

33.9.1.4	Resource Specialist	20
33.9.1.5	Designated Instructional Services (caseload)	
	Speech & Language, duplicated and unduplicated students	45
	Adaptive P. E.	55
	Psychological Services General Education	1:1000
	Mild to Moderate	1:22
	Moderate to Severe	1:10
	Assessment (including Gifted)	1:45
	Counseling (certificated)	1:22
	Orientation and mobility	1:12
33.9.1.6	School Nursing Service:	
	General Education K-12	1:1000
	Special Education	1:100
33.9.1.7	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.	

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.)

33.10 Professional Development

- 33.10.1 The District shall annually provide two days of professional development programs for unit members whose duties are impacted by the Special Education Local Plan.
- 33.10.2 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.
- 33.10.3 Unit members participating in professional development programs shall be released from their regular duties without loss of compensation.
- 33.10.4 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.
- 33.10.5 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.

SPECIALIZED HEALTH CARE PROCEDURES

Epilepsy Medication (Diastat) Legislation

See Article 22, Safety.

APPROPRIATE INCLUSION/FULL INCLUSION

SAMPLE LANGUAGE

33.11 Appropriate/Full Inclusion

- 33.11.1 An Appropriate/Full Inclusion Planning Team consisting of the appropriate/full inclusion special day class teacher and the general education teachers with identified appropriate/full inclusion pupils shall be organized at each site with identified appropriate/full inclusion pupils.
- 33.11.2 Each appropriate/full inclusion site shall receive an additional allocation of funds to support planning and implementation of the appropriate/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 Appropriate/Full Inclusion Planning

Team shall determine the utilization of such funds to support appropriate/full inclusion at their site.

- 33.11.3 Release time of one day per month shall be allocated to unit members who are teachers of identified appropriate/full inclusion pupils, to provide planning time with the appropriate/full inclusion special day class teacher and other support personnel.
- 33.11.4 Unit members impacted by appropriate/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.
- 33.11.5 Three days of staff development/training shall be provided for unit members with identified appropriate/full inclusion pupils. Such staff development training shall be on release time or compensated at the unit member's hourly rate of pay.
- 33.11.6 Each appropriate/full inclusion site shall be supported with appropriate/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.
- 33.11.7 The implementation of an Appropriate/Full Inclusion Program shall not be utilized as a tool for a reduction in staff.
- 33.11.8 The class size/caseload assigned to an appropriate/full inclusion special day class unit member shall not exceed ten pupils.
- 33.11.9 The determination of the size of classes, with appropriately/fully included pupils, shall take into consideration any extraordinary demands on physical space, unit member contact, and/or unit member supervision.
- 33.11.10 Any unit member who will be impacted by appropriate/full inclusion shall receive prior notification.
- 33.11.11 Unit members whose number of annual duty days is extended in order to implement an appropriate/full inclusion program shall be compensated at her/his daily rate of pay for those days.
- 33.11.12 Unit members shall not be required to accept assignments in the appropriate/full inclusion program.
- 33.11.13 The District shall not deny to any unit member assigned to an appropriate/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.

RESPONSE TO INTERVENTION (RTI)

Rtl is a multi-tier, integrated school improvement model which is researched based, and standards driven. It involves regular measurement of student achievement and student behavior and addresses both prevention and intervention. The 2004 Reauthorization of the Individuals with Disabilities Education Act (IDEA '04) stipulates that fifteen percent (15%) of federal special education funds may be used with non-identified general education students. The funds are to be used to develop and implement coordinated, early intervening services for students who need additional academic and behavioral support to succeed in a general education environment. IDEA '04 also provides the responsiveness to scientifically-based interventions to be used as part of a process to determine eligibility for specific learning disabilities. Rtl is a voluntary program; a district is not required to participate.

SAMPLE LANGUAGE**33.12 Response to Intervention**

- 33.12.1 Evaluation of Rtl Model: An evaluation of the Rtl model will take place by April 1 of each school year. The evaluation process will be determined by the Association and the District and implemented by both parties.
- 33.12.2 Caseload: No Resource specialist will have a caseload which exceeds 28 pupils. Resource Specialists may not simultaneously be assigned to serve additional regular education students or teach additional education classes.
- 33.12.3 Class Size: Due to Rtl considerations, class size may not be increased beyond levels mandated by the CBA.
- 33.12.4 Voluntary Transfers, Voluntary Reassignment & Request for Increase of FTE: A transfer or reassignment will not be denied due to Rtl considerations.
- 33.12.5 Involuntary Transfers and Reassignments will not be initiated due to Rtl considerations.
- 33.12.6 Evaluation Procedures: The progress/achievement, or lack thereof, of students in Rtl will not be used in the evaluation of Unit Members. The number of students needing tier 3 Intervention will have no impact on the evaluation of Unit Members.
- 33.12.7 Professional Development: The District and Association will develop a committee for professional development. The committee will consist of five (5) people: three (3) appointed by the Association and two (2) appointed by the District. The committee shall meet during the work day and Unit Members shall receive release time for their participation. If the meetings should take place outside of the work day, members will be compensated at their per diem rate.

- 33.12.8 Curriculum: The District and the Association will develop a committee for curriculum. The committee will consist of five (5) people: three (3) appointed by the association and two (2) appointed by the District. The committee shall meet during the work day and Unit Members shall receive release time for their participation. If the meetings should take place outside the work day, members will be compensated at their per diem rate. The committee will review and recommend various research-based programs for use.

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
 56190 - Establishment; advisory capacity
 56191 - Membership; appointment; responsibility
 56192 - Composition
 56194 - Authority; responsibilities
 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; meetings; members and membership requirements; attendance of meetings; excusal from attendance
 56342 - Duties of individualized education program team; compliance with federal regulations
 56345 - Individualized education program; contents; legislative intent; use of moneys; hearing impaired children
 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
 56195.7-5619.10 - Local requirements/participation in local plans

B. Government Code Sections Cited

7573 - Special education and related services

Miscellaneous

20 U.S.C. 1401 et seq. – Reauthorized “Individuals with Disabilities Act”, 2004

Title 20 of section 1414, subsection b(6), cited as 20 USC 1414 (b)(6) IDEA 2004, “Rtl statute”

Article 34: 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 Local Control Funding Formula funded juvenile court and community day schools, and/or alternative education. Other programs include special education, home/hospital, head start, ROP, and other categorical programs. County Offices may also include county run charter schools.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING A PROPOSAL

- What programs are in place in the county office? (i.e. SpEd, Juvenile Hall, etc)
- Are there positions in the bargaining unit that require that unit members work more days than others? How could you construct salary schedules so that bargaining unit members will receive the proper credit with the State Teachers Retirement System? You may need to create separate schedules to accommodate the variables appropriately.
- Are there positions in the bargaining unit that require unit members to work extended hours? How will you ensure proper compensation for the additional hours?
- Are unit members working additional days provided extra sick leave?
- Due to the nature of the regional work that results in sparse distribution of unit members in a county office, how are transfers and assignments handled to make sure unit members are not transferred to a position that creates a burden on the employee?
- While county office issues are unique, much of the language in the contract reference manual is pertinent to employees in the county office setting.
- Recognition clauses should stay broad to be inclusive of as many certificated positions as possible. Instead of listing everyone who is included, only specify positions (i.e. management) that would be excluded.

Assignments are usually offered for ten (10) month positions in programs such as special education. Twelve (12) month 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 members 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. Members 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 sparse distribution 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 bargaining 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.

Permit teachers, Adult Education teachers and TOSAs can also be included in the Recognition Article. The default should be “all certificated non-management” employees.

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 bargaining unit member's current employment location. As an alternative, any involuntary transfer beyond a certain number of miles from the bargaining 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 bargaining unit member will be assigned or transferred. Many County Office bargaining unit members have multiple credentials, and even though the bargaining unit member may hold a credential appropriate to an assignment, the bargaining 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 or ROP. 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: PROFESSIONAL RIGHTS

EVALUATION: Within the evaluation procedures section (15.1), make certain that the definition of the bargaining unit member's "primary evaluator" is clear and unambiguous. Because County Office bargaining unit members often work with students in facilities operated by a local school district or other agency, it should be clearly defined that the bargaining unit member's evaluator is the bargaining unit member's supervisor in the County Office program, and no one else.

PUBLIC COMPLAINTS: Within the public complaints section (15.4), make certain that any complaint lodged against a County Office bargaining unit member is processed through the complaint procedures delineated in the County Office contract. Again, because County Office bargaining 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 bargaining 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 derived from such systems for unit member evaluation purposes. See also Article 22, Safety, Section 22.1.7.

TEACHING CONDITIONS: County Office bargaining 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 bargaining 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 of 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 bargaining unit members are kept on temporary employment status until they receive full certification. In order to expedite the time it takes to move these bargaining 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 bargaining unit members having to complete a probationary status year after already completing two or more years on temporary status.

In County Offices with less than 250 ADA, all unit members are temporary per Ed Code 1296. Bargaining language for just cause and right to a layoff should be considered for these employees.

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 bargaining 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 bargaining unit members, regardless of work location. County Office unit members should not be required to work more days than other bargaining 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 22: SAFETY

Many County Office assignments can be especially challenging when it comes to member safety. Members are often working with students who can be violent, so extra attention needs to be paid to the safety article. This is particularly where a member has no control over their work environment, such as juvenile hall.

ARTICLE 23: LEAVES

Add a specific provision for a new type of leave of absence whereby a County Office bargaining 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 bargaining unit member would have the same return rights to a County Office position as other bargaining 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 bargaining 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 a class size maximum for community day school classes, suggested at no more than 12 students, and court school classes suggested at no more than 10.

As many County Office assignments are itinerant, having language for caseloads should be addressed. For example, Speech Language Pathologists should have a caseload of no more than 55. When there is a great distance between sites the caseload should be lowered to account for travel time.

LEGAL REFERENCES

Education Code Cited

1240 - County Superintendent of Schools - Powers and Duties
1296- 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
44903.7 - Local Special Education Plan Development - Certificated Employee Rights
56207 - Transfer of educational programs and services
74104, 74134, 74153 - County Superintendent of Schools - District Organization and Reorganization Petitions

Article 35: Technology And Related Contract Provisions

TECHNOLOGY AND RELATED CONTRACT PROVISIONS is an article that may need to be updated as new technology is updated and implemented. With the implementation of SBAC testing and greater reliance on cloud-based reporting and grade systems, proper access to computers, tech support and professional development is a growing concern as part of members' working conditions.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING A TECHNOLOGY AND RELATED CONTRACT PROVISIONS PROPOSAL

- Will training be provided within the duty day or will there be an extra stipend for attending training outside the duty day?
- Who will be responsible for collecting and maintaining the *Acceptable Use Agreements* for students?
- Will members be required to use specific software or will they have freedom to choose?
- What is the expectation for technology use in regard to time for answering email, etc.?

SAMPLE LANGUAGE

- 35.1 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, and curriculum based software and other software tools to support instruction.
- 35.2 The District shall provide protections on the use of student records to prevent unauthorized access to such information.
- 35.3 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.
- 35.4 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.
- 35.5 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".

- 35.6 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.
- 35.7 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.
- 35.8 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.
- 35.8.1 The Committee shall be composed of three Association appointees, three District appointees and one mutually agreed upon member.
- 35.8.2 The Committee shall conduct a technology and technology-related needs assessment.
- 35.8.3 The Committee may recommend training or additional training for unit members to be granted supervision rights for technology using students or equipment.
- 35.8.4 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.
- 35.9 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.
- 35.10 The Association shall have the use of the District E-mail (or whatever website) to communicate with their unit members.

- 35.11 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.
- 35.12 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.
- 35.13 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.
- 35.14 Distance Learning
- 35.14.1 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.
- 35.14.2 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.
- 35.14.3 Assignments to Distance Learning positions shall be voluntary.
- 35.14.4 Distance Learning unit members shall have a regular preparation period.
- 35.14.5 The maximum number of pupils assigned to any Distance Learning class shall be consistent with Article 27, (Class Size).
- 35.14.6 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.
- 35.14.7 Any digital rendering of instruction for distribution later shall be made only with the unit member's prior written approval.

- 35.14.8 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.
- 35.14.9 Distance Learning unit members shall have total control over any and all digitally rendered instruction.
- 35.14.10 Unit members, whose instructional presentations are digitally rendered or who create the ideas or materials for use in videotapes or who participate in the production of digital files, 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.
- 35.14.11 Evaluations of unit members assigned to Distance Learning classes shall be in accordance with the evaluation procedures in this Agreement.
- 35.14.12 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.
- 35.14.13 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 35 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, cyber-bullying 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 appropriate use is 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, CD-ROM, etc., 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 or 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, cyber-bullying 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 and/or have taken a school-owned device off school grounds.*

*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, cyber-bullying 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, cyber-bullying 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

Arbitration Participation Fund, 10-1

Article 36: Teacher Induction

An Induction Program is designed to provide a two-year program of mentoring, support and professional learning during the first two years of teaching as a requirement for earning a professional clear teaching credential. Induction programs may be offered by school districts, county offices of education, and/or institutions of higher learning. Eligible teachers are not required to participate in the local school district's Induction program. The teacher may choose from any Induction program accredited by the Commission on Teacher Credentialing.

Induction is no longer categorically funded, but is covered under the umbrella of the Local Control Funding Formula (LCFF). It is important to ensure that the cost of participation in an induction program should not result in the participant paying any of the costs.

Whether a local school district is an Induction program or not, the sample language contained herein is recommended to protect the teacher's rights regardless of the program the teacher chooses.

SUGGESTED CONSIDERATIONS PRIOR TO MAKING AN HOURS AND ADJUNCT DUTIES PROPOSAL

- What will a chapter do to support teachers in their beginning years so that they will stay in the profession?
- How will the local chapter ensure that the induction program is a supportive rather than evaluative process.
- How will the local chapter ensure that a majority of unit members comprises the Leadership Team?
- How will the local chapter ensure that the participating teacher is not required to pay for any part of the program?
- What programs does the chapter have in place so that any issues or problems that arise are revealed and dealt with in a quick and expedient manner?

TOPIC: LEADERSHIP TEAM

While a leadership team is not required under current program standards, it is a good practice to have a leadership team that includes teachers. If the local school district is an Induction sponsor, the association should bargain over aspects of the Induction program's leadership team. If the local school district does not sponsor an Induction program, then the association should bargain the establishment of a leadership team along similar lines, to monitor and make sure that external Induction programs used by teachers meet Induction program standards and respect their contractual rights.

If the district has a PAR program, programs, it may be appropriate to combine the induction leadership team and the PAR panel to form a joint panel. Should the association and the district agree to administer PAR and teacher Induction with one joint panel, use the PAR language in Article 28 and modify it to include, where appropriate, Induction Mentors.

SAMPLE LANGUAGE

39.1 Leadership Team

36.1.1 The majority of the members of the Leadership Team shall be teachers appointed by the association.

39.1.2 The Leadership Team shall:

- Establish its rules of procedure.
- Establish the selection process for mentors.
- Conduct an annual program evaluation and make recommendations for improvement.
- Develop comprehensive procedures to facilitate cooperation among eligible new hires, their teacher preparation institutions, and the district's Human Resources department.
- Establish criteria for recommending a clear credential that is clear, concise and publicly articulated.
- Develop an appeal process for induction participants who are deemed not to have completed the program.

39.1.5 Leadership Team members shall receive release time for meetings and other teacher Induction program activities and shall be paid their pro-rata hourly rate for meetings that take place before or after the contractual workday.

39.1.6 The Leadership Team shall ensure the Induction program is focused on the California Standards for the Teaching Profession.

39.1.7 The Leadership Team shall implement the Induction program only after the district and the association have met to review the program to ensure compliance with language in the collective bargaining agreement, including, but not limited to, teacher evaluation, professional growth, and professional rights.

39.1.8 Upon review of the program, the district and the association may submit, in writing, any comments/concerns to the Leadership Team. The Leadership Team shall respond, in writing, prior to implementation of the program.

39.1.9 The Leadership Team must conduct an annual program evaluation and make recommendations for changes/improvements. Said recommendations shall be forwarded to the district and the association for review and comment in compliance with 36.1.2 above.

39.1.10 As part of an agreement to enter into any consortium with other districts to provide a Teacher Induction program, the district shall ensure that the consortium has established a leadership team that includes teachers as majority of its composition. Teachers shall be appointed by the Association to participate on the consortium leadership team. Teachers shall be granted release time during their workday at no loss of pay or benefits to fulfill the obligations of their appointment. If the team meetings are held outside the workday, teachers shall be paid their hour pro-rata rate of pay.

- 39.1.11 The association and the district shall work jointly to ensure that the Induction program meets the standards for professional teacher Induction programs, as established by the California Commission on Teacher Credentialing. No teacher shall be required by the district to participate in an Induction program that does not meet these standards.
- 39.1.12 Teachers who participate in a district-sponsored Induction program shall have the right to give evidence or information to the Induction program, relevant to the quality of services provided.
- 39.1.13 The district shall furnish to the association, upon request or at least once annually, evidence that the district-sponsored Induction program does not require any teacher to perform at a higher level than is required by the Induction program standards.

TOPIC: INDUCTION AND TEACHER EVALUATION

The Individual Learning Plan in the Teacher Induction Program is intended to provide helpful feedback to teachers. It is not to be used for the performance evaluation (summative evaluation) of teachers. Caution should be exercised so that the Induction program will not become a substitute for a performance evaluation. The administrator who is evaluating the teacher or making employment related decisions should not be the same person who is assessing whether the teacher will be recommended for a clear credential.

SAMPLE LANGUAGE

- 36.2 The Induction program is not a substitute for the contractual evaluation procedure in Article ____ of the agreement. The performance evaluation and the Induction program are separate and unrelated procedures.
- 36.3 Each candidate will develop an Individualized Learning Plan (ILP) collaboratively with the mentor
- 36.4 The participation records of any teacher, including but not limited to, notifications, timelines, program participation, feedback about levels of participation, special assistance, etc., shall remain the property of the teacher and shall not be placed in the his/her personnel file or used in his/her performance evaluation. The Induction program sponsor may maintain only those records necessary to prove participation and completion of the program. These records shall be confidential and shall not be shared with the teacher's immediate supervisor or the district administration.
- 36.5 If the Mentor submits a final report, a preliminary copy of the final report shall be submitted to and discussed with the teacher to receive his/her input prior to the final report being completed. The teacher's signature on the final report does not necessarily mean agreement, but rather that he or she has received a copy of the report. The teacher shall have the right to submit a written response within twenty

- (20) days and have it attached to the final report. The final report shall not be placed in the teacher's personnel file. When the teacher has completed the Induction program, he/she will be able to apply to the CCTC for a clear credential.
- 36.6 The teacher shall have the right to begin a new Induction program with a different Induction sponsor at any time.

TOPIC: MENTOR PROFESSIONAL DEVELOPMENT

Sample contract language for this standard is dependent on the bargaining unit status of the Mentor; i.e. whether the Mentor is in the bargaining unit, as might be the case with a program administered by the district, or outside the bargaining unit, such as a consortium or university-based program.

When the Mentor is a teacher in the district, the association should establish standards for his/her professional development. The Mentor should have the opportunity to determine his/her own course of professional development, and it should be at no cost.

SAMPLE LANGUAGE

- 36.7 Teachers who have been selected as Mentors shall be granted by the district full opportunity for appropriate professional development.
- 36.8 The Mentors, in conjunction with the association and the district, shall be full partners in the design, content, and implementation of the professional development program for Mentors.
- 36.9 Mentors shall be granted release time for agreed-upon professional development, or to meet with other Mentors to develop and refine their skills, and to problem-solve, assess and reflect on teaching.
- 36.10 The Mentor shall be reimbursed for costs associated with professional development.
- 36.11 No Mentor shall be required to enroll in courses that require tuition, unless the district agrees to reimburse for tuition costs.

TOPIC: PROFESSIONAL DEVELOPMENT

The purpose of professional development, as it pertains to the Individual Learning Plan, is to provide the necessary support, resources, and materials to ensure the success of the participating teacher's attainment of the *California Standards for the Teaching Profession*. At no time should the participating teacher be required to pay for professional development included as part of the ILP.

SAMPLE LANGUAGE

- 36.12 Participating teachers shall be given the opportunity to identify specific professional development needs to create the Individual Learning Plan. The district shall make every effort to meet the participating teacher's professional development needs.
- 36.13 An array of professional development offerings shall be provided by the district to the participating teacher for the attainment of the knowledge and skills needed to meet the goals established in the teacher's Individual Learning Plan.
- 36.14 Participating teachers shall be responsible for their professional growth and development, including but not limited to, the selection of mentors and other support team members to meet the Individual Learning Plan.
- 36.15 The district shall provide participating teachers paid release time to meet with mentors for the purpose of developing and implementing the Individual Learning Plan.
- 36.16 The Individual Learning Plan shall take into consideration the participating teacher's prior preparation, training, and experience, as well as the specific assignment and teaching context of the teacher
- 36.17 Results from the pre-service teaching performance assessment may guide initial planning for induction at the discretion of the participating teacher. California Standards for the Teaching Profession-based formative assessment evidence guides the development, monitoring, and ongoing revisions of subsequent Individual Learning Plans.
- 36.18 The district shall provide all the necessary resources and release time to assist the participating teacher to complete the Individual Learning Plan. Participating teachers shall not be responsible for any of the costs associated with participation in the program.

LEGAL REFERENCES

A. Education Code Sections Cited

44279 Marian Bergeson Beginning Teacher Support and Assessment System
44500 et seq. - Peer Assistance and Peer Review Program for Teachers

B. Miscellaneous

California Standards for the Teaching Profession (CSTP)
<http://www.ctc.ca.gov/educator-prep/standards/CSTP-2009.pdf>

General Education Induction Program Preconditions and Program Standards
(2015): <http://www.ctc.ca.gov/educator-prep/standards/GEd-preconditions-program-stds-12-2015.pdf>