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## Table Of Contents

Preamble .....	1
Article 1 – Recognition .....	2
Article 2 – Association and Teacher Rights .....	3
Section 2.1 – Scope .....	3
Section 2.2 – Personal Life .....	3
Section 2.3 – Use of Facilities .....	3
Section 2.4 – Association Communications .....	3
Section 2.5 – Association Representatives .....	4
Section 2.6 – Academic Freedom .....	4
Section 2.7 – Faculty Advisory Committee .....	4
Section 2.8 – Testing .....	4
Article 3 – Professional Compensation .....	5
Section 3.1 – Salary Schedule .....	5
Section 3.2 – Pay Day .....	5
Section 3.3 – Extra Duty/Adjunct Duty .....	5
Section 3.4 – Supplemental Pay – Pay Day .....	6
Section 3.5 – Daily Rate .....	6
Section 3.6 – Pay Rates .....	6
Section 3.7 – Column .....	6
Section 3.8 – Initial Placement .....	6
Section 3.9 – Salary Schedule Placement .....	6
Section 3.10 – Credit for Experience .....	7
Section 3.11 – Professional Growth .....	7
Section 3.12 – Career Increments .....	10
Section 3.13 – Masters Degree .....	10
Section 3.14 – National Bd. for Professional Teaching Standards .....	10
Section 3.15 – Percentage Contract .....	10
Section 3.16 – Transportation – Mileage .....	11
Section 3.17 – Personal Car .....	11
Section 3.18 – Retired Teacher .....	12
Article 4 – Health and Welfare Benefits .....	13
Section 4.1 – Health Insurance .....	13
Section 4.2 – Required Health Procedures .....	13
Section 4.3 – Domestic Partners .....	13
Section 4.4 – Change of Carriers .....	13
Section 4.5 – Participation While on Leave .....	13
Section 4.6 – Participation of Surviving Spouse/Dependents .....	13
Section 4.7 – Premium Costs .....	13
Section 4.8 – Quarterly Insurance Reports .....	15
Section 4.9 – Participation by Retirees .....	15
Section 4.10 – Employer/Employee Health and Welfare Review Process ...	15
Section 4.11 – Review Committee .....	16
Section 4.12 – Written Notice of Coverage .....	16
Article 5 – Leaves .....	17
Section 5.1 – Sick Leave and Daily Absences .....	17
Section 5.2 – Personal Necessity Leave .....	18
Section 5.3 – Military Leave .....	19

Section 5.4	– Maternity/Parental Leave .....	19
Section 5.5	– Bereavement Leave .....	21
Section 5.6	– Other Leaves .....	21
Section 5.7	– Political Leave .....	22
Section 5.8	– Advanced Study .....	23
Section 5.9	– Leave for Judicial and Official Appearances .....	23
Section 5.10	– Sabbatical Leave .....	24
Section 5.11	– Industrial Accident or Illness Leave .....	25
Section 5.12	– Association Leave .....	27
Section 5.13	– Organizational Leave .....	27
Section 5.14	– General Provisions .....	27
Section 5.15	– Catastrophic Sick Leave .....	28
Article 6 – Reassignment And Transfer .....		30
Section 6.1	– Definitions .....	30
Section 6.2	– Initial Assignment .....	30
Section 6.3	– Reassignment .....	30
Section 6.4	– Transfer - Voluntary .....	31
Section 6.5	– Employer Initiated Transfer (Administrative) .....	34
Section 6.6	– Involuntary Transfers Due to Declining Enrollment ...	35
Section 6.7	– Opening Schools .....	36
Section 6.8	– Closing/Consolidating Schools .....	36
Section 6.9	– Vacancies, Promotions Posted .....	36
Section 6.10	– Intra-District Teacher Exchange Program .....	37
Section 6.11	– Affirmative Action .....	37
Section 6.12	– Disruptive Transfers .....	37
Article 7 – Class Size .....		38
Section 7.1	– School Level Class Size .....	38
Section 7.2	– Special Education .....	41
Article 8 – Safety Conditions .....		42
Section 8.1	– Assault on Employees .....	42
Section 8.2	– Voluntary Activities Applicability .....	42
Section 8.3	– Unsafe or Hazardous Conditions .....	42
Section 8.4	– Classroom Telephones .....	42
Section 8.5	– Classroom Door Locks .....	42
Article 9 – Evaluation		
Section 9.1	– Evaluation .....	43
Section 9.2	– Frequency of Evaluation .....	43
Section 9.3	– Skip Year for Permanent Teacher Evaluation .....	44
Section 9.4	– Evaluation Criteria .....	45
Section 9.5	– Designated Evaluator .....	46
Section 9.6	– Evaluation Agreement on Goals and Objectives .....	46
Section 9.7	– Formal Evaluation Sequence .....	47
Section 9.8	– Plan of Assistance .....	50
Section 9.9	– Permanent Member – Salary Restriction .....	51
Section 9.10	– Self Assessment - Warning of Liability .....	52
Section 9.11	– Data for Evaluation - Limits .....	52
Section 9.12	– Grievability .....	52

Section 9.13 – Tests Results .....	52
Section 9.14 – Complaints .....	52
Section 9.15 – Personnel Files .....	53
Section 9.16 – Examination of File .....	53
Article 10 – Grievance Procedure .....	54
Section 10.1 – Definitions .....	54
Section 10.2 – Level I—School Principal/Immediate Supervisor .....	55
Section 10.3 – Level II—Superintendent or His/Her Designee .....	56
Section 10.4 – Level III—Arbitration .....	56
Section 10.5 – General Provisions .....	57
Section 10.6 – Right of Representation .....	59
Article 11 – Organizational Security .....	60
Section 11.1 – Dues Deduction Authorization .....	60
Section 11.2 – Organizational Membership .....	60
Section 11.3 – Agency Fee .....	60
Section 11.4 – Hold Harmless .....	61
Section 11.5 – Forwarding of Dues Deducted .....	62
Article 12 – Teaching Hours .....	63
Section 12.1 – Length of School Year .....	63
Section 12.2 – Duty Week .....	66
Section 12.3 – Grades 4–6 Planning/Preparation Time .....	69
Section 12.4 – Teacher Check-Ins .....	69
Section 12.5 – Travel Requirements .....	69
Section 12.6 – Kindergarten Parent Conferences .....	69
Section 12.7 – School Calendar .....	70
Article 13 – Part-time Employment With Full Retirement Credit .....	71
Section 13.1 – Provisions .....	71
Section 13.2 – STRS .....	71
Section 13.3 – Age .....	71
Section 13.4 – Length of Employment .....	71
Section 13.5 – Optional Part-Time Employment .....	71
Section 13.6 – Salary .....	71
Section 13.7 – Minimum Part-Time Employment .....	71
Article 14 – Retirement Recognition .....	72
Article 15 – Negotiation Procedures .....	73
Section 15.1 – Contract Re-opener Procedure .....	73
Section 15.2 – Outside Consultants .....	73
Section 15.3 – Discharge of Duties .....	73
Section 15.4 – Released Time - Negotiations .....	73
Section 15.5 – Negotiations Representatives .....	73
Section 15.6 – Tentative Agreement .....	73
Section 15.7 – Final Approval .....	74
Section 15.8 – Contract Coordination Committee .....	74
Section 15.9 – Joint Leadership Council (JLC) .....	74
Article 16 – Support Services/Special Education Personnel (1992) .....	75
Section 16.1 – Music Teachers .....	75
Section 16.2 – Special Education Personnel .....	75
Section 16.3 – Group Meetings .....	76
Section 16.4 – Counselors and Resource Specialists .....	76

Article 17 – Definitions .....	78
Article 18 – Effect of Agreement .....	80
Section 18.1 – Complete Understanding .....	80
Section 18.2 – Individual Contracts .....	80
Section 18.3 – Savings .....	80
Section 18.4 – Association/Management/Board .....	80
Section 18.5 – Signed Copies of Agreement .....	80
Section 18.6 – Cost of Printing .....	80
Section 18.7 – No Strike, No Lockout .....	80
Article 19 – Management Rights .....	82
Article 20 – Peer Assistance and Review Program .....	83
Section 20.1 – Peer Assistance and Review Program .....	83
Section 20.2 – Definitions Applicable to this Article .....	83
Section 20.3 – Program Outline .....	84
Section 20.4 – Governance & Program Structure .....	87
Section 20.5 – Other Provisions .....	93
Article 21 – Professional Growth .....	95
Article 22 – Variances .....	97
Section 22.1 – Variance Plans—Purpose .....	97
Section 22.2 – Variance Procedure .....	97
Section 22.3 – Renewal and Recession of Plan .....	97
Article 23 – Duration .....	98
Article 24 – Teacher Intern Program .....	99
Section 24.1 – Definition .....	99
Section 24.2 – Salary .....	99
Section 24.3 – Fringe Benefits .....	99
Section 24.4 – Continuance in the program .....	99
Section 24.5 – Release from the program .....	99
Section 24.6 – Employment Status .....	99
Section 24.7 – Employment as Probationary Teachers .....	99
Section 24.8 – Master Teachers .....	99
Section 24.9 – Interns .....	100
Section 24.10 – Evaluation .....	100
Section 24.11 – Leaves .....	100
Article 25 – Americans With Disabilities (ADA) Provision .....	101
APPENDIX A–Teacher Salary Schedule, 2004-2005 .....	103
APPENDIX B–Psychologist Salary Schedule, 2004-2005 .....	104
APPENDIX C–Memo. of Understanding - Extra Duty Compensation .....	105
APPENDIX D–Notice of Grievance .....	106
APPENDIX E– Memo. of Understanding - New Middle School Staffing for .....	
2005-2006 .....	107

APPENDIX F– Board Policy 1312.1 - Complaints Concerning School  
Personnel ..... 100  
APPENDIX G –Calendar Dates for 2004-2005, 2005-2006..... 110  
APPENDIX H-Signature Page..... 112

## Preamble

The Board of Education of the  
Cupertino Union School District of Cupertino, California,  
hereinafter referred to as “The Employer” or “The Board” and the  
Cupertino Education Association, an affiliate of the  
California Teachers Association  
and the National Education Association,  
hereinafter referred to as “Association”, agree as follows:

## **ARTICLE 1**

### **Recognition**

- 1.1 **Bargaining Unit.** The Cupertino Union School District Board of Education, hereinafter referred to as the “Board” hereby recognizes the Cupertino Education Association, hereinafter referred to as the “Association” an affiliate of the California Teachers Association and the National Education Association as the exclusive negotiating representative as defined in Chapter 10.7, Sections 3540 through 3549.3 of Division 4 of Title 1 of the Government Code of a unit of certificated members described as follows: All temporary, probationary, and permanent certificated personnel paid on the certificated salary schedule and also interns, home teachers, psychologists, part-time teachers, and summer school personnel, but excluding substitute teachers. This Recognition Agreement shall not include District members in Board designated management, supervisory, and confidential positions.
- 1.2 **Association.** The Board agrees not to meet and negotiate with any teachers’ organization other than the Association for the duration of this Agreement; further, the Board agrees not to negotiate with any teacher individually during the duration of this Agreement on matters subject to meeting and negotiating.
- 1.3 **Board.** The Association recognizes the Board as the duly elected representative of the people and agrees to negotiate only with the Board or its duly authorized representative(s) designated by the Board to act in its behalf.

**ARTICLE 2**  
**Association and Teacher Rights**

- 2.1 Scope
- 2.1.1 “The Scope of Representation” shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. “Terms and Conditions of Employment” mean health and welfare benefits as defined by Section 53200, leave and transfer policies, safety conditions of employment, class size, procedures to be used for the evaluation of members, organizational security pursuant to Section 3546, and procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7 and 3548.8.
- 2.1.2 In addition, the exclusive representative of certificated personnel has 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.
- 2.1.3 All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the rights of the public school employer to consult with any members or member organization on any matter outside the scope of representation.
- 2.2 Personal Life. No member shall be transferred, reassigned, or evaluated in violation of this Agreement or the law because of his/her personal life.
- 2.3 Use of Facilities. The Association and its members shall have the right to make use of school equipment and buildings and facilities when not otherwise required for District business as permitted by the Educational Employment Relations Act and PERB decisions. The Association shall reimburse the Board for any consumable supplies used by the Association.
- 2.4 Association Communications. The Association shall have the right to post notices of activities in matters of Association concern on school bulletin boards at least one of which shall be provided at each school site. The Association shall be permitted use of member mailboxes for communications to members regarding matters with which the Association is involved. All notices, communications, and uses of District mail service and mailboxes shall be in compliance with applicable law. In addition, all notices and communications shall be identified as to the source of origin and dated. (1988)

*NOTE: It is the understanding of the parties that the right of access of the Association to the district mail service (“pony”), on the same basis as in the*

*1985-88 contract, shall be reinstated if so allowed by court ruling or other legal procedures.*

- 2.5 Association Representatives. Authorized representatives of the Association shall be permitted to transact official Association business on school property at all times including the regular member duty day. Utilization of rights under this section shall not disrupt the educational program.
- 2.6 Academic Freedom. Academic freedom shall be guaranteed to members in the study, investigation, presentation, and interpretation of facts and ideas concerning man, human society, the physical and biological world, and other branches of learning subject to accepted standards of professional responsibility with due regard to the maturity level of the student, district rules and policies, and the laws of the State of California.
- 2.7 Faculty Advisory Committee
  - 2.7.1 All school staffs, itinerant support staffs, and special education staff are expected to function within a participative management model. Members of the Unit shall be involved in the development and improvement of the instructional program. To this end, Faculty Advisory Committees and a committee from each support staff shall be formed to take an active role in participative decision-making. Support staffs should be involved in the development and improvement of their services.
  - 2.7.2 A Faculty Advisory Committee shall be selected by a secret ballot vote of the members of the Unit at the school once each year at the beginning of the school year. The committee composition shall be determined by the members and shall consist of not less than three unit members. The chairperson of this committee shall be a Unit member and shall be elected by the faculty advisory committee members by a secret ballot.
  - 2.7.3 The committee shall meet with the principal to review and discuss local school problems, practices, and budget. The committee shall play an active role in the revision, development or improvement of building practices and shall provide the opportunity for planning and exchanging of ideas. Faculty Advisory Committee members may consult with their colleagues in preparation for Faculty Advisory Committee meetings with the principal. School site budgets and reports shall be provided to the committee upon request.
  - 2.7.4 It is recommended that meetings with the principal shall occur at least once monthly during the school year.
- 2.8 Testing. No member shall be required to submit to testing for drugs, alcohol, or communicable diseases in excess of that permitted by state/federal law. (1992)

**ARTICLE 3**  
**Professional Compensation**

3.1 Salary Schedule

3.1.1 2004-2005 Salary Schedule

The 2004-2005 salary schedule shall be increased by 3.07 percent, retroactive to July 1, 2004. (2004) Pursuant to past practice, the following stipends and rates shall also be increased by the same percentage: adjunct duty, bonus for Master's degree, overnight stipends, and stipends that Master teachers receive for working with interns.

3.1.1.2 Additional compensation per implementation of Article 4 (Health and Welfare).

3.1.2 Basic compensation for members of the Unit with a BA/BS plus 30 or more units shall be the salary schedules including Step and Class as contained in Appendices A and B.

3.1.3 Current members with less than a BA/BS plus 30 units shall have their salaries increased by the negotiated percentage. Upon completion of thirty (30) units beyond the BA/BS the member shall be advanced to the proper step on Class C based upon years of experience.

3.1.4 Teacher Interns (members enrolled in formal university intern programs) and "Permit Teachers" (teachers serving under emergency permits while completing coursework to attain a teaching credential) shall receive the salary in "Class B" of the Teacher Salary Schedule. Interns serving in part time positions will receive the prorated portion of the salary. (2002)

3.1.5 Teacher Interns and "Permit Teachers" who qualify will receive the Master's Degree stipend (3.13). Interns who may temporarily not qualify for the intern credential (California Subject Examinations for Teachers (CSET) not passed) shall nevertheless remain in the intern program. (2002)

3.2 Pay Day. If a regular pay day during the school term falls on a day when school is not in session, members shall receive their checks on the last (teacher) work day of the pay period except in June when they will receive their paychecks within five (5) regular business days following the last teacher workday. For June, July, and August, members of the Unit may have their checks deposited in a bank or mailed by submitting a stamped, self-addressed envelope to the Payroll Office no later than the last teacher day of June. (1999)

3.3 Extra Duty/Adjunct Duty

Extra duty pay shall be in accordance with Appendix E. Pay for adjunct duty as defined in Article 12.2.4 shall be at the rate listed in Appendix A for the current school year.

- 3.3.1 Each member of the Unit who volunteers to accompany sixth grade classes to overnight outdoor education, Yosemite, or to accompany any classes on overnight trips approved by the Superintendent, shall receive an additional salary stipend which shall be listed on the teachers' salary schedule. (1998)
- 3.3.2 Payment for extra duty shall be made upon completion of such duties after submission of an approved "daily time report" or pay authorization which has been signed by the building principal/supervisor. (1998)
- 3.4 Supplemental Pay – Pay Day  
Supplemental pay shall be added to the member's salary and shall be paid in the pay check each month.
- 3.5 Daily Rate. The daily rate is determined by dividing the annual salary by the total number of duty days of the member of the Unit. This daily rate is for:
  - a. deduction purposes when the member is absent in situations not covered by paid leaves.
  - b. to compute prorated contracts when a member starts after the beginning of a school year or terminates before the end of a school year.
- 3.6 Pay Rates. All certificated members in the bargaining unit shall be paid in accordance with the salary schedule contained in Appendix A, except school psychologists who shall be paid in accordance with the salary schedule contained in Appendix B. Members of the Unit will receive their regular daily rate for extending their regular assignment and duties on work days served beyond the regular work year.
- 3.7 Column. The columns in the salary schedule are based upon the amount of preparation, in semester units, each teacher has had. Steps within each column are based upon the experience the teacher has had, pursuant to Sections 3.10 and 3.12 of this article. (1988)
- 3.8 Initial Placement. Initial placement on the salary schedule will be made when verification of training and experience has been filed with the Human Resources. At the Association's request, the District will provide the Association with a copy of the Orientation Checkoff Sheet. (1999)
- 3.9 Salary Schedule Placement. Teachers new to the Cupertino Union School District may be placed in classifications equal to but not normally higher than that paid in E-11 based upon prior teaching experience, degrees and/or course work which would allow such placement. All prior teaching experience must have been performed under a valid

credential and in K–12 public schools, including Department of Defense schools. Such persons may be placed in classifications equal to but not normally higher than that paid in E–11 and shall be permitted to advance at least one step annually if qualified, according to 3.12. (1999)

Credit for prior nonpublic school teaching experience (K–12), if the prospective member held a valid teaching credential and the nonpublic school is certified by the California State Department of Education or its equivalent in other states, may be granted by the superintendent for a designated teaching position which the district identifies as a difficult to fill position(s). Such persons may be placed in classifications equal to but not normally higher than that paid in E-11. Such persons shall be permitted to advance at least one step column annually if qualified, according to 3.12. (1994)

Nonpublic school experience shall be recognized for the schedule placement for members hired beginning with the 1993–94 school year. (1994)

Nurse Placements. Nurses new to the District shall be placed in classifications based upon prior clinical nursing experience and upon contact hours accumulated to keep their licenses current. Each 15 contact hours shall be equal to one semester unit of District credit. Such prior nursing experience will be recognized and adjusted for current members. (2002) In the absence of documentation for completed contact hours, credit will be given in the amount of fifteen (15) hours per year of valid licensing verified by the Board of Registered Nursing. This is not in addition to documentation of completed contact hours provided for the same period of time. (2004)

Credit for advancement into each of the career increments E-11 through E-27 shall be as defined in Section 3.12.

3.10 Credit for Experience. A teacher who has served more than fifty (50%) percent of the preceding school year shall have that year count as a year of experience for salary purposes. Persons who are employed in part-time positions for fifty (50%) percent of the school year or less shall accumulate one year of salary credit for every two years they work at least forty (40%) percent of the school year. Persons employed for less than forty (40%) percent of the school year shall accumulate salary credit proportionate to this percentage of employment and will be credited for a year of experience when the accumulated service reaches one hundred (100%) percent. (1988)

3.11 Professional Growth

3.11.1 Horizontal movement on the salary schedule (Columns C, D, E) shall be determined on the basis of college level course work, district-sponsored courses, and approved committee work.

3.11.2 Subsequent to initial placement, vertical movement on the

salary schedule shall be based on years of service; one vertical increment shall be granted for each year of service. For Steps 1 through 9 of Class C, Steps 3-10 of Class D, and Steps 4-27 of class E, no course work is required.

- 3.11.3 Teachers who have been “frozen” at the last step of a column or at a career increment step because of failure to complete or submit course work shall be advanced to their appropriate placement (step and column) upon submission of such units. (1988)
- 3.11.4 Credit for additional units for salary advancement must be submitted to the Human Resources Department according to the following schedule: (2002) (2004)
  - 3.11.4.1 Fall salary moves: Official transcripts/grade cards verifying additional units for course work must be submitted to the Human Resources Department no later than October 15 in order that credit to be given for additional units for that school year. (2004)
  - 3.11.4.2 Mid-year salary moves: Official transcripts/grade cards verifying additional units for course work completed by December 31 must be submitted to the Human Resources Department no later than January 31 in order that credit to be given for additional units for a mid-year salary move. The mid-year salary change for these units will be effective as of the following February 1, or the first workday thereafter. (2004)
  - 3.11.4.3 District Staff Development hours being used for salary advancement as described in 3.11.11.a may be used for a mid-year salary advancement if the courses for that credit have been completed by December 31. Only credit hours for completed classes may be applied for a mid-year salary move. Partial credit for classes in progress will not be counted. (2004)
- 3.11.5 Upon request, the District shall advise each unit member of her/his present placement on the salary schedule, number of units on file, number of units needed for advancement to the next step or class, and the year the advancement would be effective. (1994); (2002)
- 3.11.6 Courses for salary advancement must be goal directed. Goal direction is defined as a tenet of good classroom instruction, additional credentials or degrees applicable to the field of education, courses meeting the requirements of the staff devel-

opment component of the school plan, and courses which are related to the curriculum of the Cupertino Union School District.

- 3.11.7 Courses other than those classified as upper division and/or graduate level will not be accepted unless specifically approved by the Human Resources Department or District staff.
- 3.11.8 The Human Resources Department shall approve courses submitted by members prior to enrollment, that have been mutually agreed to by the principal/supervisor, applying the following criteria: (1986):
  - a. Goal directed as defined in 3.11.7.
  - b. Upper division or graduate level. Lower division courses may be specifically approved.
  - c. Members also may receive district credit for attendance at conferences and workshops if the purpose is to upgrade ongoing skills. The number of units granted shall, except under extraordinary circumstances, be one (1) unit for each fifteen hours of instruction. (1994)
  - d. Professional growth plan (as established in Article 21). (1994)
- 3.11.9 Semester or quarter units shall be as determined by the accredited college or university issuing the credit. However, if for any reason a unit member has not obtained preapproval as required by Section 3.11.7 and 3.11.8, units issued by colleges and universities may be subject to evaluation by the Human Resources Department. (1997)
- 3.11.10 Effective with the 2002-2003 school year, members may receive District credit for courses for which the member has paid tuition or for which District funds have been paid. (2002)

Members shall be solely responsible for paying any additional fees related to coursework, such as costs of transcripts. (1998)
- 3.11.11 Members have the following options regarding credit for participation in District Staff Development.
  - a. For every fifteen (15) hours of successful participation in staff development course, members may receive one (1) semester unit of District credit. Members need not take all fifteen hours in one subject area but may accumulate them in several courses. (1997)
  - b. In place of District credit, members may receive credit

from San Jose State University by paying the required administrative fees and completing the Extension Registration form. Conversion takes place once yearly at the end of the school year. Grade cards with CEU's arrive sometime in the summer or early fall and must be turned in to the Human Resources Department to receive credit. (1997)

- c. Staff development credits may be earned in two-hour time blocks and are accumulated within a two-year period. Members may contact the Human Resources Department at any time to check their number of hours. Hours automatically expire if not used within the two-year period. In order to use the hours, participants must complete an Option Credit Application form which is available in the Human Resources Department. An original itemized receipt or order form must be attached. (1997)
- 3.12 Career Increments. The Teacher Salary Schedule shall contain four (4) career increments in Column E at Steps 15, 19, 23, and 27.
- 3.13 Masters Degree. All members of the Unit who have a Masters Degree and are paid on Appendix A salary schedule shall have the master's bonus, as listed on Appendix A, added to their annual salary. Unit members paid on Appendix B salary schedule who do not have a Masters Degree shall have the master's bonus listed on Appendix A deducted from their annual salary. (1992)
- 3.14 National Board for Professional Teaching Standards Certification. All members of the unit who are National Board Certified shall receive a bonus equal to the Master's Degree bonus added to their annual salary. Official verifications of the certification must be provided to Human Resources by November 30 in order that credit may be given for that school year. (2002) (2004)

When the verification of the National Board Certification is provided to Human Resources after the November 30 deadline, the bonus for that school year will be prorated from the time the certification was received in Human Resources. (2004)

The District shall reimburse \$1000 of the initial application fee for National Board Certification upon submission of the member's portfolio and verification of assessment center participation. (2002)

- 3.15 Percentage Contract
  - 3.15.1 Any member of the Unit may request to work a percentage of the school year or to share one full-time equivalent position with another part-time member of the Unit for a corresponding percentage of salary and fringe benefits.
  - 3.15.2 There shall be no limit to the number of years a member of the Unit may work under this program.

- 3.15.3 Any member of the Unit who voluntarily reduced his/her employment as the result of this program shall be entitled, at the end of the school year, to return to the first full-time available vacancy (following the placement of all members of the Unit from declining enrollment and returning from leave) for which that member of the Unit is qualified.
- 3.15.4 Part-time contract bargaining unit members will be given consideration for reinstatement for full-time status if financial hardship is demonstrated as related to the following factors:
  - a. death of spouse;
  - b. disability resulting in loss of spousal income; or
  - c. other catastrophic event that severely impacts the financial status of the member or the member's spouse.
- 3.15.5 If reinstated to full-time status, such change will normally take place at the beginning of a semester.
- 3.15.6 Notification of an intent to change status shall be made, except under extenuating circumstances, no later than April 1 of any school year.
- 3.15.7 Applicants shall be notified of their status no later than June 1, and shall be informed of their assignments as soon as the assignment is confirmed.
- 3.15.8 Approval by the District of a percentage contract shall be subject to effect on the educational program, the ability to place the member and/or identify an acceptable partner; such approval shall not be unreasonably withheld. (1996)
- 3.16 Transportation – Mileage
  - 3.16.1 Teachers who may be requested to use their own automobiles in the performance of their duties and teachers who are assigned to more than one (1) school per day shall be reimbursed for all such travel between arrival at the first location at the beginning of their work day, and arrival at the last location at the end of the work day.
  - 3.16.2 During the term of this Agreement, the reimbursement rate shall be maintained at the maximum IRS allowance.
- 3.17 Personal Car. Teachers who use their personal cars for approved District business shall receive the benefits provided in Section 3.16 above. (1999)

- 3.18 Retired Teacher (Education Code section 52804, valid through June 2002)
- 3.18.1 Compensation. Retired teachers hired under this agreement shall be placed in classifications appropriate to their years of service and units earned but not higher than paid in E-11.
  - 3.18.2 Health and Welfare Benefits. Retired teachers shall receive benefits that are available to all members.
  - 3.18.3 Leaves. Article 5 applies except for the following sections: 5.4, 5.6, 5.7, 5.8, 5.10, and 5.12.
  - 3.18.4 Transfers/Reassignment. Every reasonable effort shall be made to assign rehired temporary retired teachers at their same site for the second year if the position is still available after the priority transfer placements and placement of any declined teacher has concluded. (Rehired retired teachers shall be assigned prior to teachers returning from leave, voluntary transfers, and the placement of any newly hired teachers.)
  - 3.18.5 Evaluation. Article 9. For the purposes of Article 9 these members will be evaluated as temporary members pursuant to the evaluation article.
  - 3.18.6 Grievance Procedures. A retired teacher member may utilize Article 10 to grieve the modified provisions of this agreement as well as the balance of the agreement.

## ARTICLE 4

### Health and Welfare Benefits

- 4.1 Health Insurance. The District shall provide members and their dependents with medical, dental, vision, paid prescription, life insurance, psychological services, and other coverage as determined by the Employer/Member Health and Welfare Review Process (4.10, 4.11) and agreed to by the parties. Such coverages shall be identified in the "CUSD Insurance Booklet." The District shall provide each Unit member with updated inserts when revisions occur. (1994)
- 4.2 Required Health Procedures. The Board shall provide prepaid services for all required physical examinations, communicable disease tests, and/or other health procedures. (1988)
- 4.3 Domestic Partners. Upon recommendation by the Health and Welfare Committee to provide such coverage, the parties agree to negotiate this subject.
- 4.4 Change of Carriers. In the event the Board or the Association proposes to change insurance carriers, the proposed carrier(s) and their specifications for coverage shall be submitted to an independent insurance consultant for evaluation as to comparability of benefits and service to that of the present carriers. Upon completion of the evaluation the independent consultant shall provide a copy of the report to the parties to this Agreement. The Board shall not make the final selection of any carrier of insurance until after consulting with the Association to determine the specifications of coverage. The utilization of this process shall result in no less than maintenance of equivalent benefits.
- 4.5 Participation While on Leave. A member of the Unit on an unpaid leave of absence may participate, at the member's option and at his/her expense, in any of the health and welfare benefits available to members of the Unit during the duration of that member's leave.
- 4.6 Participation of Surviving Spouse/Dependents. In the event of the death of a member of the Unit, the member's surviving spouse and/or dependents shall remain eligible to participate in any and all health and welfare benefits programs that would have been available to the member, at the expense of the spouse and/or dependents. Such coverage shall be at the active member rates.
- 4.7 Premium Costs
- 4.7.1 2004-2005:  
Effective with the 2004-2005 school year, the District base contribution for premiums shall be increased from \$9 million to \$9.275 million. This base contribution amount is established solely for the purpose of implementing the "Participating Full Time Equivalent (PFTE) formula set forth in this Article, and shall therefore be subject to increases and/or decreases annually pursuant to such formula. A PFTE is defined as a District employee participating in a District

provided medical plan (i.e., not employees who subscribe only to dental and/or vision and or life insurance). (2004)

- a. The parties understand and agree that the foregoing \$275,000 increase to Fund 62 for 2004-2005 will not change or impact the current levels of District or employee contributions for the 2004-2005 school year. Rather, the 2004-2005 increase will be factored into the overall District contribution at the end of the 2004-2005 school year, thereby mitigating and offsetting premium increases and employee contributions beginning in 2005-2006. (2004)

4.7.2 2005-2006 and 2006-2007:

Commencing with the 2005-2006 school year, the District's ongoing contribution for premiums shall be based on a PFTE formula as set forth herein.

a. 2005-2006:

In April/May of 2005 (i.e., following adoption of the new rate structure), a calculation will be made by dividing the \$9.275 million District contribution by the number of PFTE's in District medical plans. This calculation will yield a PFTE dollar amount contribution to be made by the District into Fund 62 for the 2005-2006 school year and each year thereafter, until or unless modified through negotiated agreement by the parties.

Example: In April/May, 2005, there are 1050 PFTE's. \$9.275 million divided by 1050 yields a District dollar contribution of \$8833 per PFTE.

- b. The amount of the per PFTE dollar contribution determined in April/May, 2005 shall remain unchanged until or unless modified through negotiated agreement by the parties.

c. 2006-2007:

The District will determine the number of PFTE's as of April/May, 2006. The District's contribution to Fund 62 for 2006-2007 will be this number of PFTE's multiplied by the per PFTE dollar contribution that was established in 2005-2006 (e.g., the hypothetical \$8833).

Example 1 (Increased PFTE's): In April/May, 2006, there are 1100 PFTE's. Multiply the District's previously established dollar contribution of \$8833 per FTE by this number. The District's total contribution to Fund 62 for 2006-2007 is \$9,716,300.

Example 2 (Decreased PFTE's): In April/May, 2006, there are 1000 PFTE's. Multiply the District's previously established dollar contribution of \$8833 per PFTE by this number. The District's total contribution to Fund 62 for 2006-2007 is \$8,833,000.

- d. The District will implement an IRC section 125 program as soon as possible following agreement between the District and the Association, to enable affected members to contribute the amounts required by this article through pretax dollars. (1998)
- 4.7.3 Upon expiration of this Agreement, the District's Fund 62 contribution shall be according to the PFTE formula contained in this Article until and unless the parties negotiate a successor Agreement modifying such formula.
- 4.7.4 Coverage shall have been earned for a full calendar year (September 1 through August 31) for any member who has been credited with a full year of paid service. Notwithstanding Section 3.10, a Unit member shall have earned coverage for a full calendar year (September 1 through August 31 of any calendar year) if that member has served seventy-five (75%) percent of the number of days required service for the year in question. (1994)
- 4.8 Quarterly Insurance Reports. The District will provide to the Association quarterly financial statements regarding the self-funded medical and dental programs through the Health and Welfare Committee.
- 4.9 Participation by Retirees
  - 4.9.1 A retired former member of the Unit may participate, at his/her option and at his/her expense, in those health and welfare benefits, including rights of conversion, now available to retirees, as listed in the "CUSD Insurance Benefits" booklet. Such premiums may be paid in advance.
  - 4.9.2 Upon the death of a retiree, the surviving spouse and/or dependents covered at the time of the retiree's death shall be eligible to continue participation as stated in 4.9.1. Such participation shall be at the expense of the surviving spouse or eligible dependents.
- 4.10 Employer/Member Health and Welfare Review Process
  - 4.10.1 Representatives of the Association and the District may meet quarterly (August, November, February, May) to review all summary reports for the Health and Welfare benefits program including fund transfers, reserve levels and nonconfidential expenditures. At each of these meetings, the district shall notify the Association of all projected transfers out of Fund 62.
  - 4.10.2 District and Association representatives may meet jointly with the insurance broker to review, consider, and discuss the broker's proposed rate levels prior to the district establishing the annual rate levels for the self-insurance plans.

- 4.10.3 The Association representatives may make recommendations to the Superintendent regarding fund transfers, reserve levels, nonconfidential expenditures, and rate levels pertaining to health and welfare benefits program. A copy of these recommendations shall be provided to the Board of Education.
- 4.10.4 Additional information regarding Fund 62 transfers and proposed transfers shall be made available in a timely manner upon a request to the Assistant Superintendent, Business Services. (1991)
- 4.11 Review Committee. The Employer/Member Health and Welfare Review Committee shall be expanded to include representatives of SEIU, CSEA, and management/supervisory/confidential members.
  - 4.11.1 The purpose of the expanded committee shall be to review the financial status of all health and welfare plans.
  - 4.11.2 No transfers of money out of Fund 62 (Health and Welfare Funds) shall be made for the duration of this contract. (1994)
  - 4.11.3 Each bargaining unit (CEA, SEIU, CSEA, management/supervisory/confidential and the District ) shall have 3 members. Each member shall have one vote.
  - 4.11.4 The committee also shall look at proposed premium increases in the plans and reserve levels and shall make recommendations to the administration regarding such increases. The committee shall retain the right to report to the Board of Education.
  - 4.11.5 The committee also shall examine possible cost savings and cost shift ideas and proposals, and determine their effects upon members of the bargaining units and the District. No cost savings/shifts would be recommended without a majority vote of the committee.
  - 4.11.6 It is the intent of the committee to provide the best medical or dental coverages possible.
  - 4.11.7 Carryover funds resulting from cost savings, interest, and/or lowered expenses shall be addressed by the committee.
  - 4.11.8 Interest income would remain in Fund 62 (Health and Welfare Funds).
  - 4.11.9 The committee shall submit recommendations to the Board of Education no later than July 1 of each year. (1994)
- 4.12 Written Notice of Coverage. All members shall be provided written notice prior to the October open enrollment period summarizing the current health and welfare coverages, member related costs, and co-pays/deductibles.

## ARTICLE 5

### Leaves

#### 5.1 Sick Leave and Daily Absences

5.1.1 Each member of the Unit shall be entitled to ten (10) days leave of absence for illness or injury during the school year and such days shall be cumulative and carried forward to the succeeding year. Part-time members shall earn sick leave credit on a pro-rated basis consistent with their percentage assignment.

5.1.2 When a member of the Unit is absent from his/her duties due to illness or injury, the member shall use all of his/her accumulated sick leave before the provision of extended sick leave shall apply. At the termination of the accumulated sick leave period, the members shall be eligible for up to five (5) additional months sick leave during which the amount deducted from the salary due the member for any school month in which the absence occurs, shall not exceed the established long term daily rate paid substitutes employed to fill the position during the absence. A unit member may only have one five-month period of differential pay per illness or accident (AB 1019). Extended sick leave will be granted only upon receipt by the Human Resources Department of a doctor's statement indicating clearly the illness or injury giving rise to the leave and the expected duration of the leave. (2002)

5.1.2.1 A member shall not be provided more than one five-month period per illness or accident. However, if a school year terminates before the five-month period is exhausted, the member may take the balance of the five-month period in a subsequent school year. (1999)

5.1.2.2 When a member has exhausted all available sick leave, including accumulated sick leave, and continues to be absent on account of illness or accident for a period beyond the five-month period provided pursuant to Section 5.1.2, and the member is not medically able to resume the duties of his or her position, the member shall, if not placed in another position, be placed on a reemployment list for a period of twenty-four (24) months if the member is on probationary status, or for a period of thirty-nine (39) months if the member is on permanent status. When the member is medically able, during the 24- or 39-month period, the certificated member shall be returned to employment in a position for which he or she is credentialed and qualified. The 24-month or 39-month period shall commence at the expiration of the five-month period provided pursuant to Section 5.1.2. (1999)

- 5.1.3 Compensation will not be paid to any member of the Unit absent for any reason other than those covered in this article for which compensation is provided.
  - 5.1.4 Prior to returning to work after any absence of 6 or more consecutive days due to an illness or accident, a member shall be required to submit a doctor's verification that the member is physically able to render full and complete service to the District. Such verification, when required, shall be submitted to the Human Resources Department. Such verification may be from a doctor or a recognized practitioner of those who follow a well-recognized faith which depends upon prayer for healing. (1992).
- 5.2 Personal Necessity Leave. In any single school year a maximum of seven (7) days of the ten (10) earned sick leave may be used for personal necessity. Personal necessity leave shall be limited to circumstances serious in nature which the member cannot reasonably be expected to disregard. Absences pursuant to this leave provision normally necessitate the member's immediate physical presence elsewhere and involve matters which cannot be accomplished at any other time. Personal Necessity leave is noncumulative. (1997)
- 5.2.1 Personal Emergency
    - 5.2.1.1 emergency situations related to illness in the immediate family;
    - 5.2.1.2 accidents involving persons/property of the immediate family;
    - 5.2.1.3 medical and dental appointments for children, parents, and spouse;
    - 5.2.1.4 supervising emergency repairs to damaged personal property;
    - 5.2.1.5 family graduation or marriage ceremony (family members described in 5.14.1);
    - 5.2.1.6 appearance in court as a litigant;
    - 5.2.1.7 bereavement beyond the number of days allowed under bereavement leave;
    - 5.2.1.8 paternity;
    - 5.2.1.9 adoption;
    - 5.2.1.10 special childcare and family care needs;
    - 5.2.1.11 bereavement leave for family members or other individuals not specified in 5.5.2. (2004)

- 5.2.2 Personal Business – Advance Notification
  - 5.2.2.1 Each member shall be allowed to use personal necessity leave (to limit allowed in 5.2) to conduct business of a personal nature with no questions asked. The member shall submit a request for leave for such leave to the Human Resources Department at least five (5) working days prior to the commencement of the leave, if possible. This leave may be taken in increments of no less than 1/2 day. (1997)
- 5.2.3 Personal Business – Advance Approval. In addition to advance notification, a statement outlining the urgent situation shall only be required if this leave is requested before or after any school holiday, vacation period, or on an inservice or if the leave is for more than four (4) consecutive days. Approval for such leaves shall not be unreasonably denied. (2004)
- 5.2.4 Use of Personal Necessity Days. Such leave shall not be used for personal or family vacations.
- 5.2.5 In an emergency, the member shall be responsible for contacting the supervisor at his/her earliest convenience during the first day of leave, and also shall indicate the number of days which may be required. All absences for personal necessity must be entered into the automated absence system by the member as described in 5.14.6, Reporting Absences. (1997)

5.3 Military Leave. The tenure status of a member of the Unit shall not be affected by virtue of his or her induction or call to active duty in any branch of the armed forces of the United States of America or the State of California.

During emergency military service periods, the time for which is ordered by the President of the United States or the Governor of California, the member of the Unit shall be granted leave as necessary. (1994)

#### 5.4 Maternity/Parental Leave

- 5.4.1 Notification. Members of the Unit who take leave in accordance with this section shall, under normal circumstances, give the District at least sixty (60) calendar days notice in order that appropriate provision may be made to cover the member's assignment.
- 5.4.2 Maternity Leave
  - 5.4.2.1 A member of the Unit may use sick leave if physically disabled and unable to render service to the District as a direct result of the pregnancy.
  - 5.4.2.2 The use of sick leave for pregnancy disability shall

be treated the same as any other disability for which sick leave is granted.

5.4.2.3 At any time a member is absent as a result of physical disability arising out of her pregnancy, the District may request a doctor's verification of her inability to render service to the District.

5.4.2.4 In order to use sick leave for pregnancy disability, the member must have been actually rendering paid service to the District and not on any unpaid leave immediately preceding the disability.

5.4.2.5 A member temporarily disabled as a result of pregnancy, termination of pregnancy, or child-birth may return to duty at any time she is physically able to render full and complete service to the District.

5.4.2.6 Upon returning to duty as a result of her temporary disability, the member must file a doctor's verification that she is physically able to render full and complete service to the District.

5.4.2.7 Members on maternity leave shall be returned to the same school except for just cause.

#### 5.4.3 Extended Maternity Leave

5.4.3.1 A member may request a leave of up to one school year at any time during her pregnancy. The leave request shall be accompanied by a letter from her physician indicating expected date of birth.

5.4.3.2 The member on leave for maternity shall normally return to duty after convalescence from childbirth. The convalescence period shall be determined by the member's physician. If the member wishes to extend the leave beyond the convalescence period she must request a general leave which may be granted for a period not to exceed one (1) additional school year.

5.4.3.3 A member eligible for leave under this section also may be entitled to benefits pursuant to the State and Federal Family Leave Acts (see section 5.14.4). (1994)

#### 5.4.4 Parental Leave

5.4.4.1 A member of the Unit (male or female) who wishes to take a personal leave to raise a child immediately following childbirth or upon adoption of a

child of preschool age may be granted such a leave without pay, for up to one (1) year. Such leave shall not be in addition to those provided in 5.4.3.1 and/or 5.4.3.2.

5.4.4.2 Male members of the Unit may use personal necessity leave in accordance with sections 5.2.2.1 and 5.2.3.2 if required by spouse's pregnancy and/or delivery.

## 5.5 Bereavement Leave

5.5.1 Members of the Unit shall be entitled to three (3) days leave of absence for travel up to 400 miles (one way) and five (5) days if travel beyond 400 (one way) miles is required for the death of any member of his/her immediate family. No deduction shall be made from the sick leave or salary of such member on account of such leave of absence. Such days need not be taken in consecutive order. (2004)

5.5.2 "Member of the immediate family" means the spouse, mother, father, grandmother, grandfather, grandchildren, son, daughter, son-in-law, daughter-in-law, sister, brother, sister-in-law, brother-in-law, step parents or step children of the member or his/her spouse, or any person living in the immediate household of the member. A person standing or who has stood in loco parentis shall be considered as a member of the immediate family. (1994)

5.5.3 Bereavement leave for family members or other individuals not specified in 5.5.2 may be taken by using available personal necessity leave (see section 5.2.1.11). If a unit member has exhausted his/her personal necessity leave, he/she may request to use accumulated sick leave (see section 5.1.1) for this purpose. Such requests shall be reviewed by, and granted or denied by the Assistant Superintendent of Human Resources Department on a case by case basis. This decision shall be subject to the Grievance Procedure by filing at Level II (10.3) within ten (10) days of the Assistant Superintendent's decision. This grievance will be heard by the Superintendent (and not his/her designee). The Level II decision shall be final (no appeal to Level III). (Article 10.) (2004)

## 5.6 Other Leaves

5.6.1 Initial Request - The Board of Education may grant unpaid leaves of absence not to exceed one (1) school year (2 years under 5.6.2) to members of the Unit to allow acceptance of fellowships or scholarships, suitable activities that will lead to professional improvement, personal reasons, or for reasons of health. In all such instances, the member shall be expected to file written application by March 15 (2003) of the school year preceding the proposed leave of absence, or at least sixty (60)

days prior to the effective date of such absence if the leave commences during the school year, except under extenuating circumstances. (1992/1999)

5.6.2 A leave of absence of up to two (2) years without pay shall be granted to any member of the Unit upon application for the purposes of participation in:

5.6.2.1 Exchange teaching programs in other states, territories, or countries.

5.6.2.2 Foreign or military teaching programs.

5.6.2.3 Peace Corps (1992)

5.6.3 The member shall advance the number of steps on the salary schedule equivalent to the time on leave for leaves in accordance with 5.6.2.

5.6.4 Extension of Leave. Members currently on leave of absence without pay may apply for two additional one-year extensions (one one-year extension under 5.6.2). Approval of such extension will be at the discretion of the Board of Education. Those who wish to extend such leave shall notify the District of the request for extension in writing no later than March 15 (2003) of the current school year except under extenuating circumstances. (1992/1999) (2004)

5.6.5 Returning from Leave. Those members currently on leave of absence who intend to return shall notify the District in writing no later than March 15 of the current school year. If such notices are not forthcoming, the unit member shall be deemed to have resigned from District employment. The District will attempt to notify said members by certified mail and they will be given 30 days to respond. (2002)

5.6.6 Unit members granted leave without pay for the next school year who request a return to work for a succeeding school year by March 15 (5.6.5) shall be placed in the Round One Transfer pool. (6.4.2.3) (2004)

5.6.7 Members on leave pursuant to the above provisions shall be notified no later than February 15, regarding their March 15 obligation to the District. (2002)

## 5.7 Political Leave

5.7.1 The Board of Education shall grant an unpaid leave of absence to a member of the Unit who is a candidate for public office, not to exceed fifty (50) school days prior to the election.

5.7.2 If the member is elected, and needs a leave to attend to the duties of office, he/she must request a general leave which

shall be granted for a period not to exceed four (4) years, without pay.

5.7.3 An unpaid leave of absence of not less than one (1) semester shall be granted to a member of the Unit upon application, for the purpose of campaigning for or serving in the state legislature to the extent necessary for such activities. Upon return from service in the legislature, the teacher shall be placed at the same position on the salary schedule as the teacher would have been, had the teacher taught in the system during such period.

5.7.4 Political leave may be granted only to members who have attained permanent status.

## 5.8 Advanced Study

5.8.1 A leave of absence for the purpose of approved advanced study of up to two (2) years shall be granted, upon application to any member of the Unit who does not qualify or elect to take a sabbatical leave, provided the teacher states an intention to return to the school system.

5.8.2 Under this section, leaves which are at the option of the member will be granted only to permanent members.

5.8.3 Proof of acceptance and registration for a program of advanced study shall be submitted to the Human Resources Department prior to the leave being approved and for each semester during the duration of the leave. The program of advanced study shall be related to K–8 education and involve at least nine (9) semester units or equivalent for study per semester. Failure to maintain this requirement may void the leave. Proof of completion of advanced study shall be submitted to the Human Resources Department upon return from leave.

## 5.9 Leave for Judicial and Official Appearances

5.9.1 Members of the Unit shall be entitled to 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.

5.9.2 Any compensation received for appearance as a witness or for serving as a juror under this section shall be endorsed over to the District so that the member's compensation for any days of absence for the above purposes shall not be in excess of, or less than, his/her regular pay.

5.9.3 Persons requesting leave under this section shall submit to the Human Resources Department a copy of the subpoena or summons requiring their appearance.

## 5.10 Sabbatical Leaves

5.10.1 Board approval of sabbatical leave requests shall be subject to the following: (1994)

5.10.1.1 All applications for sabbatical leave shall be submitted to the Human Resources Department and shall include a detailed outline of the purpose and plan for use of such leaves.

5.10.1.2 A member is eligible to apply for sabbatical leave who has served the District for seven (7) consecutive years. Authorized leaves shall not constitute a disruption of consecutive years of service accruing toward the sabbatical leave requirements.

5.10.1.3 All applications for sabbatical leave must be submitted to the Human Resources Department no later than March 1 of the year preceding the school year in which leave is requested.

5.10.1.4 At least one (1%) percent of the members of the Unit shall be granted sabbatical leave in any one school year if approved in accordance with this section. Where more teachers apply than the quota allows, preference shall be given according to seniority of service. The following criteria shall be considered in deciding whether to approve leave requests.

- a. Individual's seniority in the District.
- b. Total length of individual's professional service.
- c. Specific purpose of the sabbatical. Sabbaticals are to be designed to contribute directly to the educational program of the District and applicants must demonstrate how the sabbatical project will enhance the effectiveness of the applicant and other District members in improving services to the students of the District. (1994)
- d. Former sabbatical leaves granted to the individual.
- e. Quality of applicant's service to the District.

5.10.1.5 Evaluation of application shall be made by a committee consisting of three (3) teachers ap-

pointed by the Association and three (3) persons appointed by the Superintendent or his/her designee.

- 5.10.1.6 Sabbatical leaves will be granted for periods of one (1) semester or one (1) school year. While on sabbatical leave, members of the Unit shall receive fifty (50%) percent salary and fifty (50%) percent fringe benefit coverage.
- 5.10.1.7 Upon application for sabbatical leave, the member will sign an agreement to return to service in the District for not less than two (2) years upon completion of leave, or restore to the District all compensation received while on leave. Sabbatical leave salary payment will be made in the same manner as if the member were teaching in the District.
- 5.10.1.8 In the case of injury to, or illness of, the member during sabbatical leave which prevents his/her completing the purpose of the leave, the sabbatical leave will be terminated and all provisions for sick leave will apply. If death prevents the member from fulfilling the agreement to return to service in the District, no repayment of salary will be required of the member's estate.
- 5.10.1.9 The member who has taken sabbatical leave will file with the Human Resources Department for transmission to the Board of Education, a detailed report within sixty (60) days after returning, giving evidence that the program of study and/or study and travel has been carried out.
- 5.10.1.10 Sabbatical leave shall count as a year of experience on the salary schedule. Retirement deductions shall be made in proportion to the salary received. (1994) *Note: One year on a sabbatical at half salary will earn the member one-half year of STRS service credit.*

## 5.11 Industrial Accident or Illness Leave

5.11.1 A member of the Unit shall be provided leave of absence for industrial accident or illness under the following rules and regulations:

- 5.11.1.1 The accident or illness must have arisen out of and in the course of employment with the Cupertino Union School District. Unit members shall be entitled to industrial accident or indus-

trial leave for accident or illness provided the claim qualifies under the State Workers' Compensation provisions.

- 5.11.1.2 Allowable leave for each industrial accident or illness shall be for the number of days of temporary disability but not to exceed ninety (90) days.
- 5.11.1.3 Allowable leave shall not be accumulated from year to year. The leave under these rules and regulations will commence on the first day of absence.
- 5.11.1.4 When a member is absent from his/her duties on account of industrial accident or illness, the member shall be paid such portion of the salary due him/her for any month in which the absence occurs, as when added to his/her temporary disability indemnity under Division 4 or Division 4.5 of the Labor Code, will result in a payment to the member of not more than his/her full salary.
- 5.11.1.5 Industrial accident or illness leave shall be reduced by one day for each day of authorized absence regardless of a temporary disability indemnity award.
- 5.11.1.6 When an industrial accident or illness leave overlaps into the next fiscal year, the member shall be entitled to only the amount of unused leave due him/her for the same illness or injury.
- 5.11.1.7 During any paid leave of absence, the member shall endorse to the District the temporary disability indemnity checks received on account of the industrial accident or illness. The District, in turn, shall issue the member appropriate salary warrants for payment of the member's salary and shall deduct normal retirement and other authorized contributions.
- 5.11.1.8 Any member receiving benefits as a result of these rules and regulations shall during the period of injury or illness, remain within the state of California unless the governing board authorizes travel outside the state.
- 5.11.1.9 Upon termination of the industrial accident or illness leave, the member shall be entitled to sick leave benefits as provided in Section 5.1 and the

member's absence for such purpose shall be deemed to have commenced on the date of termination of the industrial accident or illness leave, provided that if the member continues to receive temporary disability he/she may elect to take as much of his/her accumulated sick leave which when added to his/her temporary disability indemnity will result in payment to the member of not more than his/her full salary.

## 5.12 Association Leave

5.12.1 An unpaid leave of absence of up to two (2) years shall be granted to any member of the Unit upon application, for the purpose of serving as an officer of the Cupertino Education Association, the California Teachers Association, or the National Education Association.

5.12.2 The tenure status of a teacher shall not be affected because of absence while on leave as provided herein.

## 5.13 Organizational Leave

5.13.1 The Board of Education shall grant leave to certain officers and representatives of the Association, not to exceed a total of sixty (60) days per school year to attend to organizational business when circumstances are so circumscribed that the organizational matters must be attended to during the normal working day.

5.13.2 In carrying out this section, the Board shall not incur any costs contrary to codes regulating the expenditure of District funds.

5.13.3 The Association shall be responsible for payment of substitutes for days of leave under this regulation. When on official organizational business, representatives of the Association are eligible for leave under this regulation. (2004)

5.13.4 Members of the Unit for whom the Association utilizes leave under this provision of the Agreement, shall submit notice to their principal or immediate supervisor on the District leave form. Such notices shall be submitted at least two (2) work-days in advance of such leave, except in unusual of emergency situations. (2004)

## 5.14 General Provisions

5.14.1 "Member of the immediate family" means the spouse, mother, father, grandmother, grandfather, grandchildren, son, daughter, son-in-law, daughter-in-law, sister, brother, sister-in-law, or brother-in-law, step parents or step children of the member

or of his/her spouse, or any person living in the immediate household of the member. A person standing or who has stood in loco parentis shall be considered as a member of the immediate family. (1994)

5.14.2 Leave Eligibility. Attainment of permanent status shall be a requirement for all leaves contained in Sections 5.6, 5.7, 5.8, 5.10, and 5.12.

5.14.3 Return to Duty. Return to duty from an unpaid leave given in accordance with this Article shall, except in extenuating circumstances, coincide with the beginning of a semester.

5.14.4 Family Leave. Members may utilize family leave as provided in the Federal Family Leave and Medical Leave Act of 1993 and the California Family Rights Act of 1991. (1994)

5.14.5 Americans With Disabilities Act. The District shall accommodate members with disabilities pursuant to the American With Disabilities Act—Article 25. (1994)

#### 5.15 Catastrophic Sick Leave

5.15.1 Bargaining unit members may donate accrued sick leave in one-half day increments to another bargaining unit member for use by that member as paid sick leave, pursuant to the requirements of this section. (1999)

#### 5.15.2 Eligibility for Using Donated Time

1. The member must have exhausted all accrued sick leave (under sections 5.1.2).

2. The member must be off work (not actually rendering service to the District) for purposes of caring for a seriously ill parent, child, or spouse, or due to a personal serious health condition.

#### 5.15.3 Certification of Need for Leave

In all cases involving the need for a leave due to a serious health condition, as defined in the *California Family rights Act of 1991 (Government Code Section 1945.2, subdivision(c)(7)*, unit members must provide certification from a health care provider regarding (1) the date on which the serious health condition commenced and (2) the probable duration of the condition.

In cases where the leave is for the member's own serious health condition, certification also will include a statement that the

member is unable to perform the function of his or her position.

In cases where the leave is for a serious health condition of the member's parent, child, or spouse, certification shall include an estimate of the amount of time the unit member will require to care for the child, parent, or spouse. This statement shall also include a statement from the health care provider that the unit member's participation to provide care is warranted during the period of treatment of the seriously ill member of the immediate family (i.e., parent, child, or spouse of the member). (2002)

5.15.4 There is no minimum or maximum number of days that must be donated, received, or used.

5.15.5 Procedure for Donation of Hours

1. CEA shall inform members on a case-by-case basis when the need for donated time arises.
2. CEA shall be responsible for collecting donated time. Members shall authorize donations in writing, signed, and dated.
3. CEA shall compile the list of donated time in order of donations received and submit the list to the District along with supporting written authorizations.

Once the first-round list is received by the District, no more donations will be added. In the event more donations are needed, the process shall repeat itself.

4. The District will convert the donated days to dollar amounts, based on the pay rate(s) of the donor member. Thereafter, the District will deduct sick leave from donors, according to the list, and credit it to the member on leave, according to the pay rate of the member on leave.
5. The total days (converted to dollars) donated by each member shall be used before moving to the next donors on the list.
6. Donor member on the list whose days were not used will have their original authorization forms returned to them as a confirmation that their donated days were not used.
7. At the completion of the Catastrophic Leave, the District will return to CEA the original list indicating which donor member days were used.

## **ARTICLE 6**

### **Reassignment and Transfer**

#### **6.1 Definitions**

- 6.1.1 Initial Assignment. The first placement of a member of the Unit in a specific location, department, or program. (1992)
- 6.1.2 Reassignment. Any subsequent placement in another department at the same location or movement between any grade level at the same location. (1992)
- 6.1.3 Transfer. An employer action which results in the movement of a member of the Unit from one location to another or from one program to another within the school district.
- 6.1.4 Vacancy. For the purposes of this section, "vacancy" shall include open positions due to retirement, resignation, transfers, leaves, and newly created positions. (2002)

#### **6.2 Initial Assignment**

Initial assignment shall be determined by the Superintendent or her/his designee in accordance with law.

#### **6.3 Reassignment**

- 6.3.1 In the event that reassignment of a member of the Unit is necessary, volunteers will be sought from among those members of the Unit at that school who have the requisite credential(s) and/or major(s) or minor(s).
- 6.3.2 Educational program needs reflecting the best educational opportunity for students and teachers shall be the primary focus regarding reassignment and transfer. Those members of the Unit on a support plan will be permitted to remain in the same assignment in order to provide continuity of assistance for improvement.
- 6.3.3 A qualified volunteer shall be a member holding the necessary credentials to serve in the new assignment. (1999)
  - 6.3.3.1 In the event a reassignment of a member of the Unit is necessary after the last working day of the school year, all members of the Unit at that school site shall be notified of such vacancy and shall have the opportunity to request a reassignment to the newly available position. (1999)
- 6.3.4 If no qualified volunteer is forthcoming, or if the educational/program needs of the school cannot be met by reassigning the least senior member, the following procedure shall be used:

- 6.3.4.1 The site administrator shall present to the teachers involved in the reassignment a written analysis indicating the status of each staff member on each of the following variables:
  - a. Credentials including authorizations for instructing English language learners (e.g. CLAD) (2004)
  - b. Major(s)/Minor(s)
  - c. Grade level experience
  - d. Subject experience
  - e. Training in special programs.
- 6.3.4.2 At the completion of the above consultation with members involved, the site administrator shall indicate his/her intent to use the above factors for reassignment rather than seniority. The administrator will then complete the reassignment. (1994)
- 6.3.5 Administrative Reassignment for District/Individual Welfare. In the event that compelling circumstances require that an individual be reassigned on an administrative basis for his/her welfare and/or the welfare of the District, the member and the Association shall be informed of the reason(s) in writing for the action by the Superintendent or designee.
  - 6.3.5.1 For purposes of this section, such administrative reassignments may be made only before the beginning of the school year, except in unusual circumstances (e.g., change in enrollment or staffing), when such reassignments may be made by September 30.
  - 6.3.5.2 Any member of the Unit administratively reassigned shall not be similarly reassigned for a minimum of two (2) years without the consent of the member, unless that school is affected by declining enrollment, in which case that member will be allowed only those rights of all members.
- 6.3.6 Limitation of Assignment. Members of the Unit shall be assigned or reassigned to teach within their credential authorization; except a teacher may be assigned outside his/her credential authorization, pursuant to law, with the member's consent. (1992)
- 6.4 Transfer - Voluntary
  - 6.4.1 A member of the Unit may request, in writing, a transfer from one school to another so long as the unit member is a permanent employee or will be a permanent employee in the school year to which the transfer request applies. Temporary teachers may not apply for transfer. The request shall be made on a "Request for Transfer" form. (2004)

- 6.4.2 Requests for transfer will be sent to the Human Resources Department with a copy to the principal of the resident school. A conference shall be held at the request of the member of the Unit or the Human Resources Department.
- 6.4.3 Vacancies will be announced by the Human Resources Department as they occur. Members of the Unit with a "Request for Transfer" form on file by the announced closing date may request an interview for any or all positions for which they qualify. The Human Resources Department will arrange interview appointments for each position. All qualified transfer applicants requesting an interview will be interviewed before the position is filled. Interviews may not be conducted during the advertising period and will be scheduled within a reasonable time following the close of the announcement.
- 6.4.4 All interviewees will be given written notification of their status by the Human Resources Department no later than ten (10) days after the interview process has been completed. Upon request, such interviewees will be informed of the final disposition of all vacancies for which they interviewed. (1992)
- 6.4.5 In order to maintain a high quality instructional program, to ensure effective performance, and to promote satisfactory personnel relations, the training, major and minor fields of study, credentials, experience, competencies, length of service to the District, past evaluations, personality, and attitude of each potential transferee shall be considered. Where practicable, advice and counsel of the appropriate faculty personnel and/or departments shall be sought in the selection of such transferees.
- 6.4.6 Round One Transfers
  - 6.4.6.1 Unit members who meet the criteria set forth in section 6.4.1 shall be eligible for Round One Transfers in accordance with the procedures set forth below. (2004)
  - 6.4.6.2 Requests must be made by April 1 on "Request for Transfer" forms in accordance with procedures set forth by the District.
  - 6.4.6.3 The Round One Transfer Pool shall consist of: unit members who meet the April 1 deadline as set forth above; unit members returning from leaves of absence under section 5.6.6; and unit members involuntarily transferred due to declining enrollment (section 6.4.5) (2004)

- 6.4.6.4 Round One Transfer applicants shall have the right to indicate preferences from a list of vacancies. Final assignments shall be made by the Assistant Superintendent, Human Resources, in consultation with the principal. The Provisions of Sections 6.3.4. and 6.3.5. shall apply. Applicants having the highest District seniority shall receive priority consideration. All Round One Transfer applicants will be assigned unless position requirements cannot be met. (2004)
- 6.4.6.5 Members transferring under these provisions may not go through the Round One Transfer procedure for at least two (2) years. (2004)
- 6.4.6.6 The Round One Transfer process shall be completed no later than June 1 and any placed applicants will remain at their current assignment. Upon completion of the Round One Transfer process or June 1, whichever occurs first, the Round Two Transfer process shall take place. (2004)
- 6.4.6.7 The Round One Transfer applicants may withdraw their request at any time without prejudice. (2004)
- 6.4.7 Round Two Transfers
  - 6.4.7.1 Unit members who meet the criteria set forth in Section 6.4.1 shall be eligible for Round Two Transfers in accordance with the procedures set forth below. (2004)
  - 6.4.7.2 Requests must be made between April 2 and June 30 on "Request for Transfer" forms and in accordance with procedures set forth below. (2004)
  - 6.4.7.3 The Round Two Transfer Pool shall consist of unit members who meet the April 2-June 30 deadline as set forth above. The District shall also place potential newly hired unit members in the Round Two Pool for purposes of making assignments from the list of vacancies applicable to Round Two. (2004)
  - 6.4.7.4 Unit Members who are Round Two Transfer applicants shall have the right to indicate preferences from a list of vacancies. Final assignments shall be made by the Assistant Superintendent, Human Resources, in consultation with the principal. The Provisions of Sections 6.3.4. and 6.3.5 shall apply. Applicants having the highest District seniority shall receive priority consideration. (2004)

- 6.4.7.5 The Round Two transfer process shall be completed no later than the first teacher workday of the school year to which the transfer request applies. Any unplaced applicants will remain at their current assignment. (2004)
- 6.4.7.6 Round Two transfer applications may withdraw their application at any time without prejudice. (2004)
- 6.5 Employer Initiated Transfer (Administrative)
  - 6.5.1 Such transfer shall be initiated by the Superintendent or designee and shall be based exclusively on the legitimate, educationally-related needs of the District.
  - 6.5.2 If the legitimate, educationally-related/program needs of the District cannot be met by administratively transferring the least senior member, the provisions of 6.4.5 shall apply.
  - 6.5.3 All members of the Unit who are involved in administrative transfers and the Association shall be informed of the reason(s) of this action by the Superintendent or designee. In addition, if the member desires, a conference shall be held with the Superintendent or designee.
  - 6.5.4 Any member of the Unit administratively transferred shall not be similarly transferred for a minimum of two (2) years without the consent of the member unless that school is affected by declining enrollment, in which case that member will be allowed only those rights of all members.
  - 6.5.5 In the event that reasonable circumstances require that an individual be transferred on an administrative basis for his/her welfare and/or the welfare of the District, the member and the Association shall be informed of the reason(s) in writing for this action by the Superintendent or designee upon request.
  - 6.5.6 Any member of the Unit affected by an administrative transfer shall be informed of this action as early as possible and shall be released by the employer from the member's contract if the member so requests. A member so transferred may apply for a subsequent vacancy in the District for which he/she is qualified.
  - 6.5.7 Any member of the Unit affected by an administrative transfer shall be provided assistance in making the physical transfer from site to site. If such a transfer is to be made during the school year, the member may elect to receive substitute services to facilitate the move, or receive adjunct duty pay for

time spent packing and unpacking. If such a transfer is to be made during time when students are not in school, the member shall receive adjunct duty pay for time spent packing and unpacking. The adjunct duty pay and substitute time will be determined by Assistant Superintendent, Human Resources. (1992)

Any member so affected by this provision shall be notified in writing of this available help by the transferring administrator. (1994)

## 6.6 Involuntary Transfers Due to Declining Enrollment

6.6.1 In all transfers from a building or “particular kind of teaching service” resulting from a substantial decrease in ADA, the transfer shall be made pursuant to the following:

6.6.2 The staff allocation at any site will be determined by the staffing ratios contained in Article 7.

6.6.3 If the educational program needs of the school cannot be met by transferring the least senior member, exceptions can be made according to the following procedure:

6.5.3.1 The site administrator will meet with the Faculty Advisory Committee to discuss the situation. The site administrator shall present to the Faculty Advisory Committee and to the teachers involved in the transfer a written analysis including the status of each member on each of the following variables:

- a. Credential(s)
- b. Major(s)/Minor(s)
- c. Grade level experience
- c. Subject experience
- e. Training in special programs
- f. Ethnicity
- g. Gender

6.6.4 At the completion of the above consultation process the site administrator shall indicate his/her intent to use the above factors for transfer rather than seniority. The administrator will then complete the transfer.

6.6.5 Any member given an involuntary transfer shall not again be given a similar transfer for a minimum of four (4) years without the consent of the member, or unless the member requests a transfer. If for any reason other than voluntary transfer, the member cannot remain in the new assignment for four (4) years, the year protection shall start again at the next assignment.

- 6.6.6 A member of the Unit to be transferred under this section shall have the right to indicate preferences from a list of vacancies and shall be assigned in the order of seniority.
  - 6.6.7 A member may turn down offered vacancies one time.
  - 6.6.8 Final placement will be made by the Human Resources Department in consultation with the principal.
- 6.7 Opening Schools. In the event that the District decides to reopen a site which is currently not in use as a school, and/or create a new school in any other way, the parties shall negotiate procedures for the transfer of members to the reopened or new school upon written request of either party. Moving existing staff and student body from one site to another would not be considered reopening a site or creating a new site. (1992)
- 6.8 Closing/Consolidating Schools
- 6.8.1 Prior to consolidation, Section 6.4.3 will be used to decline the separate staffs based upon the separate projected enrollments. Staff allocations for the consolidated school may be adjusted up to the end of the school year.
  - 6.8.2 No further declining transfers will be made during the first year of the consolidation unless enrollment declines unexpectedly.
  - 6.8.3 After the procedure in 6.8.3.1 has been completed, assignments in the consolidated school shall be made according to the following procedure:
    - 6.8.3.1 The site administrator shall poll all staff on assignment preferences.
    - 6.8.3.2 If all staff members cannot be placed in their primary preference, the site administrator shall meet with the faculty as a whole and solicit input.
    - 6.8.3.3 The site administrator shall then present to all staff members a written analysis using the variables listed in 6.6.3.1 Based on these variables, the site administrator shall make assignments of all staff members.
- 6.9 Vacancies, Promotions Posted. The Superintendent or designee shall have posted in all schools and the District Office, and shall send to the Association, a notice of all vacancies, including vacancies, promotional positions, and new positions as they occur or as they are anticipated. Such notice shall be posted for at least five (5) days. The parties may agree in certain cases to fix a different posting period. During the sum-

mer, any voluntary transfer applicant can call or write the Human Resources Department, and be given the latest information about vacancies. (1992/1999)

- 6.10 Intra-District Teacher Exchange Program. With consent of the two (2) principals involved and the Superintendent or designee, any two (2) members of the Unit in different buildings may choose to exchange positions. Such request shall be made formally in writing to the Human Resources Department no later than April 1. (2004)
- 6.11 Affirmative Action. Should the strict application of these criteria, districtwide seniority and credentials, violate the federal guidelines governing affirmative action, or Title 5 of the California Administrative Code, such criteria shall be applied until such guidelines are satisfied. Where the lateral movement transfer of a minority teacher would violate federal or California Guidelines, the Employer shall transfer instead the least senior non-minority teacher who is credentialed to perform the required services.
- 6.12 Disruptive Transfers
  - 6.12.1 In the event a member is transferred or reassigned from the regular program to special education or vice versa, or is transferred or reassigned three (3) grade levels or more from their present assignment, or is transferred or reassigned from an elementary school to a middle school or vice versa, the following provision shall apply.
  - 6.12.2 The member shall be given release time from classroom duties if required. Release time must be approved by the Assistant Superintendent, Human Resources.
  - 6.12.3 The member shall be provided the opportunity to attend District approved workshops/in-services and/or provided funds to purchase materials or supplies. Such expenditure must be approved by the Human Resources Department. The District's contribution for this purpose shall not exceed \$400 per member. Cash advances shall be permitted with receipts subsequently provided to the District.
  - 6.12.4 The member shall be notified in writing of the opportunities expressed in 6.12.2 and 6.12.3. (1994)

## ARTICLE 7

### Class Size

#### 7.1 School Level Class Size

7.1.1 The number of Full Time Equivalent (FTE) members of the Unit assigned to each school for classroom instruction shall be done on the basis of the following formula:

7.1.1.1 For the first semester each elementary school shall be assigned one (1) classroom teacher member of the Unit for every thirty-one (31) students. This shall be based on enrollment as of "the ten-day count" (the first ten (10) student days), and resulting unit member assignments shall be completed by the end of the end of the twentieth (20th) student day. (2004)

Final unit member assignments may be adjusted based on changes in student enrollment that occur after the ten-day count but prior to the end of the twentieth (20th) enrollment day. (2004)

Each middle school shall be assigned one (1) teacher member of the Unit for every twenty-five (25) students enrolled as of the end of the first school month.

ELD classes shall be assigned one (1) classroom teacher member of the Unit for every twenty-five (25) students enrolled as of the end of the first school month.

Special Education students carried on a separate class register shall not be included in this allocation formula.

The parties agree that the intent of this language is as determined by the 1992 arbitration on class size. (1992) (2004)

- a. The District's ability to add additional certificated staff to any school site in order to avoid situations that could negatively impact students, programs, or teachers is permitted by Section 7.1.1.1. (1996)
- b. The Association recognizes that there may be situations in which the staffing ratio as indicated in 7.1.1.1 may have a negative impact at a particular school. Therefore, another teacher may be needed in addition to the ratio expressed in 7.1.1.1 to mitigate said deleterious circumstances. (1996)

- c. Prior to adding additional teachers to a school site, the District shall inform CEA in writing. Based upon CEA's request, the Human Resources Department shall meet with CEA representatives for purposes of discussion and consultation. The process and procedure for determining the need for an additional teacher shall not be delayed due to the unavailability of CEA representatives to meet on a timely basis. (1996)
- d. It is not the intention of the District to indiscriminately assign additional teachers. (1996)

7.1.1.2 Class Size Reduction Implementation (MOU 1996)

- 7.1.1.2.1 The District and the Association agree it is in the best interests of District students and teachers to participate in Class Size Reduction Act (Senate Bill 1777 and related bills), and to do so in a manner which minimizes if not prevents an adverse impact on the fiscal health of the District.
- 7.1.1.2.2 Accordingly, the Association and District agree implementation of the Act should be done in a manner which takes advantage of the special funding provided under the Act and which does not endanger other funding already received by the District and minimizes the encroachment on the General Fund.
- 7.1.1.2.3 Based on the above considerations the parties agree that for the purposes of implementing the Act, the ratios contained in Section 7.1.1.1 shall be considered maximums, thereby allowing the District to staff at a level which conforms to the Act.
- 7.1.1.2.4 The understanding of Section 7.1.1.1 of the Agreement provided above extends to any grade level which is participating in the Act, beginning with the 1996–97 school year, and continuing thereafter for however long and to whatever degree participation continues, whether under “Option 1” (full-day reduction) or “Option 2” (half-day reduction).

- 7.1.1.2.5 The parties acknowledge the Board's ability to decide to implement the Class Size Reduction Program. Upon request of the Association, the parties shall meet for consultation (within the meaning of Section 17.15 of the negotiated Agreement) over whether participation in the Act is/will be consistent with the manner of participation described in paragraphs 1 and 2 above, with the understanding that the Administration will carry out the Board's direction in a timely manner.
- 7.1.1.3 Remaining fractions of 0.5 FTE or greater shall count as a full teacher.
- 7.1.1.4 The following members of the Unit shall not be included as allocations under the formula:
- a. Counselors
  - b. Resource Specialists
  - c. Special Education Teachers
  - d. Project Directors
  - e. Special Services Personnel
  - f. Itinerant Instructional Personnel
  - g. Teachers on Special Assignment
  - h. ELD teachers (K-6)
- 7.1.1.5 Classes in grades K-8 shall not exceed State mandated limits. These shall be incorporated into District regulations.
- 7.1.1.6 If a 4-6 or 4-6 combination class reaches a size of 34 students, one-hour of instructional assistant time per day shall be assigned to the class. If a 4-6 or 4-6 combination class reaches a size of 35 students, two hours of instructional assistant time per day shall be assigned to the class. (2004)

Once instructional assistant time is provided, it shall continue for the balance of the school year. (2004)

This provision applies only to elementary schools with grades 4 through 6. If such school configurations change to K-5, this provision shall apply only to elementary schools with grades 4 and 5. (2004)

## 7.2 Special Education

- 7.2.1 For the duration of this contract, the District shall adhere to state law regarding the class size/caseload.
- 7.2.2 Upon request, the Director of Instruction, Pupil Services, shall provide the Association with a copy of state law and SELPA regulations regarding class size/caseloads.
- 7.2.3 Special Day Classes/Centers shall be maintained at a SELPA II average of ten (10) pupils per Special Day Class/Center teacher. Self-contained Special Day Classes/Centers shall maintain a range of six to fifteen (6-15) pupils on the individual registers. Integrated Special Day Classes/Centers shall not exceed eighteen (18) pupils on the individual registers.
- 7.2.4 Preschool classes shall not exceed an average of nine (9), not to exceed ten (10) pupils on the individual registers (using the same averaging method used in determining primary grade class sizes). (1999)
- 7.2.5 Part-time special education teachers shall have the same percentage of daily student contact hours as the ratio of their employment to full-time employment.
- 7.2.6 Resource Specialists are allocated on the basis of serving a SELPA II average of twenty-four (24) pupils who have been identified by the IEP Team as needing the Resource Specialist's instruction or services. No Resource Specialists shall have more than twenty-eight (28) pupils on their registers.
- 7.2.7 Teachers assigned to the Individual and Small Group Instruction program (ISGI) shall be required to work with no more than eight (8) children in any one (1) hour, or more than thirty-two (32) children in one (1) week.
- 7.2.8 All involved teachers (special education and regular class) shall participate in all IEP Team meetings dealing with their students as required by law.
- 7.2.9 Insofar as possible, members of the Unit shall be given advance notice before a special education child is assigned to their class/load/service. Such advance notice shall include all available diagnostic/prescriptive information.
- 7.2.10 Determination of class size/loads shall be made in accordance with Master Plan procedure, taking into consideration (among other things) the severity of the students' needs, the ages of the students, and the credential of the teacher.
- 7.2.11 The parties agree to reopen this contract section if changes in state law mandate revisions or affect funding which supports Special Education. (1992)

**ARTICLE 8**  
**Safety Conditions**

- 8.1 Assault on Members. Members shall immediately report cases of assault and/or battery suffered by them in connection with their employment to the principal or designee who shall immediately take appropriate action. Such notification shall be immediately forwarded to the Superintendent and the Association.

In the event that criminal charges are brought against unit members in connection with an assault, the District may provide a legal defense for the unit member in accordance with Government Code section 995.8. (1992)

- 8.2 Voluntary Activities Applicability. The provisions of this Article also pertain to teaching related duties which involve student contact.

- 8.3 Unsafe or Hazardous Conditions

8.3.1 Members shall not be required to work under unsafe or hazardous conditions or to perform tasks which endanger their health, safety, or well being. The Superintendent shall be responsible for the promulgation of safety rules for all certificated members.

8.3.2 The provisions of this article also pertain to District directed or authorized teaching and related duties which involve student contact during and/or outside the teacher work day. (1992)

- 8.4 All classrooms shall be provided with telephones consistent with the District's telecommunications plan. (2002)

- 8.5 All member classrooms shall be keyed to lock consistent with the District's Bond Projects Timeline and Guidelines. (2002)

## ARTICLE 9

### Evaluation

- 9.1 The District and the Association recognize the importance of implementing a program of staff evaluation in accordance with state law for the purpose of promoting professional growth and improving services to students to the end that student performance may be improved and the mission of the District may be realized.
- 9.2 Frequency of Evaluation
- 9.2.1 Temporary. Each temporary member shall be formally evaluated at least annually no later than thirty (30) calendar days prior to the last school day.
- 9.2.2 Probationary. Each probationary member shall be formally evaluated at least two (2) times each school year, no later than February 1, and thirty (30) calendar days prior to the last school day during the first year, and no later than December 1 and March 1 during the second year. (1992)
- 9.2.3 Permanent. Each permanent member shall be formally evaluated at least every other school year, as defined in 9.2.4 no later than thirty (30) calendar days prior to the last school day.
- 9.2.4 Alternate Year Evaluation
- 9.2.4.1 In the first full year of permanent employment and in subsequent alternate years, the member shall use the designated alternate evaluation procedure if the member received a satisfactory evaluation in each area during the preceding year.
- 9.2.4.2 In the alternate years, starting with the second year of permanent employment, the member and evaluator shall complete the regular formal evaluation procedure.
- 9.2.4.3 Alternate Evaluation Procedure
- 9.2.4.3.1 Previous goals and objectives will not be modified unless mutually agreed upon between the evaluator and the member. If the evaluator and member do not mutually agree as to the goals and objectives, the appeal process outlined in 9.5.1 of this article shall be utilized.
- 9.2.4.3.2 The evaluator shall conduct a minimum of one informal observation of no less than twenty (20) minutes duration.

9.2.4.3.3 The evaluator shall provide the member with a written summary after the observation, noting strengths and/or areas of needed improvement, as appropriate. The evaluator shall conference with the member within three (3) days if an area of concern is noted. The member shall, upon request, be entitled to a subsequent observation and written summary, if a deficiency or problem area is identified. (1999)

9.2.4.3.4 The evaluator shall complete the Summary Evaluation Alternate Year form, a copy of which shall be given to the member. Copies also shall be placed in the staff member's site program file and in the staff member's personnel file in the central office.

9.2.5 Any member submitting by October 1 a letter of retirement, effective at the end of the current school year and accepted by the Governing Board, shall not be formally evaluated. (1992)

### 9.3 Skip Year for Permanent Teacher Evaluations

9.3.1 The district and CEA agree to implement a "skip year" for evaluation of permanent teachers beginning with the 1998–99 school year.

Permanent teachers with two (2) years of satisfactory evaluations may skip a year of evaluation. If performance problems occur during the "skip year," the teacher may be returned to the regular evaluation cycle for that school year after notification in writing to the teacher as to the reasons for such proposed evaluation placement.

9.3.2 Selection of teachers for "skip year" for 1998–99

9.3.2.1 Teachers selected for "skip year" must be permanent teachers with two years of satisfactory summary evaluations in each area of the evaluation (defined in Article 9.2.4.1). Any teachers with less-than-satisfactory evaluations in any areas will continue on the "long" evaluation as defined in Article 9.2.4.1.

9.3.2.2 For each school site the eligible permanent teachers' names will be drawn so that one-third of those permanent teachers eligible for "skip year" will be drawn to skip the formal and alternate evaluation process for 1998–99.

- 9.3.2.3 Those drawn to skip the 1998–99 evaluation should be equally drawn from the teachers on “full year” and “alternate” year evaluations so that the evaluation schedule at each site results in one-third of the eligible teachers on “long” evaluations, one-third of the eligible teachers on “alternate” evaluations (Article 9.2.4) and one-third of the eligible teachers on “skip year” evaluation.
- 9.3.2.4 The drawing of names will be done in the Human Resources Department with Human Resources administrators and the Cupertino Education Association president and executive director.
- 9.3.2.5 Drawing will be completed prior to October 30, 1998 and principals and teachers will be notified as soon as the drawing is completed.
- 9.3.2.6 For future years, the “skip year” teachers will return to “long” evaluation, the “long” evaluation teachers will be on “alternate” and the “alternate” teachers will be on “skip year.”
- 9.3.2.7 New permanent teachers in future years will begin the cycle with alternate evaluations as defined in Article 9.2.4.2.

9.4 Evaluation Criteria. Beginning with the 2002-2003 school year, classroom performance of members shall be evaluated on agreed-to goals and objectives under the following California Standards for the Teaching Profession (CSTP) criteria:

9.4.1 Instructional Personnel

- a. Standard for Engaging and Supporting All Students in Learning
- b. Standard for Creating and Maintaining Effective Environments
- c. Standard for Understanding and Organizing Subject Matter
- d. Standard for Planning Instruction and Designing Learning Experiences
- e. Standard for Assessing Student Learning
- f. Standard for Developing as a Professional Educator

9.4.2 Non-Instructional Personnel (Psychologists, Counselors, Nurses, Teachers on Special Assignment)

- a. Assigned job responsibilities as mutually agreed by the member and the evaluator. Disagreements shall be resolved in accordance with 9.6.1.
- b. The performance of assigned adjunct duties.
- c. A professional growth plan.

## 9.5 Designated Evaluator

- 9.5.1 School Site Personnel. The primary evaluator for school site personnel shall be the principal or his/her designee.
- 9.5.2 Support Services/Itinerant Personnel. The primary evaluator for support service/itinerant personnel shall be a district-level administrator or his/her designee.

## 9.6 Evaluation Agreement on Goals and Objectives

- 9.6.1 No later than the end of the sixth school week of the year the evaluator and member of the Unit shall meet and make a good faith effort to mutually agree to the member's goals and objectives for each criteria as listed in 9.4.1 or 9.4.2 above. To the extent the evaluator and the member disagree on the goals and objectives the member may specify his/her positions in writing, including the identification of constraints which the member believes inhibits his/her ability to meet the stated goals. Such written response shall be attached to, and filed with the evaluation documents, and forwarded to the Superintendent. The Superintendent shall make the final decision on the member's goals and objectives for the school year. The Superintendent's final decision shall not be arbitrary or capricious and shall be reasonably related to the specific assignment of the member being evaluated. These goals and objectives shall be the basis for evaluation, unless modification of same occurs pursuant to Art. 9.6.4 (below).
- 9.6.2 Members who begin their employment during the work year shall meet with their primary evaluator no later than the fourth school week of their employment to reach mutual agreement on their goals and objectives.
- 9.6.3 Leave of Absence
  - a. If the evaluation has been completed at the start of the leave, the evaluation shall stand.
  - b. If the evaluation has not been completed at the start of the leave, a Progress Summary Report will be completed based upon progress made to date on the objectives of the Evaluation Plan developed in accordance with 9.4.1 and 9.4.2. This Progress Summary Report shall be part of the Unit member's evaluation file.

- c. If, during the school year, the Unit member is absent on leave and returns during the same school year, the evaluator and the Unit member shall review the Evaluation Plan and make adjustments if necessary
  - d. If a permanent member takes a leave of absence during his/her formal evaluation year, he/she shall again be formally evaluated during the following year unless at least one formal observation takes place before the beginning of the leave or after the return to work, and no “needs to improve” or “unsatisfactory” areas are identified.
- 9.6.4 During the course of the evaluation period, circumstances may arise which require modification of the evaluation goals and objectives. The necessity for review shall be determined by the member of the Unit being evaluated and/or his/her evaluator. The determination of the new modified goals and objectives shall be arrived at in accordance with this Section with the waiver of time limitations.
- 9.6.5 Performance or nonperformance shall be the basis for evaluation of the member on the items enumerated in Sections E and F of 9.4.1, and Sections B and C of 9.4.2 of this Article.
- 9.6.6 Factors that influence the achievement of performance objectives, such as intellectual abilities of the learners, availability of support personnel, the learning environment provided, student transiency rate and other pertinent factors, may be incorporated into Section 1 of the Evaluation Agreement.
- 9.6.7 A member of the Unit shall not be held accountable for any aspect of the educational program over which the member has no authority.
- 9.6.8 Official district forms for evaluation shall be reviewed and agreed upon by representatives of the Association and the Administration and shall be available for use by September 1 of each school year. If forms have not been agreed upon by September 1 in any year, a representative designated by the District and a representative designated by the Association shall make a final decision in regard to the matter no later than September 15. Evaluators shall use only those forms agreed to under this procedure for the official observation recaps and the official summary evaluations. (1988)
- 9.7 Formal Evaluation Sequence. The formal evaluation sequence shall consist of the following:
- 9.7.1 Formal Observations

- 9.7.1.1 Instructional Personnel shall be formally observed for no less than thirty (30) minutes or one (1) full period once prior to each formal written evaluation.
- 9.7.1.2 The evaluator shall notify the member of the impending formal observation, prior to the observation. The formal observation shall, at the request of either party, include a pre-observation conference, held within three (3) days of the observation. The formal observation shall be followed by an observation recap conference within three (3) school days following the day of the formal observation. The three-day periods provided in this section and section 9.7.2.2 and 9.7.2.3 begin on the school day following the date of the conference or observation.
- 9.7.1.3 The evaluator shall provide the Unit member with a written recap of the observation.
- 9.7.1.4 The member shall, upon request, be entitled to a preobservation conference, subsequent observation and written summary if a deficiency or problem area is identified. The preobservation conference shall be held within three (3) days of the observation.
- 9.7.1.5 A support plan shall be provided to the member once deficiencies and problem areas have been identified. A support plan shall include specific written recommendations. A support plan shall also include assistance if deficiencies are noted in delivery of instruction or classroom management. The evaluator shall consult with the Unit member before establishing a support plan. This section shall also apply to the alternate year evaluation process pursuant to 9.2.4. (1994)
- 9.7.2 Informal Observations
  - 9.7.2.1 Instructional personnel shall be informally observed at least twice prior to each formal written evaluation. Informal observations are normally shorter than thirty (30) minutes, but may be of greater length (but not to exceed one full period) in order to give an accurate account of the classroom situation. (1988)
  - 9.7.2.2 Any informal observation lasting for more than thirty (30) minutes shall be followed by an observation recap conference, within three (3) days

following the day of such observation. The purpose of such observation recap shall be to provide positive feedback and/or constructive criticism to the evaluatee. (1988)

9.7.2.3 Each informal observation lasting less than thirty (30) minutes shall be followed by an observation recap conference with three (3) days following the day of the informal observation if an area or areas of concern are noted by the evaluator. (1988)

### 9.7.3 Written Summary Evaluation

9.7.3.1 The final written evaluation of the school year shall be transmitted to the member no later than thirty (30) calendar days prior to the end of the school year. The written evaluation shall relate directly to the components criteria of the Evaluation Agreement as set forth in Sections 9.4.1 and 9.4.2.

9.7.3.2 Problem areas and/or information of a negative or derogatory nature shall be discussed with the member prior to completion of any formal written evaluation.

9.7.3.3 A conference between the evaluator and member shall take place prior to the end of school to review the final written summary evaluation.

9.7.3.4 The member shall have the right to attach his/her own comments to the written evaluation within ten (10) days after receipt of a written summary evaluation.

9.7.3.5 No member shall receive an “Unsatisfactory” or “Needs to Improve” summary evaluation rating unless:

- a. she/he has been given a written support plan on a district support plan form, with a reasonable period of time to improve and/or correct the deficiencies.
- b. this section does not apply for first year probationary teachers until after the first summary evaluation has been completed (February 1).
- c. this section applies to all summary evaluations, including the alternate year evaluation. (Except as described in section b. above) (1994)

9.7.3.6 An evaluation shall include recommendations, if necessary, as to areas of needed improvement in the performance of the member.

## 9.8 Plan of Assistance

9.8.1 In the event a unit member receives a “needs to improve” or “unsatisfactory” summary evaluation, the unit member may be required to enter into a District Plan of Assistance, which shall be directly related to the deficiencies creating the overall rating.

9.8.2 If the District requires a Plan of Assistance, the unit member shall be notified in writing of such requirement no later than thirty (30) days prior to the last day of school. (1994)

9.8.2.1 The evaluator shall consult with the member prior to establishing the District Plan of Assistance.

9.8.2.2 If the member is placed in a District Assistance Plan, the district shall be responsible for providing the elements of the plan.

### 9.8.3 Peer Assistance

9.8.3.1 In addition to the District Plan of Assistance, a member may elect to participate in the Peer Assistance and Review Program. (See Article 20.3.2) (2002)

9.8.3.2 If the affected unit member chooses to participate in the Peer Assistance Program, she/he shall, within fifteen (15) days following receipt of a needs-to-improve or an unsatisfactory evaluation, notify the District of his/her intent to participate in such a program, and of her/his choice of peer advisor(s). (1988)

9.8.3.3 Prior to commencement of a Peer Assistance Program, a meeting shall take place with the member, the evaluator, the teacher advisor and an Association representative, if requested, in which the evaluator reviews the areas of deficiency.

9.8.3.4 Peer assistance shall be developed between the member and his/her peer advisor and shall be kept confidential. The district shall not utilize any substantive aspects of peer assistance with respect to evaluation or discipline. The peer advisor shall inform the evaluator as to the date, time, and length of the assistance and the areas of assistance.

## 9.9 Permanent Member – Salary Restriction

- 9.9.1 The District assistance program shall continue throughout the school year as needed, while the evaluator carries out the regular evaluation process.
- 9.9.2 If, at the conclusion of the second consecutive annual evaluation cycle (no later than thirty (30) days prior to the last day of school), the affected Unit member receives a proficient overall evaluation rating, the affected Unit member returns to the regular evaluation process. (1994) (2002)
- 9.9.3 If, at the conclusion of the second consecutive annual evaluation cycle (no later than thirty (30) days prior to the last day of school), the affected Unit member receives a second overall unsatisfactory evaluation rating, the District may move to restrict his/her annual step advancement on the salary schedule, for the succeeding school year. The affected Unit member shall be notified of such intent in writing no later than thirty (30) days prior to the last day of school. (1994)
- 9.9.4 If the District chooses not to make such a restriction, or does not take action pursuant to Education Code Section 44932 et seq., or fails to notify the affected unit member in the manner specified above, the affected Unit member shall be made whole and returned to the regular evaluation process.
- 9.9.5 Should the District notify the permanent member of its intention to restrict his/her advancement on the salary schedule, the affected Unit member may, within fourteen (14) calendar days of receipt of the notice, appeal the District's decision to the Superintendent as a Level II grievance as specified in Article 10. (1994)
- 9.9.6 For the purposes of this appeals process, all aspects of the affected Unit member's evaluation, including but not limited to the content of the evaluation, shall be subject to the grievance process.
- 9.9.7 In the event the affected Unit member does not appeal the freeze, or does not prevail in the grievance, the District may implement the freeze.
- 9.9.8 In the event the District chooses not to implement the freeze, or is not permitted to implement the freeze by an arbitrator's award the affected Unit member shall be made whole and returned to the regular evaluation process.
- 9.9.9 The District Assistance Plan shall continue throughout the next school year as needed, while the evaluator carries out the regular evaluation process.

- 9.9.10 If, at the conclusion of the third annual evaluation cycle (no later than thirty (30) days prior to the last day of school), the affected Unit member receives a satisfactory evaluation rating, the affected Unit member shall be made whole and returned to the regular evaluation process. (1994)
- 9.9.11 If, at the conclusion of the third annual evaluation cycle (no later than thirty (30) days prior to the last day of school), the affected Unit member receives a third overall unsatisfactory evaluation rating, the District shall either move to dismiss the member, pursuant to Education Code Section 44932 et seq., commencing the following school year, or make whole and return the affected Unit member to the regular evaluation process. (1994)
- 9.10 Self-Assessment — Warning of Liability. Should a member of the Unit choose to assess his/her own performance, such member shall be notified before revealing the substance of such self-assessment that the matters contained therein may adversely affect his/her job security and that such member is not required to reveal such self-assessment. This self-assessment is separate from and not part of the evaluation process pursuant to this article.
- 9.11 Data for Evaluation — Limits. Any reference to hearsay is excluded from the evaluation process.
- 9.12 Grievability. The evaluation of members of the Unit, except for alleged violation of procedural matters, shall not be subject to the grievance procedure, except as provided in Section 9.9
- 9.13 Test Results. Results of tests other than those required by Sections 9.4.1.a and 9.4.2 shall not be used in the performance evaluation of a member of the Unit nor included in his or her goals and objectives unless mutually agreed upon by the member of the Unit and his/her evaluator. This matter is not subject to the provision in Section 9.4 of this Article.
- 9.14 Complaints
- 9.14.1 A complaint regarding a member of the Unit made to any member of the administration by any parent, student or other person which does or may influence evaluation of a member shall be discussed with the member.
- 9.14.2 Should the involved member of the Unit and the principal or designee mutually agree that there should be a meeting concerning the complaint, a meeting shall be scheduled, and the complainant shall be invited to attend. An Association representative may be present at said meeting if so requested by the member.
- 9.14.3 Anonymous complaints shall not be part of the evaluation process.

9.14.4 Complaints Concerning School Personnel - Board Policy 1312.1.

The District's complaint policy, Complaints Concerning School Personnel - Board Policy 1312.1, is attached as Appendix F for reference only and is not subject to the grievance procedure. (2004)

9.15 Personnel Files

9.15.1 Each member of the Unit shall possess the following rights with reference to his/her official personnel file established and maintained at the District Office or the supplemental file at the local school site:

9.15.1.1 Each member of the Unit shall possess the right to have the contents of his/her file(s) disclosed to himself/herself provided that the request is made at the time when such member is not actually required to render services to the employer.

9.15.1.2 Information of a derogatory nature, except material mentioned in Section 9.8.3 shall not be entered or filed unless or until the member of the Unit is given notice and an opportunity to review and comment thereon. A member of the Unit shall have the right to enter and have attached to any such derogatory statement his/her own comments thereon. Such review shall take place during normal business hours at the place where these records are stored. If necessary the member of the Unit shall be released from duty during noninstructional time for this purpose.

9.15.1.3 The member shall possess the right to have copies of the contents included within the file(s) made available to him/her except documents originating from outside this District which were solicited or received prior to the origin of employment in this District, were prepared by identifiable examination committee members, or were obtained in connection with promotional examination. A reasonable fee may be charged for more than one (1) copy of materials provided in accordance with this Section. Examination of the files shall take place in the presence of an administrator.

9.15.1.4 Negative material in the supplemental file at the school not considered during a current or previous evaluation shall not be considered during a subsequent evaluation. Only material from the current evaluation period may be retained in the site (supplemental) file.

9.16 Examination of File. The member of the Unit shall have the right to authorize in writing a representative to examine the member's file and to obtain copies (except for those prohibited as cited above) of the items within the file. The member will hold the District blameless in the case of misrepresentation.

## ARTICLE 10

### Grievance Procedure

#### 10.1 Definitions

- 10.1.1 **Grievance.** A grievance is a claim by one or more members of the Unit or the Association of an alleged violation, misinterpretation or inequitable application of the terms, and conditions of this Agreement. This grievance procedure does not apply to and a grievance cannot be over:
- a. any proceedings for the dismissal of permanent or probationary teachers.
  - b. any proceedings for the layoff of teachers.
  - c. the content of evaluation of members of the Unit, except for alleged violation, misinterpretation, or misapplication of procedural matters.
  - d. any attempt to alter or amend this agreement by the filing of a grievance.
- 10.1.2 **Aggrieved.** A member of the Unit asserting a grievance or the Association is referred to as the aggrieved.
- 10.1.3 **A party in interest.** A Party in Interest is the person or persons making the claim and any person who might be required to take action or against whom action might be taken in order to resolve the claim.
- 10.1.4 **Days.** Days as used herein shall mean days members of the Unit are required to serve in a paid capacity.
- 10.1.5 **Representative.** A representative is a member of the Unit, Administrator, Association representative, or legal counsel who shall represent any party in interest at his/her election.
- 10.1.6 **Association.** Association means the Cupertino Education Association, exclusive representative or designee thereof.
- 10.1.7 **Individual Grievances.** Any member of the Unit may at any time present grievances to the employer and have such grievances adjusted without the intervention of the exclusive representative as long as the adjustment is reached prior to Level III and the adjustment is not inconsistent with the terms of this agreement provided that the employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

## 10.2 Level I – School Principal/Immediate Supervisor

- 10.2.1 A grievance will first be discussed with the aggrieved's principal or immediate supervisor with the objective of resolving the matter informally. The aggrieved may have a representative(s) present at this informal meeting.
- 10.2.2 In the event the aggrieved is not satisfied with the disposition of the grievance, he or she may submit the claim as a formal grievance in writing to the principal or the immediate supervisor.
- 10.2.3 If the aggrieved has not filed a claim within ten (10) days after speaking with the principal or immediate supervisor informally, the grievance will be deemed to have been waived.
- 10.2.4 If a formal grievance has been filed, the aggrieved may: (1) discuss the grievance personally; (2) request that a representative accompany him or her; or (3) request that a representative(s) act on his or her behalf.
- 10.2.5 The Grievance Form, Appendix D, shall be submitted to the principal or immediate supervisor and forwarded to the subsequent step administrator.
- 10.2.6 Within ten (10) days after receipt of the written grievance by the principal or immediate supervisor, the principal or immediate supervisor or his/her designee shall meet with the aggrieved and representative(s) if requested by the aggrieved in an effort to resolve the matter and shall render a written decision to the aggrieved and the exclusive representative within ten (10) days after the Level I meeting.
- 10.2.7 In the event that the aggrieved was not represented by the exclusive representative at the Level I meeting, the principal or immediate supervisor shall transmit a copy of the grievance and his/her proposed resolution of it to the exclusive representative within ten (10) days after the Level I meeting with the aggrieved. (1988)
- 10.2.8 Within ten (10) days after receipt of a copy of the grievance and the principal's or immediate supervisor's proposed resolution, the exclusive representative shall transmit to the principal or immediate supervisor its written response. Such response shall indicate agreement or disagreement with the principal's or immediate supervisor's proposed resolution. Supporting written rationale shall accompany a position of disagreement.
- 10.2.9 Within ten (10) days after receipt of the exclusive representative's response to the grievance and the principal's or immediate supervisor's proposed resolution of the grievance, the principal or immediate supervisor shall render a written decision to the aggrieved and send a copy to the

exclusive representative.

### 10.3 Level II — Superintendent or His/Her Designee

- 10.3.1 If the aggrieved is not satisfied with the disposition of the grievance at Level I or if no decision has been rendered within ten (10) days after presentation of the grievance in writing (Grievance Form in Appendix D) the aggrieved or his/her representative may forward the written grievance to the Superintendent within five (5) days after the decision at Level I or fifteen (15) days after the grievance was presented, whichever is sooner.
- 10.3.2 Within ten (10) days after receipt of the written grievance by the Superintendent, the Superintendent or his/her designee shall meet with the aggrieved and representative(s), if any, in an effort to resolve the matter and shall render a written decision to the aggrieved and the exclusive representative within ten (10) days after the Level II meeting.
- 10.3.3 In the event that the aggrieved was not represented by the exclusive representative at the Level II meeting, the Superintendent shall transmit a copy of the grievance and his/her proposed resolution of it to the exclusive representative within ten (10) days after the Level II meeting with the aggrieved.
- 10.3.4 Within ten (10) days after the receipt of a copy of the grievance and the Superintendent's proposed resolution, the exclusive representative shall transmit to the Superintendent its written response. Such response shall indicate agreement or disagreement with the Superintendent's proposed resolution. Supporting written rationale shall accompany a position of disagreement.
- 10.3.5 Within ten (10) days after receipt of the exclusive representative's response to the grievance and the Superintendent's proposed resolution to the grievance, the Superintendent shall render a written decision to the aggrieved and send a copy to the exclusive representative.

### 10.4 Level III — Arbitration

- 10.4.1 If the Association is not satisfied with the disposition of the grievance at Level II, or the time limits expire without the issuance of the Superintendent's written reply, the Association may submit the grievance to arbitration in accordance with the provisions of Government Code Section 3543, within twenty (20) days from the receipt of the Superintendent's decision or the expiration of the Level II timeline. In such case, the parties shall request a list of arbitrators from the American Arbitration Association in accordance with American Arbitration Asso-

ciation procedures.

- 10.4.2 No party in interest shall be permitted to assert any grounds or evidence before the arbitrator which was not previously disclosed to the other party. The arbitrator shall consider only those issues raised by the parties in interest. The arbitrator is empowered to include in any award such financial reimbursements or other remedies as judged to be proper. Each party shall bear the full costs for its representation in the arbitration. The cost of the arbitration and of the American Arbitration Association shall be divided equally between the Board and the Association or the aggrieved if not represented by the Association.
- 10.4.3 An arbitrator shall be selected by the following procedure: a representative of the Association and the Board's representative shall select the arbitrator from the American Arbitration Association list by eliminating names until one name remains. The first option of elimination shall alternate. The one remaining name shall be the arbitrator. The process of striking names shall occur within ten (10) days of receipt of the list from the American Arbitration Association by both parties. All grievances reaching the arbitration level shall be numbered. The odd-numbered grievances will give the Board first elimination; even numbered grievances will give the Association first elimination.
- 10.4.4 Once the arbitrator has been selected, hearings shall commence at the convenience of the arbitrator. Hearings shall be confined to working days.
- 10.4.5 The arbitrator shall conduct the hearing in accordance with the voluntary arbitration rules of the American Arbitration Association and the provisions of this procedure.
- 10.4.6 Witnesses will be assured that their testimony will be kept confidential unless they choose to make it public.
- 10.4.7 Within thirty (30) days after conclusion of the hearing the arbitrator shall render an award in writing to the parties in interest. Such award shall be binding on all parties in interest.

## 10.5 General Provisions

- 10.5.1 Since it is important that grievances be processed as rapidly as possible, the number of days indicated at each level should be considered as a maximum and every effort should be made to expedite the process. The time specified, however, may be extended by mutual consent.

- 10.5.2 In the event a grievance is filed at such time that it cannot be processed through all the levels in this grievance procedure by the end of the school year, the time limits set forth herein will be reduced so that the grievance procedure may be completed prior to the end of the school year, or as soon after as is practicable.
- 10.5.3 If a grievance arises from action or inaction on the part of a member of the administration at the level above the principal or immediate supervisor, the aggrieved shall submit such grievance in writing to the Superintendent and the Association directly and the processing of such grievance shall commence at Level II.
- 10.5.4 The aggrieved may change the designation of a representative(s) at any level during the grievance process. Such change shall be communicated in writing to all parties in interest.
- 10.5.5 Decisions rendered at Levels I and II of the grievance procedure will be in writing setting forth the decision and the reasons therefore and will be transmitted promptly to all parties in interest and to the President of the Association. Time limits for appeal provided in each Level shall begin the day following the day of receipt of written decision by the parties in interest.
- 10.5.6 If, in the judgment of the Association, a grievance affects a group or class of teachers, the Association may submit such grievance in writing to the Superintendent directly, and the processing of such grievance shall commence at Level II.
- 10.5.7 Forms for filling grievances, serving notices, taking appeals, making reports and recommendations and other necessary documents will be prepared jointly by the Superintendent or his/her designee and the Association and given appropriate distribution.
- 10.5.8 If the Association and the Superintendent or the Superintendent's designee agree in writing, the grievance may be brought directly to arbitration.
- 10.5.9 A grievance may be withdrawn at any level without establishing a precedent.
- 10.5.10 The parties in interest agree to make available to each other all pertinent information not privileged under law or board policies in their possession or control and which is relevant to the issues raised by the grievance.
- 10.5.11 No grievance shall be valid unless it shall have been presented at Level I or the Level indicated in 10.5.3 within twenty (20) days after the aggrieved knew of the act or condition and its aggravating nature that formed the basis of the grievance, and if not so presented, the grievance will be considered as waived.

- 10.5.12 A decision rendered at any level shall be considered final unless an appeal is registered within the time limit specified. If a decision is not given to the aggrieved within the time limit, an appeal may be taken to the next Level.
- 10.5.13 No party in interest shall take reprisals affecting the employment status of any member of the Unit, party in interest, and the Association representative, or any other participant in the grievance procedure by reason of such participation.
- 10.5.14 The exclusive representative shall be allowed two (2) periods of release time during each school day for a grievance representative to process grievances. At Level III, the exclusive representative shall be allowed release time for a grievance representative to attend all grievance sessions. Should the processing of any grievance require that the aggrieved be released from his/her regular assignment, the aggrieved shall be released without loss of pay or benefits.
- 10.5.15 Any record(s) pertaining to a grievance shall be kept in a grievance file separate from the aggrieved's official District Office personnel file.
- 10.5.16 A disclosure meeting between the parties must take place prior to the arbitration for the purposes of presenting any other grounds or evidence not previously disclosed. Failure to hold such a meeting (due to the perceived lack of additional grounds/evidence) or to present additional grounds/evidence at such a meeting shall not preclude the assertion of further grounds/evidence at the arbitration so long as the parties comply with sections 10.4.2 and 10.5.10 above. (1994)

## 10.6 Right of Representation

- 10.6.1 When a member of the Unit is required to appear before the Board or the Administration concerning any matter which could adversely affect the member of the Unit's employment, the member of the Unit's position, or the member of the Unit's salary; the member of the Unit shall be entitled to have a representative of the Association present. Further, when a member of the Unit is required to appear before the Board, the member of the Unit will be advised in writing of the reasons for the requirement.

**ARTICLE 11**  
**Organizational Security**  
**Professional Dues or Fees and Payroll Deductions**

- 11.1 Dues Deduction Authorization. Any member of the Unit may sign and deliver to the employer an assignment authorizing deduction of exclusive representatives' membership dues. Such authorization shall continue in effect from year to year under this Agreement unless revoked in writing within a period of thirty (30) days following the expiration of this Agreement. Pursuant to such authorization, the employer shall deduct one-tenth (1/10) of such dues from the regular salary check of the member of the Unit each month for ten (10) months. Deductions for members of the Unit who sign such authorization after the commencement of the school year shall be appropriately pro-rated to complete payments by the end of the school year.
- 11.2 Organizational Membership. Pursuant to "The Act" the exclusive representative and the Board agree that:
- 11.2.1 Members who are dues-paying members of the Unit at the outset of this Agreement shall be required to maintain membership until the expiration of this agreement.
- 11.2.2 Members who wish to terminate their dues membership upon expiration of this Agreement shall transmit written notification of such intent to the Association and the Human Resources Department at least twenty (20) days prior to the expiration of this Agreement.
- 11.3 Agency Fee
- 11.3.1 Any unit member who is not a member of the Cupertino Education Association CTA/NEA, or who does not make application for membership within thirty (30) days of the effective date of the Agreement or within thirty (30) days from the date of commencement of assigned duties within the bargaining unit, shall become a member of the Association or pay to the Association an Agency Shop fee in an amount permitted by law and PERB regulations, not to exceed the amount equal to the unified membership dues, payable to the Association in one lump-sum cash payment in the same manner as required for the payment of membership dues, provided, however, that the unit member may authorize payroll deduction for such fee in the same manner as provided in Section 11.1 of this Article.

In the event that a unit member shall not pay such fee directly to the Association or authorize payment through payroll deduction, as provided in Section 11.1, the Association shall so inform the District, and the District shall immediately begin automatic payroll deduction as provided in Education Code Section 45061 and in the same manner as set forth in Section

11.1 of this Article. There shall be no charge to the Association for such mandatory agency fee deductions. Upon request, the Association shall provide written verification that such unit members have been contacted concerning this procedure. (1988)

11.3.1.1 Any unit member who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting member organizations shall not be required to join or financially support Cupertino Education Association CTA/NEA as a condition of employment; except that such unit member shall pay, in lieu of a service fee, a sum equal to such service fee to one of the following nonreligious, nonlabor organization, charitable funds exempt from taxation under Section 50 (c)(3) of Title 26 of the Internal Revenue Code:

- a. Foundation to Assist California Teachers
- b. Cupertino Educational Endowment Foundation
- c. United Way of Santa Clara County

11.3.1.2 Proof of payment and written statement of objection along with verifiable evidence of membership in a religious body whose traditional tenets or teachings object to joining or financially supporting member organizations, pursuant to Section 11.3.1.1 (a), shall be made on an annual basis to the District as a condition of continued exemption from the provisions of Section 11.1 and 11.3 of this Article. Payment shall be in the form of receipts and/or cancelled checks indicating the amount paid, date of payment, and to whom payment in lieu of the service fee has been made. Such proof shall be presented on or before November 15 of each school year. The Association shall have the right of inspection in order to review said proof of payment.

11.3.1.3 Any unit member making payments as set forth in Section 11.3.1.1(a) and (b), and who requests that the grievance or arbitration provisions of this Agreement be used in his/her behalf, shall be responsible for paying the reasonable cost of using said grievance or arbitration procedures.

#### 11.4 Hold Harmless Clause

11.4.1 CTA agrees to pay to the District all legal fees and legal costs

incurred in defending against any court action and/or administrative action before the Public Employment Relations Board challenging the legality or constitutionality of the agency fee provisions of this Agreement or their implementation.

11.4.2 CTA shall have the exclusive right to decide and determine whether any such action or proceeding shall or shall not be compromised, resisted, defended, tried or appealed.

11.5 Forwarding of Dues/Fees Deducted. With respect to all sums deducted by the Board pursuant to this article, the Board agrees to remit promptly such monies to the California Teachers Association accompanied by an alphabetical list of names of members of the unit for whom such deductions have been made.

**ARTICLE 12**  
**Teaching Hours**

12.1 Length of School Year

12.1.1 The number of duty days in the school year for members of the unit shall be one hundred eighty-seven (187) duty days which shall be configured as follows: (1999)

- 180 Student attendance days
  - 2 August workdays for teacher preparation (12.1.1.2)
  - 1 August District workday: for site and District meetings (12.1.1.1)
  - 3 Learning Days: Staff Development “Buyback” Days (12.1.1.3)
  - 1 District Inservice Day: for District-planned activities related to curriculum (12.1.1.1)

- a. The parties intend there to be flexibility regarding the scheduling of activities during the August Teacher Workdays and August District Workday. Therefore, the principal, in consultation with the Faculty Advisory Committee, may schedule site/District meetings on the August Teacher Workdays (12.1.1.2) so long as unit members retain the equivalent of two (2) full workdays for teacher preparation during the three workdays in August. (12.1.1.1 and 12.1.1.2) (2002)
- b. The District Inservice Day was formerly used to score District and/or state assessments, but as of the 2001-2002 school year, is no longer used for this purpose. However, if this need arises in the future, the District will use one of the Learning Days for this purpose. (2002)

12.1.1.1 Two (2) of the staff development days (the August District Workday and the District Inservice Day) shall be planned by the District. (2002)

12.1.1.2 Two (2) of the 187 days before the first student day shall be for teacher preparation. (1999) (2002)

12.1.1.3 The three (3) Staff Development “Buyback” Days listed in 12.1.1 represent implementation of Assembly Bill 93. (2002)

12.1.1.3.1 If the state eliminates or reduces these days, the days shall be removed from the teachers’ duty year, and the salary schedule shall be reduced by a .5% per day to reflect such elimination or reduction.

12.1.1.3.2 Planning for such days and the determination of whether all unit members shall attend one activity or different activities, shall be in consultation with the Faculty Advisory Committee, based on District recommendations, priorities and guidelines (2002) (2004)

Activities planned for and conducted on these days must comply with all applicable criteria set forth in state law and regulation (2002)

Activities may include but are not limited to:

- Inservice Presentations
- Professional conferences
- Team planning
- Individual planning
- Grade level planning
- Individual work time
- Articulation
- Program visitations

The foregoing list of activities is by way of example only, and does not mean that any faculty or unit member may decide that they/he/she is/are entitled to choose among them. In addition, not all unit members may need to participate in the same activities, depending on the relevance and intent, etc., of the activity. (2004)

A copy of such law and regulation shall be shared with the Faculty Advisory Committee prior to the planning of such days. (2002)

12.1.1.3.3 Use of discretionary leaves of absence is prohibited on these days. Specifically, the following leaves are prohibited: 5.2.1.3 – Personal necessity leave for medical and dental appointments for children, parents, and spouse unless these appointments are of an emergency nature; 5.2.1.10 – Personal necessity leave for special childcare and family care needs that are non-emergency; 5.2.2.1 –

Personal necessity for conducting business of a personal nature with no questions asked, and 5.13 – Organizational leave – this shall not preclude participation in activities scheduled by California Teachers Association entities other than the Association. If such leave occurs, CEA will reimburse the District for the lost “buy-back” day revenue. The District could not claim for that absent teacher. (2002)

- 12.1.2 In addition to the one hundred eighty-seven (187) duty days in 12.1.1, middle school counselors and/or psychologists may be permitted to work additional days. These additional days will be authorized by the superintendent or his/her designee. (1999)
- 12.1.3 If the District requires nurses to work prior to the start of the school year in addition to the 187 days provided in section 12.1.1, such work shall be compensated at their regular hourly rate based on their per diem. (1999)
  - 12.1.3.1 Nurses shall be allowed to schedule up to ten (10) workdays per year (between August 1 and June 30) based on a “flexible schedule.” This means that nurses may, for example, work on days when students are not in attendance and not work on days when students are in attendance (up to a maximum of ten (10) days). Nurses are required to plan and coordinate schedules with approval of the supervisor to ensure that at least two (2) nurses are present at all times during the 187–day duty year.
- 12.1.4 Any new state/federal holidays enacted may necessitate adjustment to the calendars to maintain the work year (12.1.1).
- 12.1.5 Additional voluntary staff planning days may be requested by the site administrator. Such planning days shall be held in the week following the end of student instruction or in the two (2) weeks prior to the beginning of student contact time. Such planning days shall be reimbursed at the adjunct duty pay rate, or at the request of the unit member, district staff development credit will be granted. (1994)
  - 12.1.5.1 Due to the voluntary nature of these planning days, there shall be no adverse consequences to nonparticipation therein. (1994)

## 12.2 Duty Week

12.2.1 Members of the Unit shall not be required to perform duties (including required meetings) which when combined with the assigned work day, exceed forty (40) hours of work inclusive of lunch in any week. The required duty week on site shall be thirty-six and one quarter (36.25) hours except as provided in Section 12.2.4. The schedule for the work week shall be set by the principal or immediate supervisor in consultation with the Faculty Advisory Committee.

12.2.1.1 Members of the unit serving as resource teachers assigned out of the District office shall not be required to work more than an equivalent duty day as defined for other unit members (see section 12.2.1). Such members and their supervisors shall develop a schedule for the work day. (1999)

12.2.2 A duty-free lunch period of no less than thirty (30) minutes per day shall be provided.

12.2.3 Duty-free time of twenty (20) minutes a day will be provided to all teachers except teachers required to supervise students. Each member of the Unit shall share such duties equally and each member shall receive a minimum of ten (10) minutes on days she/he stands duty. Relief time shall be in minimum increments of ten (10) minutes and shall not be at the beginning of the work day, tacked on to the lunch period, or at the end of the work day. If afternoon relief time is provided, it will be scheduled during the afternoon instructional period provided that period is two (2) hours or more in length.

12.2.4 Members of the unit shall perform additional duties when assigned as defined in Article 17.12 within the context of the forty (40) hour workweek. Such duties shall not exceed twenty-five (25) hours per school year; however, this shall not be construed as a minimum requirement. (2002) Members of the unit serving on School Site Councils shall accomplish these duties within the context of the forty (40) hour workweek. In the event that such additional duties assigned to unit members exceed forty (40) hours in any one week, appropriate adjustments shall be made within that week or subsequent weeks. In addition to the twenty-five (25) hours of adjunct duties, members of the unit shall participate in not more than (1) Back-to-School night as part of their regularly assigned duties. (1996)  
(2002)

The parties will agree to maintain a list of adjunct duties, the purpose of which is specifically not to represent an exclusive enumeration of what activities may count toward the 25 hours requirement. Rather, the sole purpose of such list is to ensure

that performance of activities on the list shall count at any site. Composition of this list shall occur in the continuous negotiations process in sufficient time to apply to the 2002-2003 school year. The parties intend the list to be updated as needed through the continuous negotiations process. (2002)

Adjunct Duty List:

Open House  
School Site Council (SSC)  
Elective night  
Faculty Advisory Committee (FAC)  
PTA/home-school club representatives  
Musical/drama performances  
Track meets/dance duty in middle schools  
Department chair  
Student Study Team (SST) team members  
Site curriculum committees  
Superintendent Advisory Committee  
Leadership Teams  
Student Council Advisor  
Graduation Supervision  
GATE Advisory  
Bilingual Advisory  
Intervention Strategy Team (old Child Study Team) member  
Supervision for After School Evening/Weekend Activities  
Supervision of Awards Night and Honor Society Nights  
Sponsoring Student Clubs

- 12.2.4.1 The district and the association shall develop a form to track adjunct duty to verify the amount of adjunct duty each member performs. (1996)
- 12.2.4.2 Adjunct duties which are performed beyond twenty-five (25) hours shall be compensated at the adjunct duty pay rate. (1996)
- 12.2.5 Full-time members of the Unit at middle schools, except middle school counselors, shall have two hundred fifty (250) minutes per week set aside exclusively for preparation, planning, and upon prior arrangement, conferencing with parents and students.
- 12.2.6 K-6 members of the Unit shall have two hundred fifty (250) minutes per week set aside for the purposes above.
- 12.2.7 In the event of a schedule conflict, classroom teachers and counselors may be assigned to no more than two (2) schools in the District during the regular school year. (1996)
- 12.2.8 Beyond the regular thirty-six and one quarter hour work week (at the close of the 7.25 hour day) a maximum of ninety (90) minutes, and in the circumstances provided in section 12.2.8.1

below, one hundred twenty (120) minutes per school month may be required for faculty meetings within the context of the forty (40) hour work week. (1988) (2002)

12.2.8.1 Faculty meetings may extend to a maximum of 120 minutes per month only in the following circumstances.

- a. When necessary to meet an "emergency" as defined in section 17.14 of this Agreement, or to meet legal requirements (e.g., CCR); or
- b. When the principal and the Faculty Advisory Committee reach consensus to extend the meeting. Absent such consensus, the FAC and principal shall reach consensus on a solution to meaningfully address the subject matter which occasioned the request for the extension. (2002)

12.2.8.2 On "early Tuesdays" as provided in section 12.2.9, faculty meetings may be scheduled to begin immediately following students' dismissal (during the 7.25 hour day), and the activities described in section 12.2.9 may be scheduled to begin after completion of the faculty meeting. (2002)

12.2.9 For elementary schools, ten (10) "early Tuesdays" per year shall be scheduled for individual planning, ten (10) "early Tuesdays" per year shall be scheduled for grade level meeting, and ten (10) "early Tuesdays" per year shall be scheduled for staff development. Use of remaining "early Tuesdays" for any of these three purposes shall be determined by consensus between the principal and the FAC. (1992) (2002)

Utilization of any of these "early Tuesdays" shall be subject to modification when necessary to meet legal requirements, such as participation in Coordinated Compliance Review (CCR). (2002)

12.2.10 Members of the Unit may be called upon to assist or provide coverage for emergency situations for which no substitute is available. Events which have been previously scheduled, such as Statewide testing and co-curricular activities, do not constitute an emergency.

12.2.10.1 If a member of the unit is called upon to provide coverage for another class because a substitute is not available, during the time provided in section 12.2.5 or 12.2.6 above, he or she shall be compensated at the adjunct duty rate on an hourly basis (class periods minimally less than an hour e.g., 50 minutes, shall count as an hour). (1996)

- 12.2.11 For the duration of this contract the length of the instructional day (student contact time) shall conform to established practices. In the event changes are necessary, such changes shall be made by the school principal in consultation with the Faculty Advisory Committee.
- 12.2.12 The District shall make reasonable efforts to avoid scheduling meetings involving K-6 unit members during the five (5) school days following the close of the grading period. (2002)
- 12.3 Grades 4–6 Planning/Preparation Time. Commencing with the 1999–2000 school year, planning and preparation time for grades 4–6 in the elementary school shall be as set forth in this section. (1999)
- 12.3.1 Each regular classroom teacher shall receive a total of 135 minutes per week for planning and preparation, to be provided in three 45-minute blocks of time.
- 12.3.2 The planning and preparation time shall be for thirty-three (33) weeks.
- 12.3.3 The regular classroom teacher shall be entitled to compensation of \$15.00 if preparation time teacher is absent and the regular classroom teacher is called upon to keep his/her class during their preparation time. Classroom teachers must send a time card to the Assistant Superintendent, Human Resources, within one (1) week of missed preparation time in order to receive compensation. (*Classroom teachers are responsible for submitting their time cards directly to the Human Resources Department.*)
- 12.3.4 Grades 4–6 planning/preparation time shall not be required to be provided on nonstudent days (including holidays, learning days, or on any day in a week in which there are fewer than four (4) student days.
- 12.4 Teacher Check-Ins. Each staff and principal shall decide on the procedure for providing information relating to staff members' daily presence on the school site.
- 12.5 Travel Requirements. No member of the Unit shall be required, without the member's consent after arriving at the first duty location, to travel more than fifty (50) miles per day to other duty locations in the performance of his/her duties. Such travel shall not be considered preparation time.
- 12.6 Kindergarten Parent Conferences: Commencing with the 2002-2003 school year, kindergarten teachers not participating in the state class size reduction program (CSR) (20-1 full day) shall have three (3) release days for parent teacher conferences, (2002) and commencing with the 2004-2005 school year, one and a half (1 1/2) release days for assessment purposes. (2004)

In addition the subject of kindergarten teacher release time for assessment shall be subject to the continuous negotiations process. (2002)

- 12.7 The school calendar shall be determined through the negotiations process by the Board and an exclusive representative. Each year the parties will negotiate another year's calendar in addition to any reopener provided for the agreement. (1996)

**ARTICLE 13**  
**Part-Time Employment with Full Retirement Credit**  
**(“Willie Brown”)**

- 13.1 Provisions. In accordance with the following provisions, certain members of the Unit of the Cupertino Union School District will be permitted to reduce their workload to not less than one-half time of regular full-time members and will be permitted to have retirement benefits based on full-time employment.
- 13.2 STRS. The District and the member will make the contribution required of full-time members to the State Teachers Retirement System.
- 13.3 Age. The member must have reached the age of 55.
- 13.4 Length of Employment. The member must have been employed by the District full-time in a position requiring certification for at least ten (10) years, of which the immediately preceding five (5) years were full-time employment.
- 13.5 Optional Part-Time Employment. An eligible member must request participation in this program no later than March 1. The concurrence of the Superintendent shall not be unreasonably withheld.

In the event a participant requests to withdraw from the program to return to regular employment, approval shall be based on the criteria outlined in Section 13.4 and the needs of the District. If return to regular employment is approved, the member shall be responsible for repaying the District the cost differential of the health and welfare benefits provided the member for the period of time he/she participated in the program. (1988)

- 13.6 Salary. The member shall be paid a salary which is the pro-rata share of the salary the member would be earning had the member not elected to exercise the option of part-time employment, but shall retain all other rights and benefits for which the member makes the payments that would be required if the member remained in full-time employment. Salary placement for these purposes shall include movement on the salary schedule, as if the member remained in full-time employment. The member shall receive fringe benefits as if employed full-time.
- 13.7 Minimum Part-Time Employment. The minimum part-time employment shall be the equivalent of one-half of the number of days of service required by the member’s contract of employment during the final year of service in a full-time position.

**ARTICLE 14**  
**Retirement Recognition**

- 14.1 Retired former unit members shall be eligible for substituting at a rate which is twenty-five dollars (\$25.00) above the District's long-term substitute daily rate for the duration of this contract, not to exceed the annual income level allowed by law. (1999)
- 14.2 Retirees may elect to earn Social Security/Medicare credits for such substituting, if the law allows. (1992)
- 14.3 Retiring members electing to substitute shall be permitted to indicate their preference as to schools, grade levels, subjects, and days of the week they would be available.

**ARTICLE 15**  
**Negotiation Procedures**

- 15.1 Contract Reopener Procedure
  - 15.1.1 The parties hereto agree to enter into negotiations over a successor agreement at a mutually agreed date prior to the expiration of this Agreement. (1992)
  - 15.1.2 Any agreement so negotiated shall be reduced to writing and ratified by the parties hereto.
  - 15.1.3 The parties agree to comply with all sunshine requirements within the law. (1992)
- 15.2 Outside Consultants. The Association and the Board may utilize the services of outside consultants to assist in negotiations.
- 15.3 Discharge of Duties. The Board and the Association may discharge their respective duties by means of authorized officers, individual representatives, or committees.
- 15.4 Released Time — Negotiations
  - 15.4.1 The exclusive representatives shall be allowed release time for five (5) of its members for the purpose of attending scheduled sessions for negotiations.
  - 15.4.2 Representatives of the Association shall be scheduled to participate during working hours in negotiations and impasse procedures (e.g. mediation and fact finding) and shall suffer no loss in compensation pursuant to Section 3543.1 of the Government Code.
  - 15.4.3 An extension of negotiating sessions beyond the member work day shall be by mutual consent.
- 15.5 Negotiations Representatives. The Board and the Association shall each respectively select their negotiating representatives provided that the Board shall not select a member of the Unit, as herein defined, as its representative, and the Association shall not select as its representative a Cupertino Union School District member who is not a member of the Association's Unit.
- 15.6 Tentative Agreement
  - 15.6.1 During negotiations, items tentatively agreed upon shall be reduced to writing and initialed by both parties.
  - 15.6.2 If mutually agreeable, the tentatively agreed upon items shall be reduced to writing and initialed by both parties prior to adjournment of the meeting at which tentative agreement is reached.

- 15.7 Final Approval. When the Board and the Association reach tentative agreement on all matters being negotiated, the complete Agreement shall be submitted to and approved by the membership of the Association and the Board prior to implementation.
- 15.8 Contract Coordination Committee
- 15.8.1 A Contract Coordination Committee (CCC) shall be established for the length of the contract, and shall be composed of three (3) CEA members and three (3) District representatives.
- 15.8.2 The CCC shall meet at least eight (8) times during the calendar year, unless mutually determined by the committee, for the purpose of reviewing contract provisions outside the pressures and objectives associated with the negotiation process.
- 15.8.3 If it is determined by the CCC that clarification of language or the intent of the language is necessary, such clarification shall be communicated to the appropriate parties.
- 15.8.4 Released time, if necessary, at no cost to CEA for the CEA Representatives shall be made available for attendance at the CCC meetings.
- 15.9 Joint Leadership Council ("JLC") (2004)
- 15.9.1 The parties agree that many concerns which arise during the course of the year can be addressed and resolved between decision makers for each organization without the need to negotiate changes to the negotiated agreement.
- 15.9.2 The ability to effect such changes without negotiations is enhanced when the discussion involves individuals in "policy-making" positions within their respective organizations.
- 15.9.3 The parties agree to establish the JLC to accomplish the purposes described herein. Specifically, issues of district-wide concern shall be brought to the JLC for discussion. The JLC may resolve the issues, refer them to the formal negotiations process, or refer them to the Contract Coordination Committee ("CCC") as appropriate.
- 15.9.4 If the JLC is unable to resolve and/or declines to address an issue that is otherwise negotiable, the matter may be referred to the formal negotiations process, which shall ensue according to a schedule to be mutually determined by the parties.
- 15.9.5 The membership of the JLC shall be as follows. For CEA: President, Executive Board Officer, Bargaining Team Chairperson, and Executive Director. For the District: Superintendent and three members of the senior staff appointed by the Superintendent. The JLC may invite other District personnel to attend meetings as needed to contribute information and expertise in an area under discussion.
- 15.9.6 The JLC will calendar four (4) meetings to occur each school year, and may schedule additional or fewer sessions upon mutual agreement.

## ARTICLE 16

### Support Services/Special Education Personnel (1992)

16.1 Music Teachers. Services to be provided and school assignments shall be determined in consultation with the music teachers.

16.2 Special Education Personnel

16.2.2 Transfers/Assignments

16.2.2.1 Services to be provided and school assignments shall be determined in consultation with the appropriate support service group. The following factors shall be considered when making assignments: total number of students at a site; number of special education students at a site; types of special education programs at a site to be served.

16.2.2.2 By the end of the school year, the District shall distribute to all special education personnel a list of all known special education positions for the following year, including locations of such programs. Supplementary lists shall be similarly distributed not less than monthly during the summer.

16.2.2.3 All personnel serving within the provisions of this Article are assigned to a “particular kind of service” and transfer and reassignment procedures shall be carried out within each particular kind of service, exclusive of site locations.

16.2.2.4 Article 6, Transfer and Reassignment, shall apply to each particular kind of service, unless otherwise set forth in this article. (1992)

16.2.2.5 The district shall make reasonable efforts to find a suitable replacement in order to facilitate transfers to regular education. Upon request, the specific steps taken to find such replacements shall be communicated to the Association.

16.2.2.6 Teachers who wish to transfer from special education to regular education programs may do so pursuant to Section 6.4 (Transfer), including 6.4.1.6 (Priority transfer). (1994)

16.2.3 Individualized Education Program Team Meetings

16.2.3.1 Released time shall be provided for all members

of the Unit required to attend IEP Team during the instructional day.

16.2.3.2 Required attendance at IEP Team meetings shall be considered as adjunct duty (as defined in 12.2.4), when the time extends beyond the duty day.

#### 16.2.4 Fair Hearings

16.2.4.1 Released time shall be provided for all members of the Unit required to attend Fair Hearings during the instructional day.

16.2.4.2 Required attendance at Fair Hearings shall be considered as adjunct duty (as defined in 12.2.4), when the time extends beyond the duty day.

16.2.4.3 The District shall provide advisory personnel to assist all members of the Unit in preparation for a Fair Hearing.

16.2.5 School Psychologist's Work Year. The number of duty days for all School Psychologists except those presently on two hundred nineteen (219) days shall be one hundred ninety-nine (199) days for this contract. Those psychologists presently serving two hundred nineteen (219) days shall continue to be employed for the same length of time during the duration of the contract.

16.2.6 Middle School Counselors Work Year. The number of duty days for middle school counselors for the duration of the contract shall be twenty (20) days beyond those stated in 12.1.1. Counselors shall be paid at per diem rates for those twenty (20) days. This shall be treated as regular salary for retirement purposes.

#### 16.3 Group Meetings

16.3.1 The District shall conduct "faculty" meetings with each special education services group on a regular basis.

16.3.2 Such faculty meetings shall comply with the provisions of Article 12.2.8.

16.3.3 Such faculty meetings shall be coordinated with building-level faculty meetings the member is expected to attend. Time spent beyond the ninety (90) minutes per month shall be considered adjunct duty. (Article 12.2.8). (2002)

## 16.4 Counselors and Resource Specialists

- 16.4.1 Counselors shall be assigned at each middle school and Resource Specialists at each elementary school. In view of the wide diversity of needs existing in any school and since the strengths of the Counselors and Resource Specialists differ, specific functions will vary from school to school and will be mutually agreed upon by the counselor or resource specialist and principal.
- 16.4.2 A full-time middle school counselor shall not be assigned as a classroom teacher unless mutually agreed upon by the counselor and site administrator. A part-time counselor shall not be assigned as a classroom teacher during that time the individual is assigned counseling duties unless mutually agreed upon by the counselor and site administrator. These restrictions of assignment shall not apply in the event that reassignment is required due to reduction of services or declining enrollment.

## ARTICLE 17

### Definitions

- 17.1 “The Act” means Chapter 10.7, Sections 3540 through 3549.3 of Division 4 of Title 1 of the Government Code of the State of California.
- 17.2 “Member” and/or “member” as used herein means any member of the Bargaining unit.
- 17.3 “Unit”, as used herein, means the bargaining Unit under this Agreement.
- 17.4 “Board” means the Board of Education of the Cupertino Union School District, sometimes referred to as the District.
- 17.5 “Superintendent” shall indicate the Superintendent of Schools or the Superintendent’s designee.
- 17.6 “Exclusive Representative/Association” means the Cupertino Education Association, an affiliate of the California Teachers Association and the National Education Association.
- 17.7 “Days” means days members of the Unit are required to render paid services to the District.
- 17.8 “Member Duty Week” unless otherwise specifically defined, shall be the hours of employment as provided by Article 12 of this Agreement.
- 17.9 “Daily Rate” or “per diem” shall be that rate as computed in accordance with the provisions of Section 3.5 of this Agreement.
- 17.10 “Full-Time Employment Status” or “full-time status” as used herein means employment of a member of the Unit as described in Article 12 of this Agreement.
- 17.11 “Part-Time Employment Status” or “part-time status” as used herein means employment of a member of the Unit less than that defined for full-time status.
- 17.12 “Adjunct Duties” as used in this Agreement shall be any duties which are assigned to members of the bargaining Unit and which require expenditure of time beyond the normal work day. These duties shall include but not be limited to any task or assignment which has, in the past, been assigned, chosen by, or otherwise distributed among the faculty members, and which does not involve direct instruction of pupils.
- 17.13 “Principal/Immediate Supervisor” as used in this Agreement means the administrator of one or more schools or offices with responsibility to manage the school or office including the general control and supervision of members assigned to the school or office.

- 17.14 “Emergency” as used in this Agreement means a sudden unexpected happening, or an unforeseen occurrence or condition, or a sudden or unexpected occasion for action.
- 17.15 “Consultation” as used in this Agreement means participation in identifying and analyzing alternative solutions to problems for the purpose of influencing decision-making.
- 17.16 “Special Education” means specially designed instruction to meet the unique needs of individuals with exceptional needs, whose educational needs cannot be met with modification of the regular classroom, and related services, which may be needed to assist such children who benefit from specially designed instruction.
- 17.17 Members of the Unit shall be designated as falling within the following designations as used in the Agreement:
- a. “Regular class teacher”
  - b. “Special Education Personnel” (e.g., Resource Specialists, Special Day Class/Center Teachers, I.S.G.I., Adaptive P.E., Health Services, Speech/Language Pathologists, Psychologists, or other designations as defined in the Master Plan for Special Education)
  - c. “Support Service Personnel” (e.g., librarians, media specialists, ESL teachers, Title programs, music teachers, Chapter I teachers, GATE teachers, resource teachers, counselors). (1988)
- 17.18 “Special Day Classes/Centers” as used in this Agreement shall mean a program at a school site in which an identified special education student spends fifty percent (50%) or more of her/his instructional day assigned to the Special Day Class/Center teacher.

**ARTICLE 18**  
**Effect of Agreement**

- 18.1 **Complete Understanding.** The terms and conditions set forth in this Agreement represent the full and complete understanding between the parties hereto. The terms and conditions may be altered, changed, added to, deleted from, or modified only through the voluntary, mutual consent of the parties in a written amendment executed according to the provisions of this Agreement. This Agreement terminates and supersedes those past practices, agreements, procedures, traditions and rules or regulations inconsistent with any matters covered herein. However, existing policies, rules, regulations, practices and procedures which are consistent with this Agreement are not modified. The parties agree that during the negotiations which culminated in this Agreement, each party enjoyed and exercised without restraint, coercion, intimidation or other limitation, the right and opportunity to make demands and proposals or counter proposals with respect to any matter not reserved by policy or law from compromise through negotiations and that the understandings and agreements arrived at after the exercise of that right and opportunity are set forth herein.
- 18.2 **Individual Contracts.** Any individual contract between the Board and an individual member shall be subject to and consistent with the terms and conditions of this Agreement. If an individual contract contains any language inconsistent with this Agreement, this Agreement during its duration shall be controlling.
- 18.3 **Savings.** Should an article, section, or clause of this Agreement be declared illegal by a court of competent jurisdiction, said article, section, or clause, as the case may be shall be automatically deleted from this Agreement to the extent that it violated the law. The remaining unaffected articles, sections and clauses shall remain in full force and effect for the duration of this Agreement.
- 18.4 **Association/Management/Board.** Each party agrees that it will not take any reprisals against any management member, Board member, or member regarding the administration of the Agreement or any grievance filed hereunder. (1994)
- 18.5 **Signed Copies of Agreement.** There shall be two (2) signed copies of the final Agreement for record-keeping purposes. One (1) shall be retained by the District and one (1) by the Association.
- 18.6 **Cost of Printing.** The Board and the Association agree to share equally the costs of printing the Agreement.
- 18.7 **No Strike, No Lockout.** The Association and the Board agree that differences between the parties hereto shall be settled by peaceful means

as provided in the Agreement. During the term of this Agreement, the Association, in consideration of the terms and conditions of this Agreement, will not engage in, instigate, or condone any strike, work stoppage or any concerted refusal to perform work duties as required in this Agreement, and will undertake to exert its best efforts to discourage any such acts by a member in the Unit. During the term of this Agreement, the Board, in consideration of the terms and conditions of this Agreement, will not authorize or permit any lockout of Association members or other persons covered by this Agreement.

**ARTICLE 19**  
**Management Rights**

- 19.1 The Board on its own behalf, and on behalf of the electors of the District, hereby retains and reserves unto itself, except as limited by the terms and conditions of this Agreement, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and Constitutions of the United States and the State of California, including but without limiting the generality of the foregoing, the rights:
- 19.1.1 To determine and administer policy.
  - 19.1.2 Subject to the provisions of the law, to hire all members, to determine their qualifications and the conditions governing their dismissal, demotion or promotion.
  - 19.1.3 To delegate to the Superintendent and other legally appointed officers, the operation of the school system, its properties and facilities, including but not limited to, innovative and experimental exploration in the field of education, experimental and innovative uses of District facilities and experimental and pilot investigation of new educational programs.
- 19.2 The exercise of the foregoing powers, rights, authority, duties and responsibilities by the Board, the adoption of policies, rules and regulations, and practice in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the terms and conditions of this Agreement.

**ARTICLE 20**  
**Peer Assistance and Review Program**

20.1 Peer Assistance and Review Program

- 20.1.1 The Peer Assistance and Review Program (PAR) allows exemplary teachers to assist permanent teachers in need of development and/or improvement in the areas of subject matter knowledge, teaching strategies, and teaching methods.
- 20.1.2 The Program’s assistance shall be provided through consulting teachers as described in detail in Sections 20.4.1.3.8 of this Article. This assistance shall not constitute the evaluation of certificated unit members as set forth in Article 15 of the Agreement and *Education Code 44660*, et seq.
- 20.1.3 The Program resources shall be utilized in the following priority: first, for the “Referred Participating Teachers” and second, for the “Voluntary Participating Teachers and then for the “BTSA” teachers.

20.2. Definitions Applicable to this Article

- 20.2.1 “Classroom Teacher” or “Teacher.” Any permanent classroom teacher whose major professional responsibility is to provide instruction to pupils in a classroom setting.
- 20.2.2 “Participating Teacher.” A permanent classroom teacher who either volunteers or is required by this Article to participate in the Program.
- 20.2.3 “Consulting Teacher.” An exemplary teacher meeting the requirements of subsection 20.4.1.3.8.1 who is selected by the PAR Panel to provide support to Participating Teachers and/or beginning teachers. Consulting Teachers are fully released from classroom responsibilities for a maximum of 5 years. Consulting Teachers shall return to the classroom following their term.
- 20.2.4 “Evaluator.” An administrator or instructional supervisor appointed by the District to evaluate a certificated teacher.
- 20.2.5 “Voluntary Participating Teacher.” A Voluntary Participating Teacher is a permanent classroom teacher who volunteers to participate in the PAR Program.
- 20.2.6 “Joint Panel.” The Joint Panel shall consist of five (5) members, three (3) of whom shall be CEA bargaining unit members who are chosen to serve by the Association. The District shall choose two (2) administrators for the Joint Panel.

- 20.2.7 "Referred Participating Teacher." A Referred Participating Teacher is a permanent teacher who has, pursuant to the steps outlined in subsection 9.7.3, received an unsatisfactory summary evaluation rating, and an unsatisfactory rating in one or both of the following areas: "Classroom Management;" "Instructional Skills—Student Assessment/Student Achievement."
- 20.2.8 "BTSA Beginning Teacher." A fully credentialed teacher in his/her first or second year in the profession of teaching.
- 20.2.9 "Voluntary Beginning Teacher." A Voluntary Beginning Teacher is an untenured teacher who is not eligible for the Beginning Teacher Support and Assessment Program.
- 20.2.10 "Contracted Consultant." The Contracted Consultant is contracted by the district to assist teachers in the PAR program. The Contracted Consultant may be a retired teacher, a teacher on leave of absence, a part time or a full time teacher working extra hours or an outside consultant with expertise in the specific area where assistance needs to be provided.

## 20.3 Program Outline

### 20.3.1 Referred Participating Teachers

- 20.3.1.1 A Referred Participating Teacher, as defined in section 20.2.7, must participate in the Program.
- 20.3.1.2 The Consulting Teacher's assistance and review shall focus on the specific areas recommended for improvement by the Participating Teacher's Evaluator in the Plan of Assistance (see Article 9.8.2) which is developed after the Referred Participating Teacher receives an unsatisfactory evaluation as set forth in section 20.2.7.
  - 20.3.1.2.1 The recommendations in the Plan of Assistance shall be considered as part of the Referred Participating Teacher's performance goals for the period of participation in this Program.
  - 20.3.1.2.2 The Evaluator, Consulting Teacher, and the Referred Participating Teacher shall meet and discuss the recommended areas of improvement outlined by the Evaluator in the Plan of Assistance and the types of assistance that will be provided by the

Consulting Teacher, including but not limited to those set forth in subsection 20.4.3.4

- 20.3.1.2.3 The Consulting Teacher and the Evaluator are expected to establish a cooperative relationship and shall coordinate and align the assistance provided to the Referred Participating Teacher on an ongoing basis, consistent with the Plan of Assistance.
- 20.3.1.3 On or before April 1 of each year (subject to modification by the Joint Panel), the Consulting Teacher shall complete a written report documenting the results of the Referred Participating Teacher's participation in the Program, consisting of a description of the assistance provided and anecdotal information sufficient to enable the Joint Panel to make its recommendations to the Governing Board (see subsection 20.3.1.5).
- 20.3.1.3.1 A Referred Participating Teacher shall be entitled to review all reports generated by the Consulting Teacher prior to their submission to the Panel and to have affixed thereto his/her comments. The Consulting Teacher shall provide the Referred Participating Teacher with copies of such reports at least five (5) working days prior to any Panel meeting at which the report will be given. This process also shall apply to the Evaluator of the Referred Participating Teacher.
- 20.3.1.4 The report described in subsection 20.3.1.3 shall be included as part of the Referred Participating Teacher's annual evaluation which is placed in the official personnel file. The Evaluator, as the individual officially responsible for the evaluation, retains the right and responsibility to comment on the report in his/her evaluation.
- 20.3.1.5 After receiving the report described in subsection 20.3.1.3, the Joint Panel shall recommend in writing to the Governing Board (and provide copies simultaneously to the Referred Participating Teacher, Consulting Teacher, and Evaluator) one of the following:

- 20.3.1.5.1 That the elements of the Plan of Assistance involving peer intervention have been completed and that the Referred Participating Teacher is demonstrating a satisfactory level of performance; or
- 20.3.1.5.2 That despite sustained assistance, the Referred Participating Teacher is not able to demonstrate satisfactory performance, and further assistance through the program will not be successful; or
- 20.3.1.5.3 That continued participation in the Program is recommended. The length of continuation in the program shall be set by the Panel, but shall not exceed one year and shall be on a one-time basis. Following this period, the Panel shall receive another report from the Consulting Teacher pursuant to a schedule determined by the Panel, after which the Panel shall recommend in writing to the Governing Board either subsection 20.3.1.5.1 or 20.3.1.5.2.
- 20.3.1.5.4 That the Participating Teacher, his/her CEA representative if requested, and the Evaluator may be present for the Consulting Teacher's report to the Panel. However, none of these individuals may be present during deliberations of the Panel, which are closed and confidential. The Panel may request additional follow-up information from these individuals.

### 20.3.2 Voluntary Participating Teachers

- 20.3.2.1 Permanent classroom teachers desiring assistance in improving their practice may apply to the Joint Panel for such assistance on a confidential basis.
- 20.3.2.2 The Joint Panel shall have the authority to accept or reject such self-referrals, and shall give priority to those applicants who choose to disclose to the Panel that such application has been made at the suggestion of an Evaluator.

- 20.3.2.3 If a teacher is accepted into the PAR Program as a volunteer, documentation will not be placed in the personnel file so long as participation continues to be on a voluntary basis.
- 20.3.2.4 Neither the Consulting Teacher nor the Panel will forward to the Governing Board the names of volunteer teacher participants.

### 20.3.3 Beginning Teacher Support Assessment (BTSA) Programs

- 20.3.3.1 BTSA. The BTSA program's purpose is to assist and support new teachers as they enter the teaching profession to advance their skills and knowledge in relation to the California Standards for the Teaching Profession. BTSA teachers will be provided with non-judgmental, non-evaluative feedback and support. (2002)
- 20.3.3.2 After selection of Consulting Teachers by the Joint Panel, the Instructional Services Department shall be responsible for implementation of the Beginning Teacher Support Program.
- 20.3.3.3 Neither the Consulting Teacher nor the Joint Panel will make written reports regarding individual BTSA teachers, nor forward to the Board the names of individual BTSA teachers who participated in the Program. (2002)

### 20.3.4 Voluntary Beginning Teachers

- 20.3.4.1 Voluntary Beginning Teachers receive support through the New Teacher Support Program provided by the district. (2002)
- 20.3.4.2 Voluntary Beginning Teachers' participation in the Program is not legally mandated. Neither the Consulting Teacher nor the Joint Panel will make written reports regarding individual Voluntary Beginning Teachers, nor forward to the Board the names of individual beginning teachers who participated in the Program. (2002)

## 20.4. Governance and Program Structure

### 20.4.1 Joint Panel

- 20.4.1.1 The Peer Assistance and Review Program will be administered by a Panel consisting of five (5) members, three (3) certificated classroom teachers

appointed by the Association, and two (2) administrators appointed by the District. There also shall be one (1) alternate each for the teachers and the District who shall be trained and assume Panel duties if needed in the event of a conflict of interest or if a Panel member is unable to perform his/her duties. Qualifications for the teacher representative shall be the same as those for Consulting Teacher. A Panel member's term shall be three (3) consecutive years, the terms to be staggered. The chairperson of the Joint Panel shall be one of the three certificated classroom teachers.

20.4.1.2 The Joint Panel will make all decisions through consensus in the areas of appointments, reports, and recommendations to the Governing Board, and Program plan and budget. Failing consensus, decisions will be made by majority vote of members present, provided that four (4) of the five (5) Panel members will constitute a quorum for purposes of meeting and conducting business.

20.4.1.3 The Joint Panel's primary responsibilities involve establishing the annual program and budget, and selecting the Consulting Teachers and determining in a manner consistent with this Article, the number of Consulting Teachers to be allocated to the specific programs (BTSA, Voluntary, and Referred).

20.4.1.3.1 Reporting to the Referred Participating Teacher, the Evaluator, and the Governing Board one of the recommendations set forth in subsection 20.3.1.5 of this Article;

20.4.1.3.2 Reporting annually to the Governing Board and the Association regarding the program's impact and making recommendations for improvement of the program;

20.4.1.3.3 Assigning the Consulting Teachers to Referred Participating Teachers;

20.4.1.3.4 Monitoring of Consulting Teachers assignments to BTSA teachers and other Voluntary Teachers as resources allow;

20.4.1.3.5 Reviewing Consulting Teacher's reports on Referred Participating Teachers;

- 20.4.1.3.6      Reviewing the effectiveness of the Consulting Teachers in their roles.
- 20.4.1.3.7      Coordinating with the District to provide training and retraining for Consulting Teacher, Panel members, and where appropriate, for Participating Teachers;
- 20.4.1.3.8      Selecting Consulting Teachers (2002)
- 20.4.1.3.8.1    The Joint Panel shall seek applicants for the positions of Consulting Teacher for the PAR Program from permanent members who are classroom teachers.
- 20.4.1.3.8.2    In determining its recommendations, the Joint Panel shall consider the statutory criteria for qualifications.
- 20.4.1.3.8.3    Interviews and classroom observations of candidates shall be conducted by both classroom teachers and administrators, who are members of the Joint Panel.
- 20.1.3.8.4      Applicants for the Consulting Teacher Program shall consent to the Joint Panel's reviewing their past experience and performance except that an applicant's personnel file including evaluations shall not be available to the Panel.
- 20.4.1.3.9      Forwarding to the Human Resources Department at the end of the year all the records regarding the program that shall be filed separately from the individual personnel records, except as set forth in subsection 20.3.1.3 in this Article.
- 20.4.1.3.10     Establishing internal operating procedures and regulations necessary to carry out the requirements of the Education Code and this Article.
- 20.4.1.3.11     Resolving issues between Participat-

ing Teachers, Consulting Teachers, and Evaluators.

20.4.1.3.12 The Panel shall use the following procedure for establishing the annual Program plan and budget:

20.4.1.3.12.1 By May 15 of each fiscal year the Panel will establish a program and budget for the succeeding year, which will include:

a. The estimated state revenues for the Program; and

b. The estimated expenditures, involving:

-projected number of Participating Teachers and BSTA Teachers;

-projected number of Consulting Teachers needed to service the projected need for Referred Participating Teachers, Voluntary Participating Teachers and BTSA Teachers.

-release time for the Panel and Consulting Teachers

-compensation as per 20.4.4, and

-projected costs for training, administrative overhead, and if necessary, legal and consulting assistance.

20.4.1.3.1.2.2 By June 15, the Program plan/budget will be submitted to the Association President and the Superintendent for approval. If the plan/budget is not approved by both parties, it may be modified by mutual agreement. By September 1, if the parties cannot reach agreement to either approve the plan/budget or to amend it, then the plan/budget will be implemented following agreement by the District and Association Bargaining Teams.

20.4.2 Consulting Teacher

20.4.2.1 The minimum qualifications for a Consulting Teacher:

- 20.4.2.1.1 A credentialed classroom teacher with permanent status and substantial recent experience in classroom instruction;
  - 20.4.2.1.2 Demonstrated exemplary teaching ability, as indicated by, among other things, effective communication skills, subject matter knowledge, knowledge and understanding of District curriculum goals and standards, and mastery of a range of teaching strategies necessary to meet students' needs in different contexts;
  - 20.4.2.1.3 Ability to work cooperatively and effectively with other teachers and administrators; and
  - 20.4.2.1.4 The District and the Association mutually agree that the parties and the Panel should make every effort to select Panel members and Consulting Teacher who reflect grade level diversity and successful professional experience in the Cupertino Union School District.
- 20.4.3 Consulting Teachers shall provide assistance to Participating Teachers in the areas of need as set forth in the Plan of Assistance.
- 20.4.3.1 The Evaluator, Referred Participating Teacher, and the Consulting Teacher shall meet to discuss the recommended areas of improvement set forth in the Plan of Assistance, and types of assistance to be provided by the Consulting Teacher (which are subject to budget approval by the Panel).
  - 20.4.3.2 The Consulting Teacher's assistance and review shall focus on the areas recommended for improvement set forth in the Evaluator's Plan of Assistance.
  - 20.4.3.3 Recommendations for improvement contained in the Plan of Assistance shall constitute part of the Referred Participating Teacher's performance goals during the period of participation in PAR.
  - 20.4.3.4 The Consulting Teacher and the Evaluator shall maintain a cooperative relationship, and coordi-

nate and align, on an ongoing basis, assistance activities provided to the Referred Participating Teacher pursuant to the Plan of Assistance. Types of assistance may include, but not be limited to the following activities:

- a. providing consultative assistance to improve in the specific areas targeted by the Evaluator or the District Teaching Standards;
- b. meeting and consulting with the Evaluator or Designee regarding the nature of the assistance being provided;
- c. observations of the Participating Teacher during periods of classroom instruction;
- d. allowing the Participating Teacher to observe the Consulting Teacher or other selected Teachers;
- e. attending specific training in specified teaching techniques or designated subject matter;
- f. demonstrating good practices to the Participating Teacher; and
- g. maintaining appropriate records of each Participating Teacher's activities and progress.

20.4.3.5 Within the six (6) school weeks of the assignment of the Consulting Teacher to the Participating Teacher, the Participating Teacher or the Consulting Teacher may petition the Panel for an assignment change. The Participating Teacher may be allowed only one change per year.

20.4.3.6 The parties understand that every possible subject matter competency may not be available within the corps of Consulting Teachers, and therefore it shall occasionally be necessary to secure additional assistance from Contracted Consultants to fully address identified areas of needed improvement. In such cases, the Consulting Teachers shall maintain primary responsibility as set forth herein under the Plan of Assistance, but may function more like a case carrier who assures the availability of appropriate resources.

#### 20.4.4 Compensation

20.4.4.1 Joint Panel members will be paid a \$500 stipend.

- 20.4.4.2 If alternates provide service on the Panel, the regular Panel members shall establish proportional compensation therefore.
- 20.4.4.3 As part of establishing the annual budget, the Panel shall project the amount of release time needed to carry out the duties of the Panel. If panel meetings cannot be held during release time, Panel members shall be compensated at the adjunct duty pay rate in addition to their annual stipend. (2004)
- 20.4.4.4 Contracted Consultants will be paid adjunct duty for time spent outside the duty day. The adjunct duty rate shall also apply to Contracted Consultants from outside the District.
- 20.4.4.5 Consulting Teachers will be paid on the teachers' salary schedule plus a \$4,530.00 stipend.

## 20.5 Other Provisions

- 20.5.1 Functions performed by unit members under this Article shall not constitute either management or supervisory functions as defined by *Government Code Section 3540.1(g) and (m)*.
- 20.5.2 Unit members who perform functions as Consulting Teachers or Panel members under this Article shall have the same protection from liability and access to appropriate defense as other public school employees pursuant to *Division 3.6, commencing with Section 810 of Title 1 of the California Government Code. See Education Code section 44503, subdivision(c)*.
- 20.5.3 All proceedings and materials related to the administration of this Article shall be strictly confidential. Therefore, Panel members and Consulting Teachers may disclose such information only as necessary to administer this Article and compliance with the law.
- 20.5.4 A Participating Teacher shall have the right to be represented by Cupertino Education Association (CEA) in any meeting of the Panel to which he/she is called and shall be given reasonable opportunity to present his/her point of view concerning any report being made.
- 20.5.5 No encroachment/termination of program if loss of funding.

- 20.5.5.1 Expenditures of this program shall not exceed revenues received from funds made available through passage of ABIX (1999, Villaraigosa) or successor legislation and BTSA funding excluding the allowable administrative costs.
- 20.5.5.2 It is understood that this Program shall terminate if for any reason there exists an inability for full funding thereof through ABIX (1999, Villaraigosa), or successor legislation.
- 20.5.5.3 At the conclusion of the 2000-2001 fiscal year, and each year thereafter, if revenue exceeds expenditures the parties shall meet to determine the allocation of the surplus.
- 20.5.6 Board/District Reservation of Rights: Nothing in this article limits the District and Board's exercise of management rights set forth in Article 19, and specifically Section 19.2
- 20.5.7 Non-grievability: A teacher shall not have access to the grievance process to challenge the contents of reports, evaluations, or decisions of the Panel, but may file official responses, as provided herein, which shall become part of the official record of the intervention provided under this program.

**ARTICLE 21**  
**Professional Growth**

- 21.1 Those members who, as of September 1, 1985, do not hold a clear multiple or single subject teaching credential, shall develop an individual program of professional growth which consists of a minimum of one hundred fifty (150) clock hours of participation in activities which contribute to competence, performance or effectiveness in the profession of education. This program is to be completed within each five-(5) year period. The initial five-(5) year period begins September 1, 1985, or on the date that a credential takes effect after September 1, 1985.
- 21.2 A clock hour is determined by the actual time spent in the approved professional growth plan activities.
- 21.2.1 For each hour that a member spends directly involved in an activity that is identified in a signed professional growth plan, the member shall record one (1) clock hour of time on the professional growth record.
- 21.2.2 In a professional growth record, a member shall not record any time spent traveling to or from a professional growth activity, or any time spent completing routine out-of-class assignments such as reading assignments or preparing for tests for an approved course, workshop, teachers center program, staff development program or professional conference that the member attends. A member may record time spent on out-of-class assignments if the member and the professional growth advisor agree that the assignments qualify as professional growth activities in the categories defined in Section 80558(c) (2 through 7) of Title 5, Administrative Regulations. Time spent preparing to make formal presentations in professional conferences or as the instructor of a course, workshop, teacher center program or staff development program for teachers, may be recorded.
- 21.3 The District shall prepare a list of professional growth advisors who are not members of the bargaining unit. A list of these advisors including work location and a brief biography on the experience of the advisor shall be available annually upon request. The number of advisors shall be reasonable and adequate, in order to provide assistance to advisees within a reasonable period of time. Any professional growth advisor may refuse to assist advisees beyond a reasonable number unless all advisors have approximately the same number of advisees. A credential holder's evaluating administrator may act as that candidate's advisor, at the discretion of the candidate.
- 21.4 The responsibility of the professional advisor shall be to assist the

member in establishing, implementing, and completing his/her professional growth plan pursuant to applicable laws.

- 21.5 The professional growth advisor shall approve or disapprove of proposed plans independently of any evaluation that may affect the member's employment status.
- 21.6 The professional growth plan and record shall not include any portion of an activity which occurred prior to the time the member applied for the professional clear credential or the most recent renewal of such credential.
- 21.7 No professional growth advisor or other District representative shall compel a member to pay any fee or provide any service in exchange for professional growth advice, or for approval of a professional growth plan or record.
- 21.8 All approved professional growth college or university units that meet District salary schedule advancement requirements shall be given credit for salary credit advancement.
- 21.9 A holder of a clear teaching credential may appeal an adverse action by a professional growth advisor or other District representatives related to professional growth to the Commission on Teacher Credentialing.
- 21.10 The District and the Association shall provide a joint inservice no later than October 1 of each school year for members required to complete these professional growth requirements.
- 21.11 The above paragraphs shall be in accordance with the State Board of Education's regulations governing professional growth.

## ARTICLE 22

### Variances – Site-Based Exceptions (1994)

- 22.1 Variance Plans—Purpose. It is the objective of the Association and District to encourage initiative and innovation at the work site through site-based decision-making. To promote and achieve this objective, the parties recognize that proposals may be generated which conflict with the negotiated Agreement. In the event of such a conflict, a variance may be warranted. The following variance process is intended to provide the necessary flexibility for site-based decision-making and at the same time protect the integrity of the negotiated Agreement.
- 22.2 Variance Procedure
- 22.2.1 In the event a faculty member (including site administrators) or group of faculty members at a school wish to establish an instructional/work program or schedule that varies from the negotiated Agreement, such variance plan shall initially be discussed with the principal. Thereafter, consideration of the plan will be initiated by petition, signed by at least twenty-five (25%) percent of the faculty members at the site, including members of “special groups” assigned to the site (e.g., special education and counselors), and submitted to the Association President and the District Superintendent or designee. The petition must clearly identify which provisions of the Agreement are affected by the variance plan, proposed date of implementation, and duration of the plan.
- 22.2.2 Upon attainment of twenty-five (25%) percent of the signatures as provided above, a secret ballot shall be conducted by the Faculty Advisory Committee and the principal at the site. The variance plan must receive the support of at least two-thirds (66 2/3%) of the votes cast by faculty members assigned to the site.
- 22.2.3 Upon attainment of the required vote as provided above, the variance plan shall be submitted in writing to the association president and the district superintendent or designee for each party’s consideration.
- 22.2.4 Upon approval of the variance plan by both parties, the plan will be implemented according to its provisions.
- 22.3 Renewal and Rescission of Plan. A variance plan may be renewed or rescinded by following the procedure in section 22.2.

## **ARTICLE 23**

### **Duration**

- 23.1 This agreement shall be in effect through 2004-2005, 2005-2006, and 2006-2007. (2004)
- 23.2 In 2005-2006 the parties agree to reopen Article 3 and one other article for each party, but not Article 4. In 2006-2007 the parties agree to reopen Article 3 and 4 and two other articles for each party. (2004)
  - 23.2.1 In 2005-2006, CEA may also elect to reopen Section 7.2.8 (IEP meetings), in addition to the reopeners set forth in Section 23.2 above.
- 23.3 Proposals shall be “sunshined” (presented for public review) at the first regularly scheduled meeting of the Board of Education following the exchange of proposals. Negotiations shall commence within seven (7) days of completion of the sunshine requirements.
- 23.4 During the third year of the contract, the parties agree to reopen negotiations on a successor agreement pursuant to Article 15 herein.
- 23.5 During the second and third years of the contract, reopeners on negotiations may occur if necessitated by changes in the law which mandate changes in the contract. In addition, the parties will negotiate as necessary to establish the calendar for the next two (2 years). (1996)
- 23.6 In Witness Whereof, the Cupertino Education Association has caused this Agreement to be signed by its President, and the Cupertino Union School District has caused this Agreement to be signed by its President attested by its Clerk.

**ARTICLE 24**  
**Teacher Intern program**

Except as described below, the Agreement between CEA and CUSD shall apply to teacher interns.

24.1 Definition. Interns are unit members who have no credential issued in the United States and are working through the district and a university to obtain a California credential. Interns must hold a California intern credential.

24.2 Salary. Teacher Interns shall receive the full salary provided on cell B of the salary schedule. Interns serving in part-time positions will receive the prorated portion of the salary. Interns with additional units and/or degrees will not receive any additional salary. (2002)

Section 3.23 (Masters degree stipend) of the contract shall apply to interns. (2002)

24.3 Fringe Benefits. Article 4 of the contract shall apply for teacher interns.

24.4 Continuance in the program. A satisfactory performance evaluation will be required to continue in the program.

24.5 Release from the program. The district may at its discretion release the intern from employment with the district at any time after consultation with the university supervisor, principal, and master teacher.

24.6 Employment Status. Interns will be in “intern” status while they are completing the program.

24.7 Employment as Probationary Teachers.

24.7.1 If the district employs an intern who served under a California intern credential upon successful completion of the intern program and receipt of the teaching credential, the intern's status (e.g., first of second-year probationary teacher) will be according to Education Code Section 44466, and the intern will be placed at Step C-2, D-2 or E-2 on the teacher salary schedule if the intern has the semester units to qualify for such placement effective 2002-2003 retroactive to July 1. (2002) (2004)

24.8 Master Teachers. Master teachers will be selected and assigned from volunteers by the Human Resources Department. Upon request, a human resources representative will discuss these selections with a CEA representative. Master teachers must have satisfactory performance evaluations and must be permanent teachers in the district. Master teachers will be responsible for helping the intern in areas such as plan-

ning and will share ideas regarding meeting the duties of a teacher. Master teachers will receive a stipend of \$2119 per school year for their support to the assigned intern. This stipend will be pro-rated for part-time interns. (2000) (2004)

The assistance provided by a master teacher to an intern is an ongoing activity throughout the year. The master teacher's duties include meeting at least once a week with the intern.

- 24.9 Interns. Interns will participate in the responsibilities of a teacher (pro-rated for part-time service).
- 24.10 Evaluation. Article 9 shall apply. Interns will be evaluated on the same timeline as first year probationary teachers. Interns will receive two summary evaluations due on February 1 and thirty (30) calendar days prior to the last day of school.
- 24.11 Leaves. Article 5 shall apply only as follows: Interns shall be eligible for sick leave (5.1), personal necessity (5.2), military leave (5.3), bereavement (5.5), judicial/official business leave (5.9), and Industrial Accident (5.11).

**ARTICLE 25**  
**Americans With Disabilities (ADA) Provision**

- 25.1 The District and the Association acknowledge that both parties have the legal obligation to consider reasonable accommodation for qualified disabled members.
- 25.2 If the District determines that it must reasonably accommodate a qualified disabled member, that legal obligation may supersede those sections of this agreement in conflict with the duty to accommodate.
- 25.3 The Association recognizes that the District has the legal obligation to meet with qualified disabled members to discuss reasonable accommodation.
- 25.4 A unit member seeking accommodation has the right to representation by the Association in discussions with the District regarding such accommodation. Upon such a request, arrangements shall be made for a representative to be present before discussion continues.
- 25.5 Following discussion with the unit member (and his/her representative if requested), if the District determines that implementation of the reasonable accommodation will conflict with the rights of other members or with provisions of the collective bargaining agreement, and the parties (including the Association) have not already consented to the accommodations offered by the District, the District will give the Association written notice and an opportunity to meet to discuss alternatives before implementation of said accommodations.
- 25.6 If after discussions the Association disputes the necessity for or appropriateness of the reasonable accommodation, the District will require the unit member to undergo an independent medical examination. In such case, the medical examiner shall determine, in his/her professional opinion:
- a. whether in fact a disability exists within the meaning of the ADA, and if so,
  - b. whether the proposed accommodation will allow the disabled unit member to perform the essential job functions.
- 25.7 If the examination referred to above answers questions (a) and (b) in the affirmative, and the Association continues to dispute the necessity for or the appropriateness of the reasonable accommodation, at the Association's request, a conference will be held with the superintendent, attended by Association representatives, the unit member (and/or representative), and a representative from the Human Resources Department. The superintendent's decision regarding the reasonable accommodation shall be final. The Association agrees to keep medical information related to the reason for the reasonable accommodation confidential, unless the affected member signs a release.

- 25.8 The District and the Association acknowledge that particular accommodations are intended to meet the individual needs of particular persons. Acceptance by the District and the Association of a particular accommodation shall not obligate either of them to accept the same and similar accommodation for a different individual.
- 25.9 Any reasonable accommodation provided under the ADA shall not establish a past practice, nor shall it be cited or used as evidence of a past practice in the grievance/arbitration procedure. Any action taken to provide an accommodation pursuant to the ADA shall not be subject to challenge through Article 10 (Grievance Procedure), however disputes regarding the use of the procedure herein shall be subject to Article 10 provided that an arbitrator shall have not authority to change or otherwise affect the accommodation made for the member.
- 25.10 For the purposes of this Article/Section, “member” or “unit member” includes current unit members, members from other bargaining units whose reasonable accommodation involves assignment to a position in this bargaining unit, and new members whose employment in the bargaining unit will involve reasonable accommodation.

**TEACHER SALARY SCHEDULE 2004-05**  
**Cupertino Union School District**

CLASS B Emergency Permit or Waivers or Intern Credential	CLASS C ** Regular Credential B.L. + 30 Semester Units	CLASS D ** Regular Credential B.L. + 45 Semester Units or M.A.	CLASS E ** Regular Credential B.L. + 60 Semester Units or M.A. + 15 Semester Units*	STEPS
\$44,239	\$44,874	\$44,995	\$45,481	1
	\$44,995	\$45,116	\$46,088	2
	\$45,116	\$46,371	\$47,785	3
	\$45,237	\$48,550	\$51,938	4
	\$47,195	\$50,471	\$53,982	5
	\$49,170	\$52,627	\$56,109	6
	\$51,185	\$54,759	\$58,381	7
	\$52,992	\$56,754	\$60,511	8
	\$54,963	\$58,935	\$62,691	9
		\$61,061	\$65,028	10
<p>**To be eligible for placement on these columns, in addition to the semester units required, a unit member must hold a valid California Teaching Credential, not including an emergency permit, intern permit, or waiver. <i>See Education Code section 45023.4(a)(1).</i></p> <p>*Units, to apply, must have been earned after receipt of Masters Degree. \$1279 annual bonus for Masters Degree and National Board Certification. Adjunct duty will be \$29.80. The overnight stipend will be \$67.27. Stipend for master teachers of intern teachers will be \$2119. (CUSD/CEA, Article 24.8)</p>			\$68,621	11
			\$71,028	15
			\$73,460	19
			\$75,843	23
			\$83,889	27

Career Increments: The Teacher Salary Schedule provides for four career increments in Column E at Steps 15, 19, 23, and 27. There is a service requirement at each career increment.

Credit for Service and Additional Units: Vertical progression on the salary schedule is one step for each year of service. Horizontal progression on the schedule requires fifteen semester units with no time limit. Counselors are placed on the Teacher Salary Schedule according to their years of experience and units. Counselors shall work 20 days beyond the contract duty days.

This schedule is for a 187 day work year.

**Date Effective:** July 1, 2004

**Board Adopted:** November 9, 2004

HR/tn 11/02/04

# PSYCHOLOGIST SALARY SCHEDULE 2004-05

Cupertino Union School District

## SCHEDULE E

1	2	3	4	5
\$64,356	\$68,039	\$71,656	\$75,006	\$78,518

1. Salary is for a 199 day work year.\* Salary adjustments for length of the work year shall be computed on the basis of the ratio of days worked to total days in applicable work year.
2. A maximum of two (2) years previous experience outside the district may be credited for initial placement on the schedule.
3. Salary listed includes M.A. increment. If no M.A., deduct \$1,279.
4. No person placed on this schedule shall earn less than his/her salary as a teacher plus 10%.
5. Psychologist interns shall be paid on step 1 and shall stay at step 1 until they complete the credential.
6. When a psychologist's pay is less on a per diem basis than the per diem pay of a teacher with the same number of years experience and the number of units required for placement on Column E on the teacher salary schedule, the psychologist shall be paid based on the same per diem rate as the teacher multiplied by the number of days in that psychologist's work year.

\*12 month position = contract plus 20 days = 219 day contract.

Effective : July 1, 2004

Board Adopted: November 9, 2004

HR/tn  
11/02/04

**APPENDIX C**

**Memorandum of Understanding – Extra Duty Compensation  
(Revised 1998)**

1. Extra Duty Compensation – There shall be compensation for the after school sports programs at \$550 per authorized unit paid through the Los Gatos – Saratoga Recreation Department. (The rate for 1999–2000 is \$625.00 first year and \$650.00 second year.)
  - 1.1 Each unit shall be based upon an activity scheduled four (4) days per week, two (2) hours per day, plus tournaments for seven (7) weeks.
  - 1.2 Payment shall be made upon completion of each unit. Instructors shall not be compensated for more than one (1) unit in a particular area scheduled on a concurrent basis.
  - 1.3 The district coordinators for girls’ activities and for boys’ activities will each receive an additional unit of pay.
  - 1.4 Members of the Unit shall have first priority for assignments for which they are entitled.
  - 1.5 Units shall be equally distributed among the middle schools.

\_\_\_\_\_  
Cupertino Education Association

\_\_\_\_\_  
Cupertino Union School District

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**APPENDIX D**

Notice of Grievance

Identity Number \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_ School \_\_\_\_\_

**STATEMENT OF GRIEVANCE**

STATE THE PROVISION(S) OF THE AGREEMENT ALLEGED TO HAVE BEEN VIOLATED MISINTERPRETED OR INEQUITABLY APPLIED

REMEDY DESIRED

If you wish to be represented, indicated below:

\_\_\_\_\_ CEA (Association will inform parties at interest)      Class Action

\_\_\_\_\_ Other Designee (List Name) \_\_\_\_\_

\_\_\_\_\_ Self

Signature of Aggrieved \_\_\_\_\_

RECORD OF TIME  
LEVEL

DATE FILED

WITH WHOM

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## APPENDIX E

### MEMORANDUM OF UNDERSTANDING BETWEEN CUPERTINO UNION SCHOOL DISTRICT AND CUPERTINO EDUCATION ASSOCIATION

JUNE 21, 2004

#### New Middle School Staffing For 2005-2006

The staffing for the new middle school will occur between January and June of 2005. The District recognizes the necessity of establishing the faculty early in order to plan the program for the new school and will post openings as early as possible in 2005.

The initial staffing will be done following the process described below. Any position not filled through this process, will remain posted. In-District teachers eligible for transfer may apply for any unfilled positions posted. Unfilled positions will be filled through the normal spring staffing process including but not limited to transfers described in Article 6.

#### **Posting and Application:**

A notice will be sent to all active teachers with information about applying to teach at the new middle school in the 2005-2006 school year.

The principal of the school will interview the teachers who apply by the application closing date indicated in the notice.

Selection criteria: Selection will be based on grade level and subject experience, academic preparation (majors and minors), credentials including authorizations, training in special programs, competencies, past performance evaluations, person ality and attitude of potential transferees.

Selection: The order of consideration for teachers who return the in-District application will be as follows:

1. Current permanent and second year probationary 6th and 7th grade teachers from elementary and middle schools for 6th and 7th grade positions.
2. Current permanent and second year probationary middle school elective teachers for electives and any unfilled 6th and 7th grade positions.
3. Seniority will prevail for final decisions if all other qualifications between candidates are equal.
4. Teachers have the right to turn down such positions if offered.
5. Upon request, teachers not chosen for such positions shall be notified, in writing, of such reasons for non-selection.

6. Teachers who transferred for 2004-2005 under priority or voluntary transfer provisions are eligible to apply for positions at the new middle school.

7. For the year 2006-2007 openings at the new middle school, the regular transfer process (Article 6) will be used. Section 6.4.6.5 shall not apply for transfer to these openings.

**Moving:** Members chosen for such positions shall be provided assistance in making the physical transfer to the new site. (e.g., The District will move the boxes.)

If such packing is done during the school year (spring 2005), the member may elect to receive substitute services to facilitate the move or receive adjunct duty pay for the time spent packing. The teachers will receive adjunct duty pay for the time spent unpacking in the new building when it becomes available in summer 2005. The district will pay for the equivalent of two days for packing (spring) and two days for unpacking (summer).

**Program Planning:** Members chosen for the positions shall have five (5) workdays to plan and facilitate the new programs. These may be a combination of release days, or time outside the regular teaching day, or spring learning days. The new principal will coordinate these days. The actual days will be determined through consultation between the new principal and the teachers.

Cupertino Education Association

Cupertino Union School District

Date

Date

## APPENDIX F

CUPERTINO UNION SCHOOL DISTRICT  
Cupertino, California  
Board Policy

BP 1312.1 (1)

### COMMUNITY RELATIONS

#### Complaints Concerning School Personnel

The Board of Education recognizes the public's right to lodge a complaint against district employees and to expect a thorough and prompt investigation of legitimate complaints. At the same time, the Board wishes to ensure that employees receive due process and are freed from unwarranted criticism and complaints.

Every effort will be made to resolve a complaint at the earliest possible stage. Parents/Guardians are encouraged to attempt to orally resolve concerns with the staff member personally.

The superintendent or designee at his/her discretion may keep a complainant's identity confidential except to the extent necessary to investigate the complaint. The district will not investigate anonymous complaints.

All written complaints shall be referred to the employee's administrative supervisor or principal for investigation and solution. The individual employee involved shall be advised of the nature of the complaint and shall be given every opportunity for explanation, comment, and presentation of facts as the employee sees them. Complaints unresolved at this level shall be referred to the superintendent. The superintendent's decision shall be final, although the Board reserves the right to review all complaints and serve as an appeals body. Complaints related to the Superintendent shall be filed in writing with the Board. The Board may appoint a neutral party to investigate the complaint and report its findings directly to the Board.

Legal Reference: Education Code

33308.	Guidelines and procedure for filing child abuse complaints
35146	Closed Sessions
35160.5	Requirement for school district policies: parental complaints re employees
44031	Personnel file contents and inspection
44811	Disruption of public school activities
44932-44949	Resignation, dismissal and leaves of absence (rights of employee procedures to follow)
48987	Child abuse guidelines

Government Code

54957	Closed session: complaints re employees
54957.6	Closed session: salaries or fringe benefits

Penal Code

273 Cruelty or unjustifiable punishment of child  
11164–11174.3 Child Abuse and Neglect Reporting Act

Welfare and Institutions Code

300 Minors subject to jurisdiction

Policy Adopted by the Board of Education: August 28, 1984

Annual Review: January 8, 1991  
February 11, 1992  
March 23, 1993 (revised)  
February 8, 1994  
January 25, 1995/October 24, 1995 (revised)

Policy Revised by the Board of Education: January 28, 1997 (Education Code 35160.5, annual review rescinded)

## APPENDIX G

### School Calendar Dates for 2004-2005 and 2005-2006

#### District Calendar 2004-2005 (all schools except Murdock-Portal Elementary)

August 23, 24, and 25, 2004 .....	Teacher Work Days
August 26, 2004 .....	Students Return
September 6, 2004 .....	Labor Day
November 11, 2004 .....	Veterans Day
November 12, 2004 .....	Non-duty Day for CEA
November 24, 25, and 26, 2004 .....	Thanksgiving Recess
December 20, 2004 – December 31, 2004 .....	Winter Recess
January 17, 2005 .....	Martin Luther King Day
February 20 – 24, 2005 .....	Presidents Day/Mid-Year Recess
April 18 – 22, 2005 .....	Spring Recess
May 30, 2005 .....	Memorial Day
June 17, 2005 .....	Last Day of School

#### Murdock-Portal School Calendar 2004-2005

August 9, 10, and 11, 2004 .....	Teacher Work Days
August 12, 2004 .....	Students Return
September 6, 2004 .....	Labor Day
October 11 – 22, 2004 .....	School Recess
November 11, 2004 .....	Non-duty Day for CEA
November 12, 2004 .....	Veterans Day
November 24, 25, and 26, 2004 .....	Thanksgiving Recess
December 20, 2004 – December 31, 2004 .....	Winter Recess
January 17, 2005 .....	Martin Luther King Day
February 20 – 24, 2005 .....	Presidents Day/Mid-Year Recess
April 11 – 22, 2005 .....	School Recess
May 30, 2005 .....	Memorial Day
June 24, 2005 .....	Last Day of School

#### District Calendar 2005-2006 (all schools except Murdock-Portal Elementary)

August 22, 23, and 24, 2005 .....	Teacher Work Days
August 25, 2005 .....	Students Return
September 5, 2005 .....	Labor Day
November 11, 2005 .....	Veterans Day
November 23, 24, and 25, 2005 .....	Thanksgiving Recess
December 19, 2005 – December 30, 2005 .....	Winter Recess
January 2, 2006 .....	Martin Luther King Day
February 20 – 24, 2006 .....	Presidents Day/Mid-Year Recess
April 17 – 21, 2006 .....	Spring Recess
May 29, 2006 .....	Memorial Day
June 16, 2006 .....	Last Day of School

#### Murdock-Portal School Calendar 2005-2006

August 8, 9, and 10, 2005 .....	Teacher Work Days
August 11, 2005 .....	Students Return
September 5, 2005 .....	Labor Day
October 10 – 21, 2005 .....	Fall Recess
November 11, 2005 .....	Veterans Day
November 23, 24, and 25, 2005 .....	Thanksgiving Recess
December 19, 2005 – December 30, 2005 .....	Winter Recess
January 2, 2006 .....	New Year's Day
January 16, 2006 .....	Martin Luther King Day
February 20 – 24, 2006 .....	Presidents Day/Mid-Year Recess
April 10 – 21, 2006 .....	Spring Recess
May 29, 2006 .....	Memorial Day
June 23, 2006 .....	Last Day of School

The number of certificated contractual days total 187 and the number of student instructional days total 180.

**APPENDIX H**

**Negotiating Teams**

**Cupertino Union School District**

**Cupertino Education Association**

\_\_\_\_\_  
Andy Mortensen

\_\_\_\_\_  
Jeff Warner

\_\_\_\_\_  
Linda Denman

\_\_\_\_\_  
Grace Hynes-Galvan

\_\_\_\_\_  
Patricia McCreery

\_\_\_\_\_  
Robin Geiman

\_\_\_\_\_  
Russ Ottey

\_\_\_\_\_  
Brenda Rousseau

\_\_\_\_\_  
Gregory J. Dannis, Attorney

\_\_\_\_\_  
Neal Wooley

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date