



Joe Silva
County Superintendent

Preamble

This Agreement is made and entered into this 1st day of July, 2005, by and between the Tuolumne County Superintendent of Schools (hereinafter referred to as “the Superintendent”) and the Tuolumne County Council of Classified Employees, AFT Local 6097, AFL-CIO (hereinafter referred to as “the Council”).

Article 1 Recognition

- 1.1 The Council is hereby recognized by the Superintendent as the exclusive representative and the sole bargaining agent for an appropriate unit of classified employees for the purpose of collective bargaining pursuant to the Certification of Representative in PERB Case Numbers SA-RR-1001 and SA-RR-1007.
- 1.2 The bargaining unit shall include all classified employees of the Tuolumne County Superintendent of Schools who are employed as instructional assistants or in office/technical classifications. New classified positions that share a community of interest with current bargaining unit positions shall also be included. If the parties do not agree as to whether the newly created position is a part of the bargaining unit, the matter shall be submitted to the Public Employment Relations Board for resolution.
- 1.3 The bargaining unit shall exclude all other classified employees, including substitute employees, certificated employees, as well as supervisors, administrative (management) employees, and confidential employees.

Article 2 Management Rights

- 2.1 The exercise of the powers, rights, authority, duties and responsibilities by the Superintendent as set forth below, and the adoption of policies, rules, regulations, and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement, and then only to the extent such specific and express terms are in conformance with law.
- 2.2 It is understood and agreed that the Superintendent retains all of his/her power and authority to direct, manage and control to the full extent of the law in accordance with Section 2.1, including but not limited to those duties and powers which are the exclusive right of the Superintendent: to determine the organization of the programs of his/her office; to direct the work of his/her employees; to determine the times and hours of operation, to determine the kinds and levels of services to be provided, and methods and means of providing them; to establish its educational policies, goals and objectives; to

ensure the rights and educational opportunities of students, to determine staffing patterns; to determine the number and kinds of personnel required to maintain the efficiency of Superintendent operations; to determine the instructional curriculum; to build, move or modify facilities; to establish budget priorities and procedures and to determine budgetary allocation; to determine the methods of raising revenues; to contract out any or all work performed by employees of his/her office, provided such contracting out does not diminish the current number of the bargaining unit members or would result in the subcontracting of currently-performed bargaining unit work for more than sixty (60) calendar days that would have otherwise maintained or increased the number of regular classified employees in a classification; to hire, classify, assign, evaluate, promote, terminate and discipline employees; and to take action on any matter in the event of an emergency. For purposes of this Article, emergency shall be defined as a natural disaster or other similar calamity affecting the operation of the educational program. The determination of whether or not an emergency exists rests solely within the discretion of the Superintendent.

- 2.3 The Superintendent retains its right to amend, modify or rescind policies and practices referred to in this Agreement in cases of emergency as defined in Government Code section 3504.5. If the Superintendent determines that an emergency exists, and it modifies or suspends any portion of this Agreement, the Superintendent shall notify the Council within 24 hours and shall meet with the Council within ten (10) days to discuss the implications of the declared emergency on the Agreement.

Article 3 Employment Categories

- 3.1 Permanent Employees: Classified employees employed to fill bargaining unit positions shall be classified as permanent employees following the completion of the required probationary period. They may be employed on either a full-time or part-time basis as to hours or days. They are entitled to all employee benefits authorized by this Agreement and the Education Code.
- 3.2 Probationary Employees: Classified employees employed to fill bargaining unit positions shall serve a probationary period of nine (9) months of continuous service. In the event a probationary classified employee takes a leave of absence for more than three (3) consecutive weeks, the employee's probationary period shall be extended by the amount of time while on leave. At the sole discretion of the Superintendent, a classified employee's probationary period may be extended an additional ninety (90) calendar days, at which point the employee shall either be granted permanency or shall be dismissed. The Superintendent shall provide written notice to the employee prior to the completion of his/her ninth (9) months of service that his/her probationary period has been extended an additional ninety (90) days. Probationary employees may be terminated for any lawful reason in the exclusive discretion of the Superintendent. Actions concerning the termination of a probationary employee's employment shall not be subject to the grievance procedure. Probationary employees may be employed on either a full-time or part-time basis as to hours or days and are entitled to all employee benefits authorized by

this Agreement, except as may be specifically limited by the terms of the Agreement, and the Education Code.

- 3.3 Substitute Employees: Substitute employees shall not be used to fill a vacant position for longer than sixty (60) calendar days.

Article 4 Council and Unit Member Rights

- 4.1 Authorized representatives of the Council and its members shall be permitted to transact Council business in facilities owned or leased by the County Superintendent at available times other than during regular contracted working hours.
- 4.2 The Council shall have the right to post notices of activities and matters of Council concern on the existing bulletin board in the County Office of Education. The Council may use the County Office delivery service and unit member mailboxes for communication to Unit Members, to the extent permitted by law. Officers of the Council may use the County Office e-mail system for communicating short messages to unit members provided that such use does not interfere with either the sender's or recipient's work time. The foregoing limited authorization to use the County Office e-mail system is made with the specific understanding that nothing in the e-mail messages may be considered private or confidential since the County Office has the right to access any and all e-mail messages to monitor compliance with its policies and this section. The County Office shall have no responsibility to provide e-mail access to any unit member for Council business use if the unit member does not have access to a computer terminal for his or her work assignment.
- 4.3 The Council may use County Office duplicating equipment for Council business provided the Council pays for the cost of all materials and supplies.
- 4.4 The Superintendent will provide the Council Local Presidents with a TCS Board agenda and unadopted minutes of the previous meeting at least forty-eight (48) hours prior to any regularly scheduled meeting and twenty-four (24) hours prior to any special meeting.
- 4.5 In the event the Council desires to appear on the agenda of a regular TCS governing board meeting, the Local Presidents of the Council shall notify in writing the County Superintendent of Schools in sufficient time to be so scheduled.
- 4.6 Reasonable release time shall be granted to a reasonable number of Council representatives for the purpose of collective bargaining and/or grievance processing. Days shall be approved in advance by the Superintendent or designee.
- 4.7 A maximum of twelve (12) days for the unit per year shall be granted for voluntary absences for unit members designated by the Council to conduct Council business. The Council shall notify the Superintendent as soon as possible, but not later than three (3) business days prior to the commencement of the leave. The Council shall pay the County

Office for all costs of a substitute, including statutory benefits, or the amount which would have been paid had a substitute been employed.

- 4.7.1 This leave shall not be used for the purpose of or for conducting any concerted activity or litigation against the County Office.
- 4.8 The Superintendent shall not contract out any work except as provided for under Article 2, Management Rights Clause, and Education Code section 45103.1.
- 4.9 The Superintendent shall furnish unit members with one (1) copy of the Superintendent's Policy Manual containing all policies and procedures currently in force. The Superintendent shall furnish the Council Local Presidents with one (1) copy of each proposed policy change which may affect Unit Members with backup materials.
- 4.10 The Superintendent shall furnish the Council with a complete list of Unit Members in the bargaining unit as of August 31 of each year. The list shall contain the following information: name, address and telephone number (if available). The Superintendent shall supply the Council with a list of the name, address and telephone number (if available) for each newly hired Unit Member within ten (10) working days of being employed.
- 4.11 The Superintendent shall make available to the Council Local Presidents public information concerning the County Superintendent's Office which is relevant and necessary to negotiations and to the Administration of this Agreement.
- 4.12 The Superintendent will deduct and forward from the monthly paycheck of each Unit Member Union dues and other voluntary deductions as authorized in writing by the Unit Member on the mutually accepted form. All Council dues collected by the Superintendent as a result of deductions shall be remitted to Local 6097 together with a printout of each payee's name.
- 4.13 The Council shall indemnify and hold harmless the Superintendent from any claims made of any nature and against any lawsuit instituted against the Superintendent arising from its deductions for the dues, insurance or benefit programs of the Council.
- 4.14 Bargaining unit members who voluntarily decide to join the Council shall maintain their membership in good standing for the duration of this Agreement. However, nothing in this section shall deprive Unit Members of the right to terminate their obligation to the Council within a period of thirty (30) days following the expiration of this Agreement. In the event a unit member revokes his/her dues authorization during the term of this Agreement, the County Office shall continue to withhold from the unit member's pay the amount of union dues (not including any amount for non-chargeable costs) pursuant to Education Code Section 45168(b). Nothing in this section shall be construed as prohibiting a unit member from paying service fees or dues directly to Local 6097 in lieu of having such fees deducted from his/her pay warrant.

- 4.15 Within thirty (30) calendar days of ratification of this Agreement by the Council and the Superintendent, each unit member shall be provided with a copy of this Agreement. The Council shall receive ten (10) additional copies of the Agreement for its use. Each new employee hired into a bargaining unit position shall be given a copy of the Agreement during orientation. The cost for printing of the Agreement shall be shared between the Council and the Superintendent.
- 4.16 The Council Executive Board shall have the right to negotiate with the Superintendent's office concerning proposed changes in job descriptions of bargaining unit classifications that falls within the mandatory scope of bargaining.
- 4.17 Unit members shall be informed by the Superintendent or his/her designee prior to the meeting of the purpose of any meeting called for discipline and/or evaluative purposes.
- 4.18 Unit members shall have the right to request union representation during any meeting with supervisors/administrators from which discipline may result. [See Article 11, Section 11.5]
- 4.19 The County Superintendent or his or her designee shall make every effort not to schedule any on-going business after 5:00 p.m. on the first Wednesday of every month.
- 4.20 The County Superintendent of Schools or his or her designee shall not knowingly permit any unit member to be subject to harassment, intimidation, abusive language, insults or interference by another employee during the course of and in the performance of their job related duties. Council shall utilize the contractual grievance procedure prior to it initiating any other remedies available under law.

Article 5 Grievance Procedure

5.1 Definitions

- 5.1.1 A "grievance" is an allegation by a grievant that she/he has been adversely affected by a violation, misapplication or misinterpretation of a specific provision or provisions of this Agreement.
- 5.1.2 A "grievant" refers to any employee in the bargaining unit covered by the terms of this Agreement or the Council.
- 5.1.3 A "day" for purposes of this Article is any day the Unit Member would be required to work.

5.2 Purpose

- 5.2.1 The purpose of the grievance procedure is to secure, at the lowest possible administrative level, acceptable solutions to problems that may, from time to time, arise affecting the welfare or working conditions of Unit Members. These

proceedings will be kept as informal and confidential as possible at any level of the procedure.

5.2.2 To minimize workplace discord, grievances must be processed as quickly as possible. Therefore, the parties agree that the time limits specified in each of the following levels will be considered to be maximum allowable and every effort shall be made to expedite the process. The parties may agree to extend any time limit set forth in this Article. In the event a grievance is filed near the end of the school year such that the grievance procedure time frame could not be completed by the grievant's last working day of the school year, the parties agree to continue processing the grievance during the summer recess to the extent mutually agreeable or to carry the grievance forward to the next school year.

5.3 Procedure

5.3.1 Level 1 -- Informal Resolution

5.3.1.1 Within ten (10) days after the occurrence of an alleged act or omission giving rise to a grievance, the grievant must schedule a meeting to personally discuss the allegations with the grievant's immediate supervisor with the objective of resolving the matter. No written documentation is required from the grievant at this Level.

5.3.2 Level 2 -- Immediate Supervisor

5.3.2.1 If the grievant is not satisfied with the informal disposition of her/his grievance at Level 1, or if the grievance has not been resolved within five (5) days after discussing the problem with the supervisor in Level 1, the grievant may, within ten (10) days following the date of the Level 1 disposition, file a formal grievance with the immediate supervisor.

5.3.2.2 The grievance shall be in writing and shall include the name of the grievant, the date of the alleged violation, the provision or provisions of the collective bargaining agreement alleged to have been violated, the specific remedy sought by the grievant, and a description of the circumstances giving rise to the grievance.

5.3.2.3 Within ten (10) days after the receipt by the immediate supervisor of the written grievance, the immediate supervisor will meet with the grievant and a representative of the Council in an effort to resolve the grievance. The immediate supervisor will render a written decision concerning the resolution of the grievance within ten (10) days thereafter. The immediate supervisor's written decision shall include the reasons for his or her decisions.

5.3.3 Level 3 -- Grievance Mediation

5.3.3.1 If the grievant is not satisfied with the disposition of her/his grievance at Level 2, or if no decision has been rendered within ten (10) days after the grievant has met with the immediate supervisor, or if the grievance is against the County Superintendent of Schools, the grievant may submit the grievance to mediation.

5.3.3.2 Requests for grievance mediation must be in writing and submitted to the County Superintendent with ten (10) days after the date of the immediate supervisor's decision, within ten (10) days after the occurrence of an alleged act or omission giving rise to a grievance against the County Superintendent, or, in absence of a Level 2 response, within twenty (20) days of the date the Grievant met with his or her immediate supervisor concerning the Level 2 grievance.

5.3.3.3 Upon receipt of the request for mediation, the parties shall request the services of a mediator from the State Mediation/Conciliation Service.

5.3.3.4 The mediation shall be scheduled at a mutually agreeable time and location. The mediator shall attempt to resolve the grievance by exploring settlement options with the parties. Settlement options advanced by the mediator shall not be binding on the parties, unless mutually acceptable. The mediator shall not issue any public statements of fact or opinion concerning the disputed issue. In the event of a mutually acceptable settlement, the terms of such settlement shall be reduced to writing and signed by the parties.

5.3.4 Level 4 -- County Superintendent of Schools

5.3.4.1 In the event the parties are unable to reach an agreement through mediation, the grievant may submit the grievance to Level 4 within ten (10) days of conclusion of the grievance mediation.

5.3.4.2 The Grievant shall, within that ten (10) day period, submit to the County Superintendent, the person alleged to have violated or misapplied the contract, and to the Superintendent's designees a copy of all documentation and correspondence concerning the disposition of the grievance at each of the prior levels. The Superintendent's designee shall, within ten (10) days of receipt of the grievant's documentation, submit any additional documentation he or she deems appropriate to the County Superintendent and to the grievant.

5.3.4.3 Within ten (10) days after the receipt of the written documentation from both parties, County Superintendent shall meet with the parties. The grievant and the Superintendent's designee may present testimony or written statements from identified relevant percipient witnesses. The

County Superintendent of Schools shall render a written decision within ten (10) days after meeting with the grievant and the Superintendent's designee. The County Superintendent's written decision shall include the reasons for his or her decisions.

5.3.5 Level 5 -- Advisory Arbitration Panel

5.3.5.1 If the Council is not satisfied with the disposition of the grievance at Level 4, the Council may submit the grievance to an Advisory Arbitration Panel within fifteen (15) days after receipt of the Superintendent's written decision.

5.3.5.2 Upon receiving the request for advisory arbitration from the Council, the Superintendent shall, within ten (10) days, request a list of five (5) arbitrators from the California Mediation and Conciliation Service. The Superintendent shall immediately provide the list of names to both parties. Within ten (10) days of receipt of the list of potential chairpersons, a representative of the Superintendent and the Council shall meet and alternately strike names until one name remains. The parties shall draw lots to see which party strikes first. The person who remains shall serve as the chairperson.

5.3.5.2.1 The parties agree that the cost of arbitration is a crucial factor. If the arbitrator's total cost for conducting the arbitration (travel, hotel accommodations, preparation, hearing, etc.) exceeds \$1500, the parties agree to meet and confer regarding obtaining the services of an arbitrator. Only by the mutual consent of the parties will the matter be submitted to advisory arbitration if the total cost of arbitration exceeds \$1500 for the chairperson. If the parties are unable to agree upon an alternative method of conducting advisory arbitration, this step shall not be included in the grievance process.

5.3.5.2.2 Unless the parties mutually agree to pay for the cost of a court reporter, the party who requests the presence of a court reporter shall pay for a court reporter. Each party shall be responsible for the costs of any transcripts following the hearing.

5.3.5.3 Within ten (10) days of the appointment of a chairperson, each party shall select a representative for the advisory arbitration panel. If the Council's panel member is an employee of the County Superintendent of Schools' Office, the Council agrees to reimburse the County Superintendent for the cost of the substitute, including any statutory

costs, or the amount which would have been paid had a substitute been employed.

- 5.3.5.4 The arbitration panel shall conduct a hearing at which both parties may present witnesses and evidence.
- 5.3.5.5 The arbitration panel shall have no right to amend, modify, nullify, or ignore the provisions contained in this Agreement.
- 5.3.5.6 Within thirty (30) days of the conclusion of the hearing, the arbitration panel shall render a written decision on the issue(s) submitted. If the decision of the panel is not unanimous, the panel shall issue a majority and minority written opinion.
- 5.3.5.7 Within ten (10) days of receipt of the opinion(s) of the arbitration panel, the County Superintendent shall affirm, modify, or reject the majority or unanimous written decision of the panel.
- 5.3.5.8 Each party shall bear the cost of preparing and presenting its own case to the arbitration panel. All fees and expenses of the chairperson shall be shared equally by the parties unless the Superintendent modifies or rejects the unanimous or majority written decision of the panel. In that event, the Superintendent shall pay for all costs of the chairperson. Regardless of the Superintendent's decision, each side shall be responsible for the fees and costs of their panel member. The grievant, the grievant's representative, the Officer of the Chapter, and any employees of the County Superintendent who are called as witnesses shall be compensated at their regular rate of pay.
- 5.3.5.9 The decision of the Superintendent shall be final and binding on the parties.

5.4 General Provisions

- 5.4.1 The failure of the grievant to meet any of the time limits established by this Article shall invalidate the grievance.
- 5.4.2 A grievant may request the participation of the Council at any level of the grievance process.
- 5.4.3 The Council or the County Superintendent may consolidate grievances for the purpose of arbitration.
- 5.4.4 If a grievance affects a group or class of unit members and the facts with respect to all persons alleged to be aggrieved are substantially the same and the issue(s) raised by the grievance are the same as to all unit members involved, the Council

may initiate and submit such grievances as a class grievance on behalf of all aggrieved unit members.

- 5.4.5 One (1) Council representative, the grievant(s), and County Superintendent of Schools' employee(s) called as witnesses shall be released without loss of pay in order to participate in grievance meetings and proceedings. At the hearing before an arbitration panel, the Council may also include an Officer of the Chapter without loss of compensation.
- 5.4.6 The Council shall notify the Superintendent of the individual(s) authorized to act as the grievant's representative for the purpose of the grievance.
- 5.4.7 The Superintendent shall cooperate with the Council in the investigation of any grievance and shall provide the Council with such available information as is requested.
- 5.4.8 At all stages of the grievance process, except for the Advisory Arbitration Panel, the grievant may proceed without a Council representative provided the County Superintendent does not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and is given the opportunity to file a written response. Any such resolution shall be consistent with the terms of the negotiated agreement.
- 5.4.9 No reprisals of any kind shall be taken against any unit member because of participation in the grievance procedure in accordance with the terms of this Agreement.
- 5.4.10 All records dealing with the processing of grievances shall be filed separately from the personnel file of the unit member.

Article 6 Leaves of Absence

6.1 Sick Leave

6.1.1 Sick Leave Entitlement

6.1.1.1 Each classified Unit Member who is scheduled to work less than one hundred and eighty (180) workdays per year shall receive, for a full school year of service, a proportion of the ten (10) days of leave of absence for illness or injury as the number of days he or she is in paid status bears to one hundred and eighty (180) workdays. Sick leave pay shall be based on the average number of regular hours a unit member is assigned to work on a daily basis.

6.1.1.2 Each classified Unit Member who is scheduled to work between one hundred eighty (180) and one hundred ninety-nine (199) workdays during

a school year shall receive ten (10) days of leave of absence for illness or injury per school year with full pay. Sick leave pay shall be based on the average number of regular hours a unit member is assigned to work on a daily basis.

6.1.1.3 Every classified Unit Member who is scheduled to work between two hundred (200) and two hundred and nineteen (219) workdays during a school year shall receive eleven (11) days of absence for illness or injury per school year with full pay. Sick leave pay shall be based on the average number of regular hours a Unit Member is assigned to work on a daily basis.

6.1.1.4 Every classified Unit Member who is scheduled to work two hundred twenty (220) or more work days during a school year shall receive twelve (12) days leave of absence for illness or injury per school year with full pay. Sick leave pay shall be based on the average number of regular hours a Unit Member is assigned to work on a daily basis.

6.1.1.5 Sick leave hours shall be available to the Unit Member as provided for by Education Code section 45191.

6.1.2 Sick leave shall be credited at the beginning of the school year. Employees who do not complete a full year of service will be charged for any unearned sick leave used as of the date of termination.

6.1.3 Unused Sick Leave

Unused days of sick leave shall be accumulated from year to year without limitation. Upon request, an employee who terminates her/his service to the Superintendent after being employed for one (1) school year may have her/his accumulated sick leave transferred to her/his next public school employer as provided in the Education Code.

6.1.4 Verification

6.1.4.1 After any absence due to illness or injury, the employee shall verify the absence by submitting a completed and signed absence form provided by the Superintendent to her/his immediate supervisor.

6.1.4.2 The Superintendent additionally reserves the right to require written verification by the employee's doctor whenever an employee's absence record shows chronic absenteeism or a pattern of absences or whenever the Superintendent suspects that an absence may not be related to illness or injury.

6.1.4.3 Whenever the Superintendent has reason to believe that an employee does not have a medical reason for continued absence, the Superintendent, at his/her expense, may require an employee to be examined by an appropriate physician selected by the president of the Tuolumne County Medical Society in order to determine whether the employee is medically able to perform the essential functions of his or her position. The Superintendent shall comply with the Confidentiality of Medical Information Act. If the physician's report concludes that the employee's condition does not warrant continued absence because the employee is medically able to perform the essential functions of the position, the Superintendent may deny further paid leave after giving notice to the employee.

6.1.5 Return to Work Authorization

6.1.5.1 Following any absence of one (1) workweek or longer, the Superintendent, in his/her exclusive discretion, may require the employee to submit a statement from the employee's physician indicating that the employee can safely perform the essential functions of his or her position.

6.1.5.2 The employee's physician must also indicate any limitations and/or suggested accommodations that are necessary to allow the returning employee to perform such essential functions and the estimated duration of such limitations or accommodations.

6.1.5.3 The Superintendent reserves the right to have the employee examined by an appropriate physician selected by the president of the Tuolumne County Medical Society to determine whether the employee can safely perform the essential functions of his or her position and whether or not accommodations are necessary to permit such performance. The Superintendent shall comply with the Confidentiality of Medical Information Act. In the event there is a conflict of opinion between the employee's physician and the physician selected by the Medical Society president, the parties agree that the Superintendent may rely on the opinion of the physician selected by the Medical Society president to determine whether the employee may permissibly return to work and under what conditions may the employee do so.

6.1.6 Notifications

Unit members shall notify their immediate supervisor, or designee, of their inability to work due to medical reasons at least one (1) hour before the scheduled start time of the day of absence but in no event later than 7:00 a.m., unless compelling circumstances prevent notification by that time. This notification shall include an estimate of the expected duration of absence, if known. The requirement for daily

notification of absence does not apply to Unit Members who are on a medical leave of absence for a specified period of time.

- 6.1.7 When earned sick leave has been exhausted and a Unit Member is absent because of illness or accident, the Unit Member shall be paid the difference between her/his salary and the salary of a substitute employed to fill her/his position, for a period not to exceed five (5) school months. For purposes of determining differential pay, the five (5) month period shall commence upon the first day of absence as provided in section 6.1.1, or proration thereof, and shall run concurrently with accumulated sick leave. While in paid status, including any residual amount as a result of differential pay, Unit Members shall continue to receive the contribution toward health benefits that would have been paid had they been working as regularly assigned.
- 6.1.8 To the extent permitted by law, the Superintendent agrees to integrate sick leave and State Disability Insurance benefits.
- 6.1.9 There shall be a catastrophic leave program (sick leave bank) consistent with Education Code Section 44043.5 available for unit members. (See AR 4159)

6.2 Industrial Accident and Illness Leave

When a classified employee is absent from her/his duties because of an industrial accident or illness, the following rules shall apply:

- 6.2.1 Allowable leave for any single industrial accident or illness shall be for up to sixty (60) days during which time the educational programs of the Superintendent are being conducted, or when the employee would otherwise have been performing work for the Superintendent in any one fiscal year.
- 6.2.2 Allowable industrial accident and illness leave shall not accumulate from year to year.
- 6.2.3 Industrial accident or illness leave shall start on the first day of absence. Accumulated sick leave will not be used until industrial accident leave is exhausted.
- 6.2.4 An employee on allowable leave for industrial accident or illness shall be paid such portion of the salary due for any month in which the accident occurs as, when added to Workers' Compensation temporary disability indemnity, will result in a payment to the employee of not more than her/his full salary.
- 6.2.5 Industrial accident or illness leave shall be reduced by one (1) day for each day of authorized absence, regardless of a temporary disability indemnity award.
- 6.2.6 When an industrial accident or illness leave overlaps into the next fiscal year, the employee is entitled to only the amount of unused leave due the employee for the same illness or injury. On expiration of allowable leave for an industrial accident

or illness leave, the employee may use any accumulated personal illness and injury leave, if any.

6.2.7 During any paid leave of absence, the employee may endorse to the Superintendent the temporary disability indemnity checks received on account of her/his industrial accident or illness. In those cases, the Superintendent will issue appropriate salary warrants for payment of the employee's salary and will deduct normal retirement, other authorized contributions and the temporary disability indemnity, if any, actually paid to and retained by the employee for periods covered by such salary warrants. While a Unit Member is in paid status, the Superintendent shall continue contributing to the cost of health and welfare benefits.

6.2.8 Any employee receiving benefits under this leave shall, during periods of injury or illness, remain within the State of California unless the Superintendent authorizes travel outside the state.

6.3 Personal Necessity Leave

6.3.1 A classified employee may use up to seven (7) days of her/his accrued sick leave during any school year for reasons of personal necessity. Personal necessity leave will be credited and may be used on an hourly basis.

6.3.2 Acceptable reasons for the use of personal necessity leave include:

6.3.2.1 Death of a member of the immediate family when the number of days of absence exceeds the limits set by bereavement leave provisions in contract Section 6.5 or to attend the funeral of a close personal friend.

6.3.2.2 An accident involving the employee's person or property.

6.3.2.3 Fire, flood or other immediate danger to the home of the employee.

6.3.2.4 Required court appearance other than jury duty and other than that required when the employee is an agent of the Superintendent.

6.3.2.5 Illness of a member of the Unit Member's immediate family which requires the care and attention of the Unit Member.

6.3.2.6 Unit members may use up to two (2) days of Personal Necessity Leave for discretionary purposes without specifying a reason, provided they submit a request for such time off no less than five (5) workdays before the date requested.

6.3.3 For purposes of this section, "immediate family" is defined as the mother, father, step parent, grandmother, grandfather or grandchild of the employee or the employee's spouse, the employee's spouse, son, son-in-law, daughter, daughter-in-

law, brother or sister, step child, foster child, or any relative living in the employee's immediate household.

- 6.3.4 No personal necessity leave shall be granted for purposes of personal convenience, for the extension of a holiday or vacation period, or for matters which can be taken care of outside of working hours. The Superintendent may authorize the use of Personal Necessity Leave for purposes not specifically listed in this subsection.
- 6.3.5 The employee shall request advance permission for personal necessity leave, except in urgent situations such as the death or serious illness of a member of the immediate family or accident involving the employee's person or property.
- 6.3.6 After any absence due to personal necessity, the employee shall verify the absence by submitting a completed and signed absence form provided by the Superintendent to her/his immediate supervisor. The Superintendent reserves the right to request verification that the leave was used for personal necessity.

6.4 Family/Medical Leave of Absence

6.4.1 Eligibility

Unit members who have been employed by the Superintendent for at least twelve (12) continuous months and have worked at least 1250 hours in the 12-month period preceding the date to begin the leave, may be granted an unpaid Family/Medical Leave of Absence for up to twelve (12) weeks within any twelve (12) month period. Unit members who are absent as a result of their own serious health condition as defined by law would be eligible for substitute differential pay and benefits to the extent provided in Section 6.1.7 above.

6.4.1.1 Unit members who have been employed by the Superintendent for at least two (2) years and who because of their assignment are unable to work the required 1250 hours in the 12-month period specified in Section 6.4.1, shall be eligible for a non-FMLA unpaid leave for the reasons stated below and using the application process provided. Notwithstanding Section 6.4.5 below, unit members taking this non-FMLA leave shall be entitled to up to a maximum of eight (8) weeks of benefit contributions at the same rate as if in paid status. Unit members who are absent as a result of their own serious health condition as defined by law would be eligible for substitute differential pay and benefits to the extent provided in Section 6.1.7 above.

6.4.2 Permissible Uses of FMLA

FMLA may be requested for the following reasons:

6.4.2.1 Childbirth;

6.4.2.2 Employee's own serious health condition;

- 6.4.2.3 The serious health condition of the employee's parent (or someone who stood *in loco parentis* when the employee was a child), spouse, or child;
- 6.4.2.4 Care of a newborn;
- 6.4.2.5 Adoption of a child; or
- 6.4.2.6 Placement of a foster child in the employee's home.

For employees taking leave for birth, adoption or foster care placement of a child, the basic minimum duration of the leave is two (2) weeks and must conclude within one (1) year of the birth or placement for adoption or foster care.

6.4.3 Procedure for Requesting FMLA

Employees wishing to request a FMLA must submit a written request thirty (30) days in advance, if the need for the leave is foreseeable. If the need is not foreseeable, the employee must give the Superintendent a written notice as early as possible. Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until the employee complies with this notice policy. When medically necessary, leave may be taken on an intermittent or reduced work schedule.

6.4.4 Health Care Provider's Certification

The Superintendent requires a health care provider's certification of the employee's or the employee's family member's health condition to accompany the request.

- 6.4.4.1 If the leave is for the employee's own serious health condition, the medical certification must contain the following information:
 - 6.4.4.1.1 The date, if known, on which the serious health condition commenced;
 - 6.4.4.1.2 The probable duration of the condition; and
 - 6.4.4.1.3 Statement that due to the serious health condition the employee is unable to work at all or is unable to perform any one or more of the essential job functions of the position.
- 6.4.4.2 If the leave request is to care for a family member (child, parent or spouse) of the employee, the following information is required:
 - 6.4.4.2.1 The date, if known, on which the serious health condition commenced;
 - 6.4.4.2.2 The probable duration of the condition;
 - 6.4.4.2.3 Estimate of the amount of time the health care provider believes the employee needs to care for the individual requiring care; and
 - 6.4.4.2.4 Statement that the condition warrants the employee's participation to provide care during a period of treatment or supervision.

6.4.5 Compensation and Benefits During FMLA

FMLA is an unpaid leave of absence, except to the extent the leave is for the employee's own serious health condition for which the employee may be eligible for sick leave and substitute differential pay. All Superintendent-paid insurance benefits will continue during the FMLA, up to the twelve (12) week maximum.

6.4.6 Return From FMLA

To return to work after a leave for an employee's own serious condition, an employee must provide a written release to duty regarding their health condition from their health care provider to the Personnel Department. Upon return from leave, an employee will be returned to the same position or to a comparable position with the Superintendent. An employee may be denied reinstatement following FMLA if:

6.4.6.1 An employee does not provide a written release to return to duty; or

6.4.6.2 Employment would have ceased anyway for business reasons unrelated to the leave.

6.5 Pregnancy-Related Disability Leave

6.5.1 A Unit Member is entitled to leave without pay if disabled by pregnancy, childbirth or a related medical condition under the same terms and conditions as govern any other unpaid leave of absence. A Unit Member is disabled by pregnancy if, in the opinion of her own doctor or other licensed health care practitioner, she is unable because of pregnancy, childbirth or a related medical condition to perform the essential functions of her job or to perform these duties without undue risk to herself or other persons. The length of such leave, including the date on which such leave shall commence and the date on which duties are to be resumed, shall extend for the duration of the disability not to exceed four (4) months. The Superintendent may require verification of the extent of disability through a physical examination of the employee as provided in Section 6.1.4.

6.5.2 Unit Members are entitled to use accumulated sick leave as set forth in contract Section 6.1 during the pregnancy-related disability leave. Unit members disabled as a result of pregnancy, childbirth, or related medical condition would also be eligible for differential pay and benefits to the extent provided in Section 6.1.7.

6.5.3 After completing the pregnancy-related disability leave, the Unit Member will be returned to her original job or to a substantially similar job with a substantially similar rate of pay and the Superintendent shall provide such guarantee in writing upon request.

6.6 Bereavement Leave

- 6.6.1 An employee is entitled to a leave of up to three (3) days, or five (5) days if out-of-state travel or travel in excess of three hundred (300) miles is required, upon the death of any member of the employee's immediate family. The Superintendent will pay the employee her/his regular salary during this leave.
- 6.6.2 At the employee's request, bereavement leave may be extended under personal necessity leave provisions contained in contract Section 6.3.
- 6.6.3 For purposes of this section, members of the immediate family are: the mother, father, step parent, grandmother, grandfather, or a grandchild of the employee or the employee's spouse; the spouse, son, son-in-law, daughter, daughter-in-law, foster child, step child, brother or sister of the employee; or any relative living in the employee's immediate household.
- 6.6.4 At his/her discretion, the Superintendent or designee may grant additional unpaid bereavement leave.

6.7 Jury Duty Leave

- 6.7.1 The Superintendent will grant an employee leave with pay to appear in court as a juror or as a witness other than a litigant.
- 6.7.2 In order to receive her/his regular pay, the employee shall turn over to the Superintendent any juror or witness fees received, minus the cost of mileage and other expenses necessitated by the court appearance. If the employee fails to turn over to the Superintendent the juror or witness fee, the employee will receive only the difference between the employee's regular earnings and the amount she/he receives for juror or witness fees.
- 6.7.3 The employee shall submit notices, summons, and subpoenas for court appearances to the Superintendent's Office when requesting leave.

6.8 Military Leave

All provisions of the law pertaining to military leave will be complied with.

6.9 Unpaid Leave

The Superintendent may in his exclusive discretion grant an unpaid leave of absence in any duration, not to exceed one (1) school year at a time. The Unit Member shall have the right to return to a similar position to that one held at the time of the leave unless the original position no longer exists due to a legitimate business necessity. If as a result of the unpaid leave of absence the Unit Member does not work for at least 75% of the school year, the Unit Member shall not receive a salary advancement for that year.

Article 7 Vacations and Holidays

7.1 Paid Vacation Leave

- 7.1.1 Full-time unit members shall earn vacation time at the rate of one and one-fourth working days per month or 15 days per year of vacation time, effective with the first day of employment. Earned vacation shall not become a vested right until completion of the probationary period.
- 7.1.2 Part-time unit members, who are paid monthly based on their hourly rate, shall earn vacation time at the ratio that their service bears to full-time service.
- 7.1.3 Vacation schedules submitted in a timely manner by unit members are subject to prior approval by his/her supervisor or department head. Both the needs of the employer and the employee shall be taken into consideration when scheduling vacations.
- 7.1.4 If any employee is terminated and had been granted vacation that was not yet earned at the time of termination of his/her services, the employer shall deduct from the employee's severance check the full amount of salary that was paid for such unearned days of vacation taken.
- 7.1.5 Day-to-day substitutes, short-term employees, and long-term substitute employees do not earn paid vacation.
- 7.1.6 Twelve (12) month employees may carry over not more than five (5) days accumulated vacation time at the end of any fiscal year. Any vacation time accrued in excess of that amount must either be taken during the fiscal year or the employee will be paid for such unused excess time at the end of the fiscal year.

7.2 Paid Holiday Schedule

- 7.2.1 All offices will be closed on the following holidays: July 4th , Labor Day, Veterans Day, Thanksgiving Day, day after Thanksgiving Day, December 25th , January 1st , Martin Luther King Jr. Day, Lincoln's Birthday, Washington's Birthday, Memorial Day.

If any holiday falls on Sunday, the following Monday shall be a holiday. If a holiday falls on a Saturday, the preceding Friday shall be a holiday. All unit members shall be entitled to any holiday provided by the U.S. President or the Governor of this State, subject to provisions of Section 45203 of the California Education Code.

- 7.2.2 Good Friday or other religious observances will be a normal workday. However, unit members who desire to observe those days may elect to use one of their vacation days, a floating holiday (to extent available and not otherwise included

in annual compensation), or a personal necessity leave day (as provided in Section 7.2.5).

- 7.2.3 Unit members who were employed prior to December 1, 2000 shall earn two (2) floating holidays per fiscal year. Unit members in non-clerical positions shall have these two (2) additional days included in annual compensation similar to vacation. Unit members in clerical positions will be permitted to take floating holidays only with the prior approval of their immediate supervisor or department head and provided that the use of the floating holiday will not disrupt the functioning of the operations of the County Office. These floating holidays will not be cumulative and must be taken in the fiscal year in which they are earned. Any unused floating holidays will be reimbursed at the end of the fiscal year.
- 7.2.4 Unit members who are employed after December 1, 2000, shall earn floating holidays only after their third anniversary of employment. After qualifying for floating holidays, these unit members shall accrue them at the same rate and subject to the same conditions as in Section 7.2.3.
- 7.2.5 Unit members may use up to two (2) days of Personal Necessity Leave as provided in Section 6.3 without specifying a reason, provided they submit a request for such time off no less than five (5) workdays before the date requested.

Article 8 Evaluations

- 8.1 Evaluation and assessment of performance shall be made on a continuing basis, at least twice for probationary unit members and at least once each year for permanent unit members.
- 8.2 The formal evaluation shall be in writing. If the employee is not performing satisfactorily according to the standards of the Superintendent, the employee shall be notified in writing of such unsatisfactory performance. In such cases, the Superintendent or his/her designee shall make specific recommendations in writing for improvement of the employee's performance.
- 8.3 A copy of the evaluation form shall be provided to the unit member no later than May 1st. The unit member shall have the right to prepare a written response to the evaluation within ten (10) workdays. The written response shall become a permanent attachment to the evaluation in the unit member's personnel file. The content of an evaluation is exempt from the grievance procedure in Article 5 of this Agreement, however, whether or not the evaluation procedure as defined in this Article was appropriately followed may be the subject of a grievance.
- 8.4 The Superintendent or his/her designee may require that employees who receive unsatisfactory evaluations participate in a program designed to improve areas of performance in order to further student achievement and the Superintendent's objectives.

- 8.5 Either party may reopen this Article as needed to address concerns that fall under the mandatory scope of bargaining which may arise regarding the Elementary and Secondary Education Act and legislation contained in No Child Left Behind.

Article 9 Personnel Files

- 9.1 Materials in personnel files of Unit Members shall be maintained in accordance with the provisions of Education Code Section 44031.
- 9.2 All materials in a Unit Member's personnel file except those exempted by law shall be available for inspection by the Unit Member or by a representative designated in writing, by the Unit Member, and copies shall be given to the Unit Member.
- 9.3 Every Unit Member shall be allowed to inspect, copy and respond to all materials in the Unit Member's personnel file.
- 9.4 Any employer-generated document specifically concerning the Unit Member and placed in the Unit Member's personnel file shall be signed and dated by both an employer representative and the employee.
- 9.5 No derogatory material shall be entered into a Unit Member's file unless and until the Unit Member has been given notice and an opportunity to review said material and has had at least ten (10) work days to prepare a written response which shall be attached to said material. Such review may take place while the Unit Member is in paid status.
- 9.6 There shall be one (1) personnel file for each Unit Member which shall be maintained in the County Superintendent's office.
- 9.7 Public Charges and/or Complaints
- 9.7.1 All charges and/or complaints against a Unit Member shall be made to the Superintendent and/or Director of Special Education in writing and signed by the complainant. Charges and/or complaints against a Unit Member shall be confidential.
- 9.7.2 A copy of any written charges and/or complaint shall be provided to the Unit Member.

Article 10 Assignment Procedures

10.1 Definitions

10.1.1 Seniority

- 10.1.1.1 For the purposes of this Article, "seniority" shall mean hours in paid status within the classification during the unit member's employment with the Superintendent or with the Tri-County Consortium SELPA. (As a

prerequisite to the employer's agreement to this provision, the accuracy of hours information from the SELPA must be uncontested by all affected members of the bargaining unit.)

10.1.2 Vacancy

For the purposes of this Article, a bargaining unit position shall be considered "vacant" whenever a new bargaining unit position is created by the Superintendent or when the incumbent of the position is separated from employment due to resignation, termination, service retirement, or placement on a 39-month reemployment list pursuant to Education Code Section 45192 or 45195.

10.1.2.1 An increase in the number of hours for a particular bargaining unit position shall not be considered to create either a vacancy or a new position unless the increase exceeds one or more hours per day. The Superintendent shall consult with the Council whenever the number of hours for a particular bargaining unit position is proposed to be increased by more than one hour or more per day.

10.2 Employee-Initiated Transfers

Unit members may apply for a transfer from the bargaining unit position they currently occupy to a vacant bargaining unit position consistent with the following process:

10.2.1 Notice of Vacancies

Notices of vacant bargaining unit positions shall be posted at the Superintendent's Office and mailed to the last known home address of all members of the bargaining unit who do not work at the Superintendent's office.

10.2.2 Application Process

Unit members interested in applying for a transfer to a vacant position shall submit an application to the Personnel Office within five (5) business days from the date the notices were distributed to unit members. In the event that no unit member applied for a vacant position or that none of the internal applicants is qualified for the position, the Superintendent's office shall advertise for external candidates by any effective means. Should a vacant position not be filled after two (2) school months, the Superintendent agrees to re-advertise the availability of the vacant position to current members of the bargaining unit and to members of the general public.

10.2.3 Selection Process

- 10.2.3.1 Current unit members who have applied to transfer to a vacant bargaining unit position in the same classification shall be considered for the position in seniority order. (See Section 10.1.1)
- 10.2.3.2 In the event one or more unit members have applied to transfer to a vacant position in the same classification in which they are then employed, then the Superintendent shall offer the vacant position to the most senior unit member applying for the position who is currently employed in that capacity, provided that the most senior unit member is satisfactorily performing the duties of the position based on written evaluations and is not subject to any current disciplinary process.
- 10.2.3.3 In the event one or more unit members have applied to transfer to a vacant position in a different classification including promotional positions, then, except as provided in Section 10.2.3.2, the Superintendent shall offer the vacant position to the best qualified applicant. Should two or more unit members be equally well qualified for the position, then the most senior unit member shall be offered the position.

10.3 Employer-Initiated Transfer

- 10.3.1 Any bargaining unit member who is administratively transferred under this section shall be notified in writing by the Superintendent of the specific reason prior to the transfer and may request a conference with the Superintendent prior to the transfer.
- 10.3.2 Employer initiated transfers may only be made for the following reasons:
 - 10.3.2.1 To meet State Compliance Requirements and/or;
 - 10.3.2.2 Due to changes in enrollment or changes in program
 - 10.3.2.3 Maintenance of constructive working relationships.
- 10.3.3 The Superintendent shall, where feasible, seek volunteers before involuntarily transferring a unit member.
- 10.3.4 The unit member chosen for an employer-initiated transfer shall be the least senior unit member qualified to perform the necessary services. Should the Superintendent determine that the needs and interests of students, parents, co-workers, or teachers associated with the employer-initiated transfer would be adversely affected by involuntarily transferring the least-senior unit member, the Superintendent may involuntarily transfer the next least senior unit member. The Superintendent's determination shall be in writing and shall be based on justifiable reason(s). Prior to the involuntary transfer, the Superintendent shall consult with the Council President.

10.3.5 Any unit member who is administratively transferred (employer initiated) shall not again be administratively transferred for at least two (2) years without the consent of the unit member.

10.3.6 Employer initiated transfers shall not be made for arbitrary or punitive reasons.

Article 11 Discipline

Definitions:

Demotion – assignment to a position with lower pay or status, without the employee’s written voluntary consent.

Disciplinary action – any action whereby an employee is deprived of any classification or any incident of any classification including dismissal, suspension, demotion, or any reassignment without his/her voluntary consent, except a layoff for lack of work or lack of funds.

- 11.1 The County Superintendent of Schools' Office may only impose discipline against a permanent classified unit member for just cause.
- 11.2 The Superintendent shall ordinarily use progressive discipline in response to Unit Member misconduct, to the extent it is warranted and practicable under the circumstances. For the purposes of this Article, progressive discipline shall include an oral warning, a written warning, and a written reprimand prior to the imposition of more significant disciplinary action. Nothing in this Article shall restrict the Superintendent's right and/or obligation to initiate dismissal procedures as provided in the Education Code; nor shall it restrict any rights that the unit member has under law.
- 11.3 “Discipline” may include a suspension without pay for a specific period not to exceed ten (10) workdays, however such suspension shall not reduce or deprive the Unit Member of seniority or any fringe benefits. Should the suspension be overturned or modified through the grievance process, the unit member shall be entitled to back pay.
- 11.4 The inclusion of a list of reasons that are likely to result in discipline or termination is illustrative only, and not exhaustive. The grounds for discipline, or offenses, enumerated in the law or the written rules of a public school employer may include:
- a) Inexcusable neglect of duty
 - b) Insubordination
 - c) Absence without leave for a period of three (3) workdays, including vacating work assignment/site without permission
 - d) Conviction of any criminal act
 - e) Repeated tardiness
 - f) Abuse of sick leave privileges (**Excessive absenteeism**)
 - g) Discourteous treatment of the public or other employees

- h) Misconduct unbecoming of an employee of the County Superintendent of Schools Office
- i) Refusal or repeated failure to comply with rules of the Office or directions given by an employee's supervisor
- j) Advocating overthrow of the United States Government by the use of force or violence
- k) Incompetence or inefficiency in the performance of duty
- l) Moral turpitude
- m) Dishonesty
- n) Falsifying any information supplied to the County Schools' Office, including information supplied on application forms, employment records, or any other office record
- o) Possession of an alcoholic beverage on the job site; Consumption of an alcoholic beverage on the way to work, at work, or on the way to or at any school-related function.
- p) Physical or mental disability which interferes with the efficient performance of employment duties
- q) Addiction to, possession of, or being under the influence of any controlled substance on the way to work, at work, or on any school-related activity
- r) Destructive criticism of superior or co-workers that seriously compromises the maintenance of an effective and harmonious working relationship
- s) For employees who drive a vehicle in the regular course of employment;
 - 1) Failure to maintain a good personal or business driving record;
 - 2) Failure to satisfy the insurance requirements of the County Office's insurance carrier under the regular insurance policies. The County Superintendent of School's ability to obtain insurance for the employee under a high risk or any policy other than the regular insurance policies does not mitigate this failure.
 - 3) Failure to maintain a certificate or license as required in order to perform the essential functions or tasks of one's assignment.

11.5 Written notification to the Unit Member of any disciplinary action, including any suspension without pay, shall be written in ordinary and concise language and include the following information:

11.5.1 The disciplinary action to be taken.

11.5.2 A statement of the misconduct upon which the disciplinary action is based, including the time, dates, and location of such alleged misconduct as determined by an investigation.

11.5.3 Where applicable, a statement of the rules, regulations or statutes which the bargaining unit member is alleged to have violated.

11.6 Unit members shall have the right to request union representation during any meeting with supervisors/administrators from which discipline may result.

- 11.7 The Unit Member shall have the right to respond to the charges either orally or in writing prior to the imposition of discipline. Upon request of a bargaining unit member who has been disciplined, three (3) school months following the incident giving rise to the discipline, the supervisor shall provide a written status report concerning the extent to which the Unit Member has complied with the directions for corrective action. A copy of this status report shall be placed in the Unit Member's personnel file. Information or proceedings regarding actual or proposed disciplinary action shall be kept confidential, unless disclosure is otherwise required by law or court order.
- 11.8 The imposition of discipline under this Article may be appealed through the grievance procedure.

Article 12 Work Days and Hours

- 12.1 Depending on classification, Unit Members shall be regularly assigned to work the number of workdays and work hours specified for their position.
- 12.2 Full-time unit members shall work eight (8) hours per day for 260 days per school year. Part-time unit members shall be assigned the number of hours and days specified by the position.
- 12.2.1 For unit members who regularly work 260 days per year, in school calendar years that exceed 260 work days, days in excess of 260 will be considered "furlough days". In school calendar years that do not exceed 260 work days, unit members shall not receive any "furlough days".
- 12.2.2 One furlough day shall be used on December 24th (Christmas Eve). If December 24th falls on a weekend, the Friday before shall be the furlough day.
- 12.2.3 In those school years that have two furlough days, the second day may be used at the discretion of the unit member. The employee will secure advance approval for a second furlough day from his/her supervisor or designee.
- 12.2.4 A unit member may not 1) convert furlough days to paid sick leave, vacation, or comp time, 2) carryover unused furlough days to the following school year, and 3) are not paid in lieu of time off.
- 12.3 Overtime at the rate of one and one-half times the unit member's straight time hourly rate of pay shall be paid for all time actually worked in excess of eight (8) hours in a day or forty (40) hours in a work week. All overtime must have the prior approval of the unit member's immediate supervisor.
- 12.4 Full inclusion and one-on-one instructional aides shall be assigned substitute instructional aide work in the event the student(s) to whom they are assigned do not show up for school without prior notice. In the event full inclusion and one-on-one instructional aides know in advance the student(s) to whom they are assigned will be absent for the school day, they

shall call into the County Office substitute line to make themselves available for substitute work for such days.

- 12.5 Unit members in clerical classifications may arrange "flex-time" with their immediate supervisor as mutually agreeable.

Article 13 Salary

- 13.1 The salary schedule for bargaining unit members shall be as set forth in Appendix A, which is attached to and incorporated into this Agreement. The classified salary range classification shall be as set forth in Appendix B of this Agreement. The salary schedule in Appendix A shall be increased by 4.25% effective January 1, 2005.
- 13.2 Initial placement of new hires shall be determined by official transcripts and verification of experience from the previous employer(s). When the transcripts have been examined and approved by the Superintendent and verification has been received the Unit Member shall be placed at the appropriate step and range. Newly hired unit members shall be granted up to two (2) years credit on the salary schedule for prior, verifiable experience in a similar position in the public or private sector.
- 13.3 Any Unit Member employed in a regular part-time position shall be classified on the salary schedule in the same manner as full-time Unit Members and shall be paid a percentage of the annual full-time salary equal to the percentage of full-time the part-time Unit Member is regularly assigned.
- 13.4 Unit members who are promoted within the bargaining unit shall be placed on the salary range for the promotional position at the step that would result in an increase in pay over which the unit member was previously paid. In the event a unit member accepts a position in a lower classification, the unit member shall be placed on the same step in the lower salary range.
- 13.5 Unit members shall have the option of being paid in ten (10) or twelve (12) equal payments. The selection of this option must be made prior to September 1 of the year in which it is to be in effect. Unit members hired after the start of the school year may not utilize this option until September 1 of the following year.
- 13.6: Unit members who are required to travel between sites or to attend required meetings shall be reimbursed for mileage at the then current IRS rate. There shall be no reimbursement for mileage for travel to or from a Unit Member's home and her/his designated work site.
- 13.7 The parties agreed to complete a salary comparison study, covering all job classifications, during the 2005-2006 school year.

Article 14 Insurance Benefits

14.1 Eligibility

Regular full-time and part-time employees of the Superintendent who are regularly scheduled to work at least twenty (20) hours per week and who are in paid status prior to the payroll cutoff date (as established by the Business Office) shall begin receiving benefit contributions consistent with this Article on the first day of the next month. Otherwise eligible unit members who are initially employed after the payroll cutoff date shall begin receiving benefit contributions consistent with this Article on the first day of the second month following their date of hire.

14.2 Types of Insurance Coverage

The Superintendent offers the following insurance coverages, options for which may be selected by Unit Members through a cafeteria plan (as allowed by Internal Revenue Code Section 125), provided, however, that Unit Members hired before July 1, 1999 must at a minimum select employee medical, dental, and vision coverage from among the offered plans. Other insurance options or plans that may be purchased with the monthly allowance are

- 14.2.1 Coverage for employee dependents for medical, vision, and dental;
- 14.2.2 Life insurance;
- 14.2.3 Income protection insurance;
- 14.2.4 Blanket accident insurance;
- 14.2.5 Annuity plan;
- 14.2.6 Deferred compensation plan;
- 14.2.7 Other programs approved by the Superintendent

Part-time unit members hired after June 30, 1999 who are eligible to receive a prorated CAP and who chose to participate in the insurance benefits program have the choice of taking all three health insurance options (medical, dental, vision) or any combination of the three, as long as one of the health insurance options is selected.

14.3 Premium Contribution

14.3.1 Bargaining unit members employed prior to July 1, 1999, shall continue to receive prorated benefit contributions based on the proration schedule then in effect. Unit members hired after July 1, 1999, shall receive prorated benefit contributions based on Section 14.3.2 and 14.3.3 below.

14.3.2 For full-time employees who work 2080 hours during the fiscal year, the Superintendent shall contribute toward insurance premiums \$650.00 per month, effective July 1, 2005. The employee shall contribute the remainder of the insurance premiums, if any, through payroll deduction.

14.3.3 For part-time employees, the Superintendent shall contribute a prorated amount toward insurance premiums. The employee shall contribute the remainder of the

insurance premiums for selected insurance options through payroll deduction. The amount of the Superintendent's contribution shall be based on:

14.3.3.1 The proration shall be based on the percentage of full time (2080 hours) that the employee is regularly scheduled to work.

14.3.3.2 The premium amount shall be based on the amount paid by the Superintendent for full time employees in Section 14:3.2.

14.4 Retiree Benefits

Unit members who are eligible to retire according to the rules of the Public Employment Retirement System (PERS), who while employed were eligible for employer-paid contributions to insurance benefits, and who in fact do so retire, are entitled to employer-paid medical insurance (the same coverage plans as available to then active employees) at the single subscriber rate until the retiree reaches age 65, provided that the retiree is at least 55 years of age or older at the time of retirement and has earned twelve (12) years of PERS service credit with the Tuolumne County Superintendent of Schools. For the purpose of this section, unit members who had been employed by the Calaveras County Office of Education and who were employed by the Tuolumne County Superintendent of Schools as a result of the change in responsible local agencies on July 1, 1997, shall receive service credit for years of service with the Calaveras County Office of Education. To the extent permitted by the Tuolumne JPA or its successor, retirees may purchase spouse and/or dependent coverage.

Article 15 Safety

- 15.1 The Superintendent and Unit Members shall conform to and comply with all health, safety, and sanitation requirements imposed by State and/or Federal law or regulations adopted under the State and/or Federal law including those prescribed by Cal-OSHA.
- 15.2 Any Unit Member who observes a working condition which she/he believes to be unsafe or unhealthy shall report such conditions in writing including the reasons for believing it to be unsafe or unhealthy to the site administrator and to the Superintendent or designee. The Superintendent or designee will respond in writing within forty-eight (48) hours and explain how the unsafe or unhealthy condition has been or shall be remediated, if such remediation is possible or practical. Remediation timelines shall be stated.
- 15.3 A Unit Member may use such reasonable force as is necessary and legally appropriate to protect herself/himself from attack, to protect another person, and to prevent damage to property:
- 15.3.1 Unit members who are assigned to work with students who have potential assault/destructive behaviors as identified in an IEP (Individualized Education Plan) shall receive training on management of assault/destructive behavior. Such training shall be provided within thirty (30) workdays following the first day in

paid status in such assignment. Appropriate updates shall be provided annually or as determined necessary by the Director of Special Education.

15.3.2 Vehicles owned by the Superintendent's Office in which students are transported shall be equipped with a means of communication to be used to conduct official work-related business and in the event of an emergency. The parties agree to monitor the effectiveness of the means of communication for use in emergency situations.

15.4 Unit members shall immediately report and notify in writing cases of assault or threatened assault suffered by them in connection with their employment to their immediate supervisor. When appropriate, law enforcement authorities shall be notified. The immediate supervisor shall promptly report the incident to the Director of Personnel. If a Unit Member is assaulted while fulfilling assigned duties, the supervisor shall, pursuant to Education Code Section 44014, provide full cooperation with the filing of a report of the assault.

15.5. Occupational Exposure to Bloodborne Pathogens

15.5.1 The Superintendent agrees to establish standards of protection from bloodborne pathogens for Unit Members who may reasonably anticipate coming into contact with human blood and other potentially infectious materials in the course of performing their assigned duties.

15.5.2 The Superintendent agrees to establish a written exposure control plan for Unit Members regarding occupational exposure to blood and other potentially infectious materials. The control plan shall include the followings, provisions:

15.5.2.1 The Superintendent shall distribute health and safety rules to all Unit Members.

15.5.2.2 The Superintendent will establish a method for keeping records of exposure incidents, post-exposure follow up, hepatitis B vaccinations, and Unit Member training.

15.5.3 The Superintendent will inform Unit Members how to obtain Hepatitis B vaccinations. Unit Members with occupational exposure to bloodborne pathogens will be provided on a voluntary basis Hepatitis B vaccinations at the Superintendent's expense: employees who choose not to accept the vaccine must sign a declination form; employees who decline the vaccine may elect to be vaccinated at a later date.

15.5.4 Medical follow up and appropriate counseling as may be required by law shall be provided by the Superintendent if an exposure incident occurs.

15.5.5 The Superintendent agrees to provide inservice training on human immunodeficiency virus infection (HIV infection), acquired immune deficiency syndrome (AIDS), and Hepatitis B to all Unit Members regarding occupational exposure to blood and other potentially infectious material. Training shall be provided as follows:

15.5.5.1 At the time of initial assignment to tasks where exposure may

15.5.5.2 At least annually thereafter.

15.5.6 The Superintendent agrees to provide warning labels and containers for regulated waste as required by law.

15.5.7 The Superintendent agrees to provide all tools, equipment, and supplies necessary in accordance with health and safety regulations.

15.6 Unit members required to perform any specialized physical healthcare service or procedure (such as clean intermittent catheterization, injections, suction and tube feeding) shall receive training.

Article 16 Effects of Layoffs

16.1 The Superintendent may lay off classified staff, upon forty-five (45) days' written notice, for lack of work or lack of funds.

16.2 At least fifteen (15) calendar days prior to the issuance of layoff notices, the Superintendent shall notify and consult with the Council of the need for the impending layoff, including alternatives to layoff and measures to mitigate the impact of layoffs on remaining bargaining unit members. Nothing in this section shall be construed to mean that the Superintendent has in any way limited his management prerogative to determine when and how to effect layoffs.

16.3 In the event of layoff, bargaining unit members with the lowest seniority within a classification shall be laid off first.

16.4 Seniority for layoff shall be within classification. Time spent in higher classifications counts as seniority in lower classifications. All seniority shall be based on hours in paid status.

16.5 Unit members who have been laid off are eligible for reemployment in a vacant position in the classification from which the layoff occurred for a period of 39 months and shall be reemployed in preference to new applicants. Such unit members may apply for promotional opportunities with the Superintendent during the 39 months. Unit members who voluntarily take a demotion in lieu of layoff will remain on the reemployment list for an additional 24 months.

- 16.5.1 A unit member to be laid off may bump the least senior unit member with the same number of hours and days in a lower classification previously held by the unit member.
- 16.5.2 Notification of possible recall shall be made by both certified and first class mail to the last known address of all laid-off unit members from the classification in which the vacancy exists requesting confirmation of availability for the position. The most senior laid-off unit member confirming her or his availability to accept the position shall be offered the position.
- 16.5.3 If unit member fails to respond to the mailings within five (5) business days of date they were deposited with the U.S. Postal Service, the Personnel Director shall place a telephone call to the unit member at the unit member's last known telephone number. If there is no response to either the mailings or to the telephone call within seven (7) business days of the initial mailed notices, the Superintendent may remove the unit member's name from the recall list. It shall be the responsibility of the laid-off unit member to keep contact information current with the Personnel Director's office.
- 16.5.4 Vacant positions from which a layoff has occurred within the previous 39 months shall be posted or advertised to current bargaining unit members within the same classification. Vacant positions shall not be advertised to members of the general public until laid off unit members from the affected classification have been given an opportunity to confirm their availability for the position. (See Section 10.2.1.)
- 16.5.5 The Superintendent may also notify laid-off unit members of available positions in classifications other than that from which they were laid off. In the event none of the laid-off members from the classification for which there is a vacant position is available to accept the position, the Superintendent may offer the position to a qualified unit member who was laid off from a different classification. Laid-off unit members offered a position in a classification different than that from which she or he was laid off may refuse the offer of employment without affecting their placement on the recall list. Acceptance of a position in a different classification than that from which the unit member was laid off shall not forfeit the unit member's recall rights to vacant positions in the classification from which she or he was laid off for the remainder of the reemployment preference period specified in Section 16.5 above.
- 16.6 In the event of a reduction in force, the Superintendent agrees that he will not unilaterally increase workload, nor will it unlawfully transfer or contract out bargaining unit work, or use volunteers to replace the work of eliminated/reduced positions.
- 16.7 The Public Employment Relations Board has decided that parties to a collective bargaining agreement can agree to a negotiated resolution of all potential effects in the event of some future layoff. The parties can then agree that at the time a future layoff actually occurs there would be no legal obligation for either party to further negotiate

about the effects of the layoff. The purpose of agreeing ahead of time on the effects of such layoffs, and waiving the right to bargain at the time the layoffs occur, is to consider such issues in a non-crisis setting and to allow the employer to efficiently implement the layoff, knowing in advance the procedure to be followed and the rights of unit members. The parties to this collective bargaining agreement agree that they have had an unrestricted opportunity to negotiate the effects of classified employee layoffs, and that the language in this article shall constitute the complete understanding and agreement of the parties regarding the effects of all future classified employee layoffs, including displacement and re-employment rights, and shall relieve the Superintendent and Council of any further obligation to negotiate the effects of any classified employee layoff occurring during the term of this collective bargaining agreement.

Article 17 Non-Discrimination

Neither the Superintendent nor the Council shall unlawfully discriminate against any unit member on the basis of, but not limited to, the following: race, color, religion, age, sex, sexual orientation, national origin, political affiliation, marital status, physical or mental disability, or membership status or participation in the activities of a labor organization.

Article 18 Concerted Activities Prohibited

- 18.1 It is agreed and understood that there will be no strike, work stoppage, willful absence from assigned work station, refusal to fully and faithfully perform job functions and responsibilities or other interference with the operations of the Superintendent by the Council or its officers, agents or members during the term of this Agreement, including compliance with the request of other labor organizations to engage in such activity.
- 18.2 The Council recognizes the duty and obligation of its representatives to comply with the provisions of this Agreement and to make every effort toward inducing all Unit Members to do so. In the event of a strike, work stoppage, slowdown or other interference with the operations of the Superintendent by Unit Members who are represented by the Council, the Council agrees in good faith to take all reasonable steps to cause those Unit Members to cease such action, such as personally informing bargaining unit members that the job action violates this Agreement and notifying them of their responsibility to return to work.
- 18.3 The Superintendent agrees that during the term of this Agreement there shall be no lockout.

Article 19 Effect of Agreement

19.1 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. 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 counterproposals with respect to any matter not reserved by policy or from compromise through negotiations and that the understandings and agreements arrived at after the exercise of that right and opportunity are set forth herein. No further negotiations shall take place on any item within the scope of bargaining during the term of this Agreement except as specifically authorized herein.

19.2 Savings Clause

Should any Section, Paragraph or Provision of this Agreement be declared or adjudicated unlawful, void, inoperative or unenforceable by a court of competent jurisdiction, all remaining Sections, Paragraphs and Provisions of this Agreement shall remain in full force and effect to the extent permitted by law. As soon as both parties become aware of the decision, they shall meet to discuss the impact of the decision on the contract.

If both parties mutually agree, the parties shall meet not later than ten (10) days after such discussion to renegotiate the Section, Paragraph or Provision affected.

Article 20 Term

This Agreement shall be effective as of July 1, 2005 and shall continue in full force and effect through June 30, 2008, and thereafter until a successor agreement is negotiated. Changes in salary and benefits negotiated during the 2004-2005 school year shall be effective on the date agreed upon in this Agreement, subject to unit ratification. Changes in contract language other than salary and benefits negotiated during the 2004-2005 school year shall be effective July 1, 2005. For the 2005-2006 fiscal year, re-openers shall be limited to salary and benefits only. For the 2006-2007 and 2007-2008 fiscal years, re-openers shall be salary and benefits plus any two articles chosen by each party. In each fiscal year, the parties may mutually agree to reopen negotiations on any article.

SIGNATURE PAGE

For Tuolumne County
Superintendent of Schools

Dated: _____

For Tuolumne County Council of
Classified Employees,
AFT Local 6097, AFL-CIO

Dated: _____