

# Berkeley PUBLIC SCHOOLS

Berkeley Unified School District

## ***COLLECTIVE BARGAINING AGREEMENT***

*By and Between*

*Berkeley Unified School District  
Board of Education*

*and*

*International Federation of Professional & Technical Engineers,  
Local 21, AFL-CIO*

*July 1, 2016 – June 30, 2018*





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## **Article I. TERM**

This Agreement, made and entered into between the Board of Education of the Berkeley Unified School District (hereinafter referred to as the “District”) and the Professional and Technical Engineers, Local 21 (hereinafter referred to as the Union) shall become effective upon ratification of the Agreement by both parties and shall continue from July 1, 2016 until June 30, 2018.

## **Article II. RECOGNITION**

- 1) **Exclusive Representation:** The District recognizes Professional & Technical Engineers, Local 21 as the exclusive representative for all permanent and probationary employees in the classifications set forth in Appendix A of this Agreement.
- 2) **Positions Included:** The unit shall include, but not be limited to, all positions within the classifications as listed in Appendix A.
- 3) **New Positions:** Any position created during the life of the Agreement that is generally consistent with the unit as described herein, or that shares a sufficient community of interest with employees and positions contained in the unit, shall be included in the unit. Disputes arising under this section shall be referred to the Public Employment Relations Board for final determination.

## **Article III. RIGHTS AND RESPONSIBILITIES**

- 4) **Professional Obligations:** The District and the Union agree that each employee has a professional right and obligation to:
  - a) Discharge administrative and professional responsibilities of his/her respective position.
  - b) Provide services in accordance with District policies and regulations, state and/or federal laws and regulations and directives of the Board of Education and Superintendent.

- c) Provide effective professional and supervisory leadership to subordinate staff.
- 5) **Indemnification:** Employees shall be indemnified by the District against fines and/or prosecution for any act or omission resulting from activities within the course and scope of employment except in cases of fraud, criminal conduct, recklessness and other enumerated exceptions under the Government Code.

#### **Article IV. NO DISCRIMINATION**

The District shall not discriminate against any employee with respect to the employee's compensation, terms, conditions or privileges of employment because of race, ethnicity, national origin, religion, gender, sexual orientation, physical disability, or Union membership or activity.

#### **Article V. UNION SECURITY**

- 6) **Union Dues:** The Union shall have the exclusive right to payroll deduction of dues. The District shall deduct Union dues, fees, premiums, assessments and political action fund contributions. Membership cards authorizing the above deductions shall constitute proper authorization under this section. The Union agrees to notify the District of other properly authorized deductions such as membership assessments. The Union agrees to indemnify and hold the District harmless from any and all claims, demands or suits, or any other actions arising from any provisions of this Article.
- 7) **Fair Share Fee:** In accordance with California Government Code Section 3546, employees shall be required to pay a fair share service fee in lieu of membership dues as a condition of continued employment. The Union shall have the exclusive right to payroll deduction of fair share fees.

**Service Fee:** All current and future employees of the District, except as set forth below, shall, as a condition of continued employment, become and remain a member of the Union or, in lieu thereof, shall execute a payroll deduction authorization form and thereby pay a monthly service

fee to the Union. Such service fee payment shall not exceed the Union's standard membership dues and special assessments adopted by the Union's membership for the costs of negotiations, contract administration, and grievance handling.

As an exception to the foregoing, an employee who certifies he or she is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting public employees' organizations, shall execute a payroll deduction authorization form and thereby pay sums equal to the standard monthly service fee and special assessments provided above to one of the following three charitable agencies: Breast Cancer Research, American AIDS Foundation San Francisco, or Berkeley Food and Housing Project.

- 8) **Information:** The District shall provide the Union with a monthly report accompanying the dues disbursement check that includes all employees by name and the amount of dues deduction or service fee per employee.

## **Article VI. UNION RIGHTS**

- 9) **Information:** The Union shall have the right to information necessary to discharge its duties as exclusive bargaining representative, including but not limited to information concerning negotiations, contract administration and enforcement.
- 10) **Board Packet:** The District shall transmit a copy of the Board agenda and packet to the Union at substantially the same time that said material is sent to Board members. The Board packets shall include personnel recommendations, which are not to be considered in closed session and are submitted for final action. Personnel recommendations to be considered in closed session may be included at the Superintendent's discretion.
- 11) **Miscellaneous Reports:** The Union shall receive copies of all audit reports, budget reports and classification reports, which are submitted to the Board of Education or the Personnel Commission. In addition, the District recognizes the Union's statutory right to any material related to representation and bargaining issues and agrees to provide such material within a reasonable period of time upon request by the Union.

- 12) **Access:** Union representatives shall be entitled to reasonable access to District facilities during working hours to conduct Union business. Union business on District property shall not interfere with or disrupt normal school or work functions.
- 13) **Use of District Facilities:** The Union shall have the right to reasonable use of District facilities upon prior notification to the District of the requested dates, times and locations of the usage of said facilities in accordance with District permit procedures for building use. The Union shall have the right to reasonable use of bulletin board space and District mail for the purpose of conducting Union business, including communication with members.
- 14) **New Hires:** The Human Resources Office shall distribute to all new employees a packet of informational materials, which shall be supplied by the Union. The District and the Union may establish a committee to develop an orientation program for new employees. In addition, the Union will be allowed time at any orientation meetings to address new employees.

Each newly assigned employee shall be given a copy of the written classification specification for his/her position, which his/her supervisor shall review with the employee within the first month of employment in that position. In addition, at that time the Supervisor shall review the assigned tasks for that position, which must fall within the classification specification.

- 15) The District shall meet and consult with the Union prior to changing existing job descriptions or creating new classifications.

## **Article VII. PROFESSIONAL DEVELOPMENT**

- 16) **Professional Leave and Travel Expenses:** Leave may be granted by the Superintendent or designee for the purpose of attending conferences, workshops, professional association meetings and other events relevant to the conduct of District business or professional growth. Requests under this section shall be responded to in a timely manner. Employees shall be reimbursed for at least one meeting per year for expenses

incurred, i.e. transportation, lodging, meals, registration and materials. Additional reimbursement shall be at the option of the Superintendent.

- 17) Reimbursement for Expenses:** On an out-of-town trip requiring the employee to be away from his/her work site during times when meals would normally be consumed, the employee is entitled to a meal allowance as follows:

Breakfast.....	\$ 8.00
Lunch.....	\$ 12.00
Dinner .....	\$ 25.00

When eligible for full reimbursement, the employee may submit receipts not to exceed \$45.00 per day, or current District allowance.

Out of town trips do not include: Alameda, Albany, El Cerrito, Emeryville, Kensington, Oakland, Piedmont, Richmond and San Pablo.

- 18) Lodging:** The District will provide separate lodging whenever possible for out-of-town trips.
- 19) Mileage:** Any employee authorized to use his/her vehicle on employer business shall be reimbursed at the highest rate per mile allowed by the IRS for all miles driven on behalf of the employer.

## **Article VIII. COMPENSATION**

- 20) Salary:** Unit members shall be compensated on a monthly and annual basis as provided for in Appendix A and which apply to 2016-2018 only.
- a) Total compensation is defined as the cost of all salaries, wages, longevity, step movement, active and retiree health and welfare benefits and statutory benefits.
  - b) Wages for 2016-2017 and 2017-2018:  
  
For 2016-2017 and 2017-2018:

If the District agrees to a higher total compensation increase for the Berkeley Federation of Teachers (BFT), the District shall increase the total compensation of Local 21 unit members by the same percentage.

**21) Steps:**

- a) The District may place new hires with three (3) or more years of experience on the salary schedule at the step that will ensure that the new hire receives no less than a five per cent (5%) increase from his/her current rate of pay, inasmuch as that step is within the current salary schedule for the classification. The District shall have sole discretion to determine whether a new hire has the necessary experience under this Article.
  
- b) “Employees shall be granted one (1) step increase as follows: For employees hired on or after July1, 2009, following successful completion of the employee’s one-year probationary period, the employee shall advance to the next step on either January 1 or July 1, following successful completion of the probationary period, whichever occurs first. Thereafter, the first date of step advancement following successful completion of the probationary period shall become the employee’s anniversary for the purposes of future step increases only.

**22) Stipends**

**A. Longevity Pay:** Effective July 1, 2016, longevity pay shall be granted to employees when they have completed the following years of service:

- 5 – 7 years: \$ 836 per year;
- 8 – 10 years: \$ 1,332 per year;
- 11 – 13 years: \$ 1,859 per year;
- 14 + years: \$ 2,958 per year

These amounts shall be prorated into monthly amounts and included in monthly pay warrants and are earned while an employee is in a paid status working his/her regularly established FTE.

**B. Professional Growth:** Effective July 1, 2016, unit members shall be eligible to apply for Professional Growth salary awards as follows: \$538 per year for each 9-semester units up to a maximum of seven awards, with a maximum total award of \$3,766. Professional Growth awards provided herein shall be payable in monthly installments based upon the number of months the employee is in a paid status working his or her regularly established FTE. The award is included as a bonus item in the employee's monthly pay warrant.

- 23) Working out of Classification:** When a supervisor submits a written request to the Director of Classified Personnel for a unit member to perform duties of a higher classification, and the Director of Classified Personnel approves such request, the unit member shall be compensated at the step and range of the higher classification that affords the unit member at least five percent (5%), provided that the higher salary range allows it. If the new range affords the unit member less than five percent (5%), the unit member shall be paid at the highest step of that range.

#### **Article IX. TIMELY PAYMENT OF WAGES AND PAYROLL ERRORS**

- 24) Timely Payment of Wages:** The District shall provide all active employees timely payment of regular wages due on payday. The District shall provide all employees with a schedule of regular paydays on September 1 of each year.
- 25) Underpayments:** Any paycheck for an employee that is in error or misplaced by the District shall be replaced not later than three (3) working days following the employee's request of the payroll department for replacement of the check.

This provision does not apply to those employees who are on State Disability Leave or who are receiving Workers' Compensation payments.

- 26) Overpayments:** A payroll overpayment shall be repaid to the District over the same period of time the error occurred unless other arrangements are made with the Director of Classified Personnel or designee. No withholding of the overpayment or garnished wages shall be made without prior written notice to the affected employee. The amount

withheld by the District for a pay period shall not exceed fifty per cent (50%) of the gross pay of the employee during that pay period.

Such notification of an overpayment shall include the following information: the amount of the overpayment, and date(s) or pay period(s) over which the overpayment occurred.

An employee whose employment will terminate prior to the full reimbursement of an overpayment to the District shall have withheld from any salary owing the employee upon termination of an amount sufficient to provide full reimbursement to the District, but not to exceed fifty per cent (50%) of the gross pay of the employee during the pay period in question.

- 27) Notification of PERS Contributions:** The District shall provide timely notice to all bargaining unit personnel of employee contributions made to the California Public Employees Retirement System (“PERS”) on their behalf, which will appear on their pay remittance.

## **Article X. BENEFITS**

### **28) Maintenance of Benefits:**

- a) The District contribution to the cost of the health plan selected by the employee shall cover the cost of the premiums up to a maximum of the cost of Kaiser coverage for Fiscal Year 2003-2004 for a subscriber and two or more dependents, including domestic partners. Effective January 1, 2016, the District shall increase its contribution to health benefits by the equivalent of one percent (1%) in compensation, divided by the total number of bargaining unit members enrolled in District health benefits for Employee Plus One and Employee Plus Two or More. The parties agree that one percent (1%) equates to ninety-five dollars (\$95) per month increase (\$1,140/annually) to the District’s contribution for Employee Plus One and Employee Plus Two or More. The District shall not automatically assume responsibility for the increase in employee health and welfare premiums after expiration of Fiscal Year 2015-2016.

- b) The District shall notify each employee in writing on or before June 30 of each year of any increase in employee benefit costs and of the deduction schedule that will be in effect for the following fiscal year. The schedule will provide for deductions of such increase in benefit costs over a ten (10) or twelve (12) month period in the following school year depending on the employee's work calendar. All employees will be given the opportunity to change carriers during the open enrollment period.
- 29) Domestic Partners:** The District shall extend benefits to same and opposite gender domestic partners of employees covered by this Agreement equal to benefits extended to spouses of District employees. To qualify, the employee must provide to the District a completed Affidavit of Domestic Partnership and proof of registration with the State of California. See Domestic Partner Board Policy attached as Appendix C.
- 30) Cash In Lieu of Benefits:** Employees who demonstrate alternate medical plan coverage may elect cash equal to eighty per cent (80%) of the premium established each July 1<sup>st</sup> for Kaiser employees only. Employees who wish to exercise this option must notify the benefits office thirty (30) days prior to discontinuance of coverage. Employees who wish to reactivate health coverage may do so during open enrollment only. Upon death or disability of a spouse or domestic partner, an employee receiving in lieu benefits may re-enroll in the District's health plan.
- 31) Dental Insurance:** The District agrees to provide a maximum dental benefit of fifteen hundred dollars (\$1,500) per calendar year.
- 32) Continuation of Benefits:** The District shall continue to pay each employee's and the District's share of the monthly premiums for health and dental coverage or Cash in Lieu as provided for in Articles 29 and 31 above as long as the employee is in a paid status in his/her regular FTE assignment. Less than twelve (12) month employees will have the cost of the total premium of their health and dental benefits for the month of July pro-rated over the course of a ten (10) month period (September to June) in the subsequent fiscal year.

- 33) **Life Insurance:** The District shall provide each employee with District-paid life insurance of \$15,000. The District will request the carrier to offer increased insurance to the employee at the employee's request for such option and at the employee's expense up to \$50,000 or more.
- 34) **Pre-Tax Contributions:** All employee premium contributions for health and welfare benefits will be paid on a pre-tax basis effective at the close of the re-enrollment period upon completion of the appropriate forms at enrollment.
- 35) **Employee Assistance Program:** The District will maintain coverage for each employee.

## **Article XI. RETIREMENT**

- 36) **Pension:** The District shall provide pension benefits through the California Public Employment Retirement System.
- 37) **Contributions:** The District shall continue to pay its contribution and the employee will continue to pay his/her contribution in accordance with PERS' contribution requirements.
- 38) **Consultancies:** Bargaining unit work may be performed by retired unit employees via consultant contract by mutual agreement between the District and the Union.
- 39) **Retiree Medical and Dental Benefits:** Until age sixty-five (65), a unit employee who has retired shall receive the same health and dental benefit coverage provided for other employees covered by this Agreement, provided, however, that the carrier or carriers of such health and dental coverage for the other employees covered by this Agreement shall provide such coverage for retirees. A unit member who has retired is defined as a person who is retiring under PERS and has been employed by the District for at least ten (10) years and is at least fifty-five (55) years of age, the last five (5) years of which were consecutive and immediate prior to retirement. In the event that the present carrier or carriers of such health and dental coverage cancel said coverage for employees that have retired, the District will provide, if available, such

health and dental coverage for those retirees under a different carrier or carriers.

All retirees and their dependents eligible for Medicare Part A must be registered in the Medicare system in order to qualify for the District-paid benefits. All retirees and their dependents must enroll in Medicare Part B in order to qualify for District-paid benefits. All retirees and their dependents must assign those Medicare Part A (if eligible) and Medicare Part B benefits to the District medical plan carrier they are using in order to qualify for District-paid benefits.

In the event of any changes to the Medicare law that impact the applicability of this Article; the parties shall have the right to reopen this Article for a period of sixty (60) days following the date that those changes go into effect.

- 40) After age sixty five (65), a retired employee may enroll in a District medical plan, with the premium paid in advance by the retiree, provided the carrier provides such coverage. This provision applies to the employee only.
- 41) Retirees who have served in the Berkeley Unified School District for twenty (20) or more years shall receive medical coverage for themselves only, until age sixty-seven (67). Retirees covered under this section may, at their own expense, pay for the group medical coverage for their spouse.
- 42) **Partial Retirement: Reduced Work Time:** Subject to approval by the District, classified employees may reduce their work assignment from full-time to part-time. If classified employees wish to reduce their work assignment and maintain retirement benefits pursuant to Government Code Sections 20900 and 20905 and Education Code Sections 45139 and 44922, the following regulations shall apply:
  - a) The employee shall have reached the age of fifty-five (55) prior to reduction in work assignment.
  - b) The employee shall have been employed in a classified position for at least ten (10) years of which the immediately preceding five (5) years were full-time employment as defined by PERS.

- c) During the period immediately preceding a request for a reduction in work assignment, the classified employee shall have been employed full-time in a classified position for a total of at least five (5) years without a break in service. Break shall be defined for purposes of this section as an actual termination of employment.
- d) The option of part-time employment shall be exercised at the request of the classified employee and can be revoked only with the mutual consent of the employer and the classified employee. Should the employee elect to return to full-time status, with the District's consent, during the term of the five (5)-year program or at the end of the fifth year at the employee's choice, the employee shall have bumping rights to ensure his/her return to the same FTE in the classification held by the employee prior to taking a reduced work assignment.
- e) Employees shall be paid a salary, which is a pro-rated share of the salary he or she would have been earning had he or she not elected to exercise the option of part-time employment. The employee shall retain all other rights and benefits to which he or she was entitled as long as he or she continues to make the payment that would be required if he or she had remained in full-time status.
- f) The minimum part-time employment shall be equivalent to one-half (½) of the employee's FTE at the time the employee applies for reduced work assignment.
- g) The period of part-time classified employment shall not exceed five (5) years. At the end of the fifth year, the employee must return to full-time service as defined herein or take full retirement.
- h) The period of part-time classified employment shall not extend beyond the end of the school year during which the classified employee reaches his or her seventieth (70<sup>th</sup>) birthday.
- i) Any change in the percent (FTE) during the five (5)-year period may be requested by either party but granted only by mutual consent.
- j) The employee and the District shall continue to pay retirement contributions to PERS based upon the FTE considered to be full-time by PERS for the employee at the time they enter the program.

- k) The employee and the District will follow all rules and regulations of the Public Employees' Retirement System.
- l) A copy of the Agreement for reduced work assignment between the employee and the District shall be sent to the Union Office.

## **Article XII. LEAVES OF ABSENCE – GENERAL PROVISIONS**

- 43) General Provisions:** A leave of absence is an authorization for an employee to be absent from duty, generally for a specific period of time and for an approved purpose. Paid leave hours that an employee is entitled to on an authorized leave of absence shall be the same number of hours as his/her regularly scheduled daily hours.
- 44)** An employee in the District has the right, to the extent practicable, to return to the District in a vacant position of the same classification at the conclusion of the leave, providing the position would have otherwise remained, and the employee is able to perform the duties. There is, however, no assurance that the return assignment will be in the school or administrative site where the employee was assigned when the leave was authorized. (This section does not apply to vacation, sick or bereavement leave.)
- 45)** A condition of each leave of absence is that any required license or certificate held at the time the leave was granted, properly authorizing the service, must be in full force upon the employee's return to work.
- 46)** Employees on a leave of absence for which the compensation is paid by the District under this Article, unless otherwise provided for herein, shall receive health and welfare coverage, retirement credits, salary step advancement and vacation, the same as if they were not on leave. Employees going out on an authorized unpaid leave shall be notified in writing by the District that they will be allowed to retain continued health benefit coverage at their own expense pursuant to the terms of the applicable insurance plan, provided that they make advance payment of the premium in a manner reasonably required by the District, unless they are otherwise qualified for District-paid benefits under law.

- 47) Any employee that regularly works less than a complete fiscal year, twelve (12) months, shall be entitled to leaves of absence, if granted, in the same ratio that his/her employment bears to a complete fiscal year, twelve (12) months.
- 48) Utilization of leave provisions under this Article for full day(s) shall be deducted from an employee's leave entitlement in the same number of hours the employee is absent from work.
- 49) An employee who is absent on authorized leave shall give his/her immediate supervisor as much advance notice as possible, by noon on the day prior to confirm the employees expected return to work day.
- 50) An employee who is absent from work other than for those days authorized by state law or by authorized leave provisions of this Agreement takes an unauthorized absence in violation of this agreement. Such unauthorized absences shall be without pay and such employee may be subject to disciplinary action. An employee may be deemed to have abandoned employment after five (5) consecutive days of unauthorized absence.
- 51) Immediately upon return to work, the employee shall complete the appropriate District absence form and submit it to his/her immediate supervisor.
- 52) There shall be no loss of sick leave due to illnesses, communicable disease or injury contracted through work or work-related incidents provided that the appropriate procedures for claiming Workers' Compensation have been complied with and an award of Workers' Compensation has been made in such a manner as to substitute for the use of sick leave.
- 53) **Accrual of Vacation and Sick Leave:** The employee shall continue to accrue vacation and sick leave in accordance with the contract while the employee is working his or her regularly assigned FTE.

### **ARTICLE XIII. VACATION LEAVE**

- 54) **Vacation Leave:** The District and Union agree that vacation leave is provided for the benefit and health of the employees. Permanent

employees shall take all earned vacation each year if possible. All vacation requests shall be acted on by an employee's supervisor or designee within twenty (20) calendar days of receipt of the vacation request. No vacation request shall be unreasonably denied. Employees shall submit vacation requests as required by the employee's supervisor.

- 55) (A)** Vacation leave accrues monthly and is pro-rated based on the number of months worked in a given fiscal year. Vacation leave accrues at the rate of two and one-quarter (2.25) days per month, or twenty-seven (27) days per calendar year. Accrual of vacation leave shall be prorated accordingly for ten (10)-month employees, or employees with a less than 1.0 FTE.
- (B)** Beginning with the effective date of this Agreement, upon accruing more than fifty-four (54.0) vacation days, unit members shall no longer accrue vacation at the contract rate. Unit members with more than fifty-four (54.0) days of accrued vacation shall begin accruing vacation at the rate of one and one-half (1.50) days per month, or eighteen (18) days per calendar year, for twelve (12)-month employees. Accrual of vacation leave shall be prorated accordingly for ten (10)-month employees, or employees with a less than 1.0 FTE. Once the accrued vacation days are down to fifty-four (54.0) or less, unit members will resume accruing at the contract rate set forth in Paragraph A.
- 56)** No employee shall accrue any paid vacation leave for any period of leave with pay or while on suspension. The accrual rate is based on the employee's regularly scheduled FTE. Accrued vacation days do not vest until an employee has successfully completed probation.
- 57)** Vacation for twelve (12) month employees may be taken any time during the year. If the employee is not permitted to take his/her full annual vacation, and this causes the employee's accrued vacation balance to exceed fifty-four (54.0), then the amount not taken shall accumulate for use in the next year or be paid for in cash at the option of the District. Beginning on July 1 of the following school year, the decelerated rate of accrual in Section 57 paragraph B shall not apply under Section 59, and the employee shall accrue vacation at the rate set forth in Section 57, Paragraph A, for that school year only.

- 58) Vacation payout for employees working less than twelve (12) months will be paid at the end of the fiscal year in a lump sum. Such employees may be granted up to three (3) vacation days during their regular work year with prior approval by the immediate supervisor and the Director of Classified Personnel or designee.
- 59) **Vacation Lump Sum Payout:** Upon separation from service, the employee shall be entitled to lump sum compensation for all earned and unused vacation.
- 60) **Illness While on Vacation:** While on authorized paid vacation, an employee may request to revert to leave of absence for illness or injury if the employee suffers a personal illness or injury which requires hospitalization and/or house confinement under doctor's orders. The employee's request must be submitted in writing to his/her supervisor or designee within three (3) working days after his/her return to duty. A written verification from the hospital or private physician (whichever applies) must accompany the employee's request and be approved by the Director of Classified Personnel or designee. When all or part of an employee's vacation is to be processed as sick leave, the appropriate vacation credit shall be restored to the employee's earned vacation balance. The credited vacation may be rescheduled in accordance with this Agreement.

#### **ARTICLE XIV. SICK LEAVE**

- 61) **Sick Leave:** Sick Leave is the authorized and necessary absence of an employee because of illness, injury, exposure to contagious disease, or necessary appointments for health treatment. Every effort will be made by the employee to schedule necessary appointments during non-work hours.
- 62) An employee shall earn paid sick leave at the rate of one (1) day per month, in accordance with the provisions of Education Code Section 45191. Employees not using the full amount of leave authorized in any school year, shall accumulate the unused portion from year to year.

63) The employee may convert unused sick leave to retirement credit if the employee is filing a request for retirement, subject to approval by the PERS.

**64) Catastrophic Leave:**

1) Catastrophic leave is available to employees suffering from a severe illness or injury and is to be available after the employee has exhausted his/her sick and/or vacation leave. It is to be applied prior to extended leave provisions. Catastrophic leave cannot be used in conjunction with Worker Compensation or Long Term Disability benefits.

2) Employees may donate sick or vacation leave to another employee in daily increments from their sick leave or vacation balances. In order to donate, the employee must be able to maintain at least five (5) days' vacation or sick leave.

3) Procedure: a) The employee or designee shall request catastrophic leave from the Director, Classified Personnel. b) The Director, Classified Personnel should circulate a memo to interested parties letting them know of the need of catastrophic leave. c) Once leave is acquired from employees, the Director, Classified Personnel will advise the employee needing the leave of his/her new leave balance.

**Article XV. MISCELLANEOUS LEAVE**

65) **Bereavement Leave:** An employee is entitled to three (3) days of bereavement leave or five (5) days if the employee must travel out of state due to the death of a member of the employee's immediate family. This is to be without loss of pay and does not count as personal necessity leave or personal injury or illness leave and, thus, shall not be deducted from accumulated sick leave. In the event of the death of a unit member's spouse, domestic partner, or child, the unit member shall be entitled to a maximum of five (5) days of bereavement leave.

a) **Immediate Family Defined:** Members of the employee's immediate family shall include mother, father, foster parents, stepmother, stepfather, grandparents, spouse, domestic partner, children, brother,

sister; and mother, father, sister, brother, son, and/or daughter of spouse or domestic partner, grandchild, legal guardian, and such persons as the Superintendent or designee may approve in individual cases.

- b) Employees may utilize the provisions of bereavement leave for one occurrence other than that provided in Education Code and the Rules and Regulations of the Personnel Commission. This provision is to enable an employee to be granted bereavement leave for a person with whom the employee has a unique relationship. The employee shall exercise this provision only with prior approval of his/her Department Head unless impossible conditions preclude such prior approval. Upon request, the reasons for denying such leave will be provided in writing.
- 66) Personal Necessity Leave:** A classified employee may elect to use up to seven (7) days in any one fiscal year of his/her earned sick leave for the purpose of personal necessities which may fall into the following categories:
- i) Bereavement leave for immediate family as defined in Section 68(a) which may be necessary beyond that authorized in this Agreement.
  - ii) Personal emergency involving his/her person or property, or property of a member of his/her immediate family, as defined in Section 68(a) above.
  - iii) Appearance in any government court or before any government administrative tribunal as a litigant, a party, or as a witness under subpoena, or any order made by the court or administrative tribunal with jurisdiction.
  - iv) Serious or critical illness of member of immediate family, as defined in Section 68(a) above.
- 67) Maternity/Paternity Leave:** Maternity/Paternity Leave shall be available for a parent in connection with the arrival of a new child either through natural birth or adoption of a child. A parent shall be eligible for maternity/paternity leave after one year of employment. Such leave is available for the birth or adoption of a child and shall be for a period of

eighty-nine (89) days at fifty per cent (50%) of his/her salary. Health and welfare benefits shall be maintained during this period.

- a) Additional maternity/paternity leave beyond that provided above may be requested and may be granted without pay. Health and welfare benefit premiums will not be paid by the District while the employee is on unpaid extended maternity/paternity leave. The employee shall pay his/her health and welfare benefits during any period of extended unpaid maternity/paternity leave unless the employee elects to terminate his/her benefits.
  - b) If a woman desires to return to work during the time she is nursing, reasonable efforts will be made to arrange for her schedule in such manner as to give her time to nurse the child.
  - c) The eighty-nine (89) working days used in this Article are defined as the days for which the employee is paid and must be consecutive with the beginning date of the leave. Once an employee returns to work, the maternity/paternity leave and all of its provisions shall be terminated.
  - d) The employee shall substantiate any portion of this leave upon request of the District.
  - e) An employee shall be granted a leave of absence from duties because of adoption or pregnancy, childbirth and recovery there from. After notice to the Superintendent or designee, an employee may begin maternity/paternity leave at such time as she and her doctor deem advisable.
  - f) In the event of absence due to medical disability caused or contributed to by adoption or pregnancy, miscarriage, childbirth and recovery there from, an employee shall be entitled to utilize available sick leave.
- 68) Family Care and Medical Leave (Paternity, Maternity, Child Bonding/Rearing):** The District shall provide an unpaid leave of absence to employees in accordance with the Family and Medical Leave Act, California Family Rights Act, and Family Temporary Disability

Insurance Act. Such leaves shall run concurrently with other leaves in accordance with law.

- a) A leave of absence without pay may be granted to an employee from the date of the birth or the adoption of a child. Such leave will normally be for not more than a six (6) month period and may be extended up to an additional year. Such leave shall be without compensation or credit toward service.
- b) Under special circumstances, a child rearing unpaid leave of up to one (1) year may be granted by the District for the purpose of attending to the needs of a dependent child.
- c) **Continuation of Benefits:** During the period of leave, under this section, the employee shall continue to be entitled to participate in the district-paid medical, dental, life insurance, and other insurance plans, as required by law. However, it is understood that participation shall be limited to the percentage that the employee would otherwise have been entitled to if she/he were working.

**69) Maintenance of Status:** The employee shall retain his/her employee status with the District during the leave period granted under Sections 70 and 71, and the leave shall not constitute a break in service for the purposes of longevity or seniority under any employee benefit plan or collective bargaining agreement. For purposes of layoff, recall, promotion, job assignment and seniority-related benefits such as vacation and longevity, the employee returning from leave granted under Section 70 shall return with no less seniority than he/she had when the leave began.

**70) Extended Sick Leave After Exhaustion of Paid Leaves:** Extended sick leave shall be used only after exhaustion of all other paid leave except as provided in the Maternity/Paternity Leave Section of the Agreement. The District will make every effort to notify employees of their right to apply for this benefit prior to salary deductions when other leaves are exhausted.

- a) Each employee shall once a year be credited with a total of one hundred (100) working days of sick leave including days to which he/she is entitled under Education Code Section 45191. Such days of

extended sick leave, in addition to those under the accumulated sick leave provisions shall be compensated at fifty per cent (50%) of the employee's regular salary. The allowable total paid extended sick leave days in a fiscal year shall be computed by subtracting from one hundred (100) the total number of sick leave days accumulated by the employee in a fiscal year.

- b) Once the extended sick leave is started, the extended leave authorized under this Article shall be exclusive of any other paid leave, holidays, vacation, or compensating time to which the employee is entitled while extended sick leave is being used.
  - c) Extended paid sick leave under this Article shall not be accumulated from year to year.
- 71) Transfer of Sick Leave from Another District:** Any classified employee of any school district who has been an employee of that district for a period of one calendar year or more and who terminates employment with that district for the sole purpose of accepting a classified position with this district and who subsequently, within thirty (30) days of termination of his/her former employment, accepts a classified position shall be credited with all of the earned but unused sick leave which was credited to his/her in his/her former school district.
- 72) Personal Leave:** Employees may use up to a maximum of four (4) days of his/her earned sick leave for personal reasons. Employee intending to take such personal leave shall give reasonable notice to his or her supervisor prior to taking the leave.
- 73) Industrial Accident and Industrial Illness Leave:** An employee in the classified service who is absent from duty because of an illness or injury defined as an industrial accident or industrial illness under provisions of the Workers' Compensation Insurance Law shall be granted up to sixty (60) days per year of paid industrial accident leave for each such accident or illness while receiving temporary disability benefits from Workers' Compensation or by the District's self- insurance program.
- 74) Paid industrial accident leave shall be reduced by one day for each day of authorized absence regardless of the temporary disability allowance under Workers' Compensation or the District's self-insurance program.**

Days absent while on paid industrial accident leave shall not be deducted from the number of days of accrued sick leave to which an employee may be entitled.

- 75) If the employee is still unable to return to duty after exhausting paid industrial accident leave, the employee shall be placed on paid illness leave if he/she is eligible therefore. Accumulated illness leave will be reduced only in the amount necessary to provide a full day's wages or salary, as indicated in the employee's assignment, when added to compensation without penalties from the State Compensation Insurance Fund or the District's self-insurance program.
- 76) After all paid industrial accident leave is exhausted, an employee may choose to receive pay from accrued vacation, earned compensatory time, or other earned leave, including extended leave, to the extent necessary to make up the employee's regular salary when receiving a temporary disability allowance without penalties from the State Compensation Insurance Fund or the District's self-insurance program. After expiration of all paid leave privileges, the District may place the employee on an industrial accident leave without pay if the employee is not medically able to return to his/her regular position and cannot be placed in another position in which the employee is medically able to perform. The total time of all leave benefits provided under this subsection including unpaid industrial accident leave, shall not exceed thirty-six (36) months for any industrial accident or industrial illness.
- 77) When all paid or unpaid leaves of absence have been exhausted following an industrial accident or industrial illness, the employee's name shall be placed on the reemployment list for the class from which he/she was on leave for a period not to exceed thirty-nine (39) months.
- 78) Employees shall notify the District ten (10) days prior to return to work, if possible. If not possible, the employee will notify the District as soon as he/she knows the date of his/her return. Upon return to service from any paid or unpaid leave resulting from an industrial accident or industrial illness, an employee shall be assigned to a position in his/her former class, he/she may displace the most recently appointed employee in the class with less seniority. This does not constitute a layoff under Education Code section 45117. The displaced employee shall receive at least ten (10) days' notice that he/she will be displaced. If an employee's

former class has ceased to exist, the employee may be reassigned or placed on a suitable re-employment list.

- 79)** The District shall give temporary alternate work at the employee's regular salary when a position for which the employee is qualified and able to perform is available to an employee who has become medically unable to perform his/her regular job class duties.
- 80)** An employee returning from such paid or unpaid leave of absence shall not have any loss or gain in status or benefits other than that which is specifically provided in applicable provisions of the Education Code and the Rules and Regulations of the Personnel Commission. An employee shall continue to receive seniority credit for all purposes while on such a paid or unpaid leave of absence.
- 81)** While an employee is on any paid leave resulting from an industrial accident or industrial illness, the employee's salary paid by the District shall not, when added to a normal temporary disability allowance award without penalties granted the employee under the State Workers' Compensation Insurance laws or the District's self- insurance program, exceed the employee's regular salary. An employee's salary is computed on the basis of the number of hours and days in his/her basic daily assignment.
- 82)** During all paid leaves resulting from an industrial accident or industrial illness, the employee shall endorse to the District all wage-loss benefit checks received under State Workers' Compensation laws or the District's self-insurance program. The District shall issue to the employee appropriate warrants for payment of wages, loss of benefits, salary, and/or leave benefits and shall deduct normal retirement and other authorized contributions. Final allowance for permanent industrial disability settlements shall not be subject to remittance to the District under this rule.
- 83)** Copies of the District workers' compensation regulations and procedures shall be distributed to each new employee and placed in each school by November 30 of the current year.

- 84) Nothing in this section shall detract from an employee's right under California Labor Code Sections 4600 and 4601 to designate a personal physician and to be seen by the physician of their choice.
- 85) **Jury Duty:** An employee who receives a jury interview and appearance notice shall notify the Human Resources Office within two (2) days of receipt of such notice or upon receipt of such notice if the notice is received less than two (2) days before the appearance is required.
- 86) Upon summons for jury duty service, the employee shall be granted release time and paid regular salary. Juror fees, exclusive of mileage reimbursement, shall be forwarded to the District.
- 87) It is understood that the employee shall be required to report for regular working duties on any and all days when he/she is not required to report to the Courthouse as a potential juror.
- 88) **Military Leave:** Leaves of absence for government ordered military service shall be granted as provided by Education Code and the Military and Veterans' Code. Request for military leaves shall be in writing, and upon request by the District, orders and status reports shall be furnished as proof of military commitment. Leave of absence for service in the Peace Corps or the Red Cross or Merchant Marine during time of national emergency may be granted for a period not to exceed twenty-four (24) months.

Employee's returning to work pursuant to this section shall be provided with employment in the District consistent with legal requirements.

- 89) **Civic Participation:** Employees who are elected or appointed to an office in federal, state, county or municipal government or subdivision shall be granted unpaid leave upon written request if such leave is necessary to perform the duties of office. Leaves may also be granted for employees who accept assignments in the Peace Corps, Vista, exchange teaching or similar programs.
- 90) Upon request of an appropriate government agency, subject to approval by the Superintendent or designee based on the operational needs of the District, an employee shall be granted release time to perform emergency civilian duties in connection with emergency situations without loss of

pay. Compensation received in performance of the above duties shall be subtracted from compensation that would normally be provided by the District.

- 91) Union Leave:** Leave may be granted by the Superintendent or designee for election or appointment to perform services as representatives of the International Federation of Professional and Technical Engineers. The Union agrees to indemnify and hold harmless the District for liability incurred during leave granted pursuant to this section.
- 92) Leaves of Absence Without Compensation:** Leave of absence without pay for any period not exceeding one (1) year may be granted to an employee upon the written request of the employee and the approval of the Superintendent or designee. Such request shall be made at least one (1) month in advance of the proposed leave, when possible, and shall not be unreasonably denied.
- 93)** After the first year, additional leave may be granted for up to one (1) additional six (6) month period. The employee shall be required to substantiate the need for a leave beyond one year.
- 94)** An employee shall not lose any accrued seniority rights by reason of an approved leave of absence. Such leave shall not count as an additional year of experience for any purpose unless agreed to in writing by the Superintendent or designee prior to the leave.
- 95)** An employee on such leave shall be permitted to make his/her contribution and the District's regular contribution to all benefit programs requiring contributions as permitted by law and consistent with the requirements of the insurance carrier, as well as other restrictions which may be placed on the benefit program by entities apart from the District.
- 96)** The granting of a leave of absence without pay gives to the employee the right to return to a position in the same classification in the District at the expiration of his/her leave of absence, provided that he/she meets the requirements of the position.
- 97)** Either the District or an employee may cancel or modify an unpaid leave previously agreed to with due notification to the other party upon mutual agreement of both the District and the employee involved. If no mutual

agreement can be reached, the original agreement or decision with regard to said leave shall be binding on both the District and the employee.

- 98) Failure to report for duty within five (5) working days after a leave has been cancelled or modified in accordance with this Article or expires, shall be considered an abandonment of the position and the employee may be terminated by the Board of Education. Such termination may be appealed to the Personnel Commission in the same manner as any other dismissal for cause. The provision is not applicable to Military Leave.
- 99) If an employee cannot be placed in a vacant position in his/her class upon return from leave of absence, he/she shall have bumping and reemployment rights in accordance with his/her seniority, in the same manner as if he/she has been laid off for lack of work or lack of funds on the date his/her leave expires.
- 100) **Leave of Absence for Study:** Every employee who has completed seven (7) consecutive years of service in regular status with the District shall be eligible to apply for a leave of absence for study purposes. The granting of such leave shall be entirely discretionary with the appointing authority. When a study leave has been authorized and taken, an additional seven (7) years of service, after return to duty from the last leave, must be completed before another study leave may be granted.
- 101) Study leave can be for any period of time not to exceed one (1) year and may be taken in any time increments as approved by the Superintendent or designee, but must be completed within three (3) years after the initial part of the leave was commenced. If the leave is not continuous, the service performed between the leave intervals shall be credited toward future study-leave eligibility.
- 102) Any leave granted and taken under this rule shall not constitute a break in service for any purpose, but the leave time shall not count toward eligibility for a future study leave.
- 103) The employee must file an application with the Superintendent or designee for a leave of absence under these provisions which must outline:

- a) His/her work history with the District (e.g., positions held, and length of service in each).
- b) Length of leave requested and time period in which the leave will be completed, if granted.
- c) The purpose for which the leave is requested. The application must include the complete course of study to be pursued, institution giving the course, costs involved, degree or credits to be granted, and other pertinent data.
- d) Amount of compensation requested while on leave, if desired.
- e) Service, if any, to be performed by the employee for the District during the leave.
- f) The benefits to be derived by the District by the granting of the leave.

## **Article XVI. HOLIDAYS**

- 104)** Employees who are employed on a twelve-month basis shall receive the following holidays:
  - i. Independence Day
  - ii. Labor Day
  - iii. Veterans' Day
  - iv. Thanksgiving (3 days)
  - v. Three Winter Board Holidays
  - vi. December 25
  - vii. New Year's Day
  - viii. Martin Luther King's Birthday
  - ix. Lincoln's Birthday
  - x. President's Day
  - xi. Spring Board Holiday
  - xii. Malcolm X's Birthday
  - xiii. Memorial Day
- 105)** Employees who work less than twelve (12) months of the school year shall receive those holidays where they are in a paid status during any

- portion of the working day of their normal assignment immediately preceding or succeeding the holiday.
- 106) Employees who work less than twelve (12) months shall receive December 25 and January 1 as paid holidays provided they were in a paid status during any portion of the workday of their normal assignment immediately preceding or succeeding the holiday.
  - 107) Holiday pay that an employee is entitled to on a given holiday shall be for the same number of hours as his/her regularly scheduled daily hours.
  - 108) Any classified employee required to work a work week other than Monday through Friday and as a result thereof loses a holiday to which the employee would have been entitled, shall receive a substitute holiday or receive compensation in the amount the employee would have received had the holiday fallen within his/her normal work schedule.
  - 109) When a non-exempt employee is required to work on any such holiday, his/her compensation shall be at the overtime rate in addition to his/her regular pay for the holiday. (See Appendix B-2 for overtime rates.)
  - 110) Holidays falling during an employee's regularly scheduled vacation period shall not be counted as vacation days.
  - 111) Any additional day declared by the President of the United States as a holiday or any additional holidays for classified employees declared by the Board of Education shall be a paid holiday for all employees.

## **Article XVII. TRANSFER AND REASSIGNMENT**

- 112) **Definition:** A transfer or reassignment is movement within an employee's job classification from site to site, department to department or shift to shift.
- 113) **Reasons for Transfer or Reassignment:** Transfers and/or reassignments may arise due to career objectives, seniority, professional expertise, and changes in District needs.

- 114) Posting:** All vacancies of positions to which employees covered by this Agreement may be qualified shall be posted for at least ten (10) days at each work site. The posting shall contain a description of the position and minimum qualifications required and the final filing date for applications or transfer requests.
- 115) Request for Transfer or Reassignment:** Employees seeking transfer or reassignment shall submit requests in writing to the Director of Classified Personnel. Such requests may contain reasons and/or proposals for services that would be rendered upon transfer or reassignment. Employees who have requested transfer or reassignment shall receive a response from the Human Resources office regarding the status of such request ten (10) days from the final filing date.
- 116) Involuntary Transfers:** Employees subject to involuntary transfer shall be provided with a written statement detailing the District's business needs to effectuate the transfer. The employee shall be provided with an opportunity to respond within ten (10) days to offer alternatives, prior to implementation of the involuntary transfer.

## **Article XVIII. PERSONNEL FILES**

- 117)** All personnel files shall be kept in confidence and shall be available for inspection only to other administrative employees of the District when actually necessary in the proper administration of the District's affairs or the supervision of the employee. The date of inspection, along with the signature of the person(s) performing the same shall be entered permanently on the file at the time of each review.
- 118)** Employees may review their personnel files by appointment. Employees may also authorize, in writing, a Union representative to inspect their own personnel file. Copies of all original entries to such files shall be provided at no expense to employees or the authorized representative upon employee request.
- 119)** Any written materials placed in an employee's personnel file shall indicate the date it was received in the District Human Resources Office.

- 120) After one (1) year, an employee may petition the Director of Classified Personnel or designee to remove written materials from his/her personnel file, excluding formal evaluations and disciplinary action or findings approved by the Board of Education and/or sustained by the Personnel Commission on appeal. After two years (2) years, upon written request of the employee, such material shall be removed.

#### **Article XIX. DISCIPLINE**

- 121) The Personnel Commission Rules and Regulations 60.1000 are hereby incorporated into this contract. See Appendix D.
- 122) The provisions of this Discipline Article shall be exempt from Article XVII, Grievance Procedure.
- 123) The District shall give employees written notice of intent to impose discipline and the reasons therefore. Included in the District's notice of discipline in accordance with the Merit rules shall be notice of the right to a hearing for suspension, demotion or dismissal and the right to have union representation during the course of any disciplinary recommendation. The District will send a copy of the above notice to the Union. Employees shall have an opportunity to respond orally and/or in writing prior to imposition of any disciplinary action.

#### **Article XX. EVALUATION PROCEDURE**

- 124) **Purpose:** Recognizing that the District's personnel evaluation procedures are intended to identify, recognize, reinforce, and improve knowledge, skills and abilities that result in the achievement or predetermined goals and objectives, all employees shall be formally evaluated.
- 125) Difficulty and complexity of the assignment shall be considered in the evaluation. Evaluation shall include commendations for outstanding performance where appropriate.
- 126) The criteria for evaluation are solely the prerogative of the Board of Education and all forms used in evaluation shall be based on those

criteria. The District and Union shall meet and confer to develop mutually agreed upon evaluation forms to be used for employees.

- 127) Evaluations shall be conducted annually on or about the anniversary date of the employee.
- 128) Evaluations and any responses from employees shall be included in the employee's personnel file.

## **Article XXI. GRIEVANCE PROCEDURE**

- 129) **Intent:** It is the intent of the parties to resolve disagreements between the parties at the lowest possible level and in the most expeditious manner as possible.
- 130) **Definition:** A grievance is an allegation by an employee, a group of employees or by the Union (the "grievant") that the grievant has been adversely affected by the District's violation, misapplication, or misinterpretation of a term, condition or provision of the Agreement.
- 131) **Step One - Informal Discussion:** The grievant shall present the grievance to his/her immediate supervisor or designee no later than thirty (30) calendar days from such time as the grievant knew or should have known of the alleged violation, misapplication or misinterpretation. The immediate supervisor shall respond within fourteen (14) days from presentation by the grievant.
- 132) **Step Two - Formal Submission:** If the grievance is not resolved at Step One, the grievant shall submit the grievance in writing to the Superintendent or his/her designee within ten (10) working days. The grievance shall state the specific section(s) of the Agreement alleged to be violated and the requested remedy. The supervisor shall render a decision in writing to the grievant within fourteen (14) working days of the formal submission of the grievance.
- 133) **Step Three:** If the grievance is not resolved after completion of Step Two, the Union may refer the matter to an arbitrator for final and binding arbitration within fourteen (14) working days from the decision at Step Two.

- 134) Arbitrator Selection:** The parties shall endeavor to select an arbitrator. In the event the parties are unable to agree on an arbitrator, a list of five (5) arbitrators shall be obtained from the State Mediation and Conciliation Service. Each party shall be entitled to strike two (2) names; the remaining name shall be selected as the arbitrator.
- 135) Proceedings:** Unless requested otherwise by either party, arbitrations shall be expedited. This may include, but not be limited to, limitations on the number and time allotted for witnesses, limited or elimination of briefs, bench decisions, or limited or no transcripts of the proceedings. If any question(s) arises as to the arbitrability of the grievance, such question(s) shall be first decided by the arbitrator in a separate hearing before consideration of the merits of the grievance, unless otherwise agreed to in writing by the parties.
- 136) Mediation:** By mutual agreement the Union and the District may seek the assistance of a mediator from the State Mediation and Conciliation Service to assist in resolution of the grievance at any step in the grievance process.
- 137) Cost:** The cost of arbitration proceedings including transcription costs shall be borne equally by the parties.
- 138) Failure to Adhere To Timelines:** Failure of the District to meet timelines shall move the grievance to the next level. Failure of the Union to meet timelines shall deem the grievance null and void. The time limits set forth in this Agreement may be extended by mutual agreement in writing.

## **Article XXII. Health and Safety**

- 139) District Compliance:** The District shall provide a safe and healthy workplace for its employees while in the course of their employment in accordance with applicable State and Federal OSHA regulations.
- 140) Inoculations:** The District shall pay for Hepatitis B inoculations for at-risk employees. In order to qualify for reimbursement, the employee must obtain the inoculation through his/her health plan. If the inoculation is not available through the unit member's health plan, the unit member shall

obtain the inoculation from a provider designated by the District. If the unit member obtains the inoculation from another source, reimbursement shall be limited to the cost the District would have incurred had the designated provider been used.

### **Article XXIII. Promotions**

- 141)** The goal of the District shall be to provide promotional opportunities to employees. When an outside applicant is selected over qualified promotional applicants, the reason for the District's decision to hire from the outside shall be given to applicants upon request.
- 142)** An employee who is promoted to a higher job classification shall be placed on the lowest step in the new job classification that will give him/her at least a five (5) percent increase in salary, except in cases where the highest step on the salary schedule in the new classification gives the employee less than five (5) percent. The employee shall receive this higher salary on the first day the employee assumes his/her new duties in the new classification either provisionally or as a probationary employee.

### **ARTICLE XXIV. TOOLS AND EQUIPMENT**

The District shall make a reasonable effort to furnish proper tools and equipment determined by the District to enable employees to perform their assigned jobs.

### **ARTICLE XXV. LAYOFFS**

The District agrees to make every effort to keep the Union advised of financial planning which contemplates a reduction of employees represented by the Union. Before a planned reduction in the workforce is implemented, the District shall meet and confer with the Union and provide a listing of classification and their seniority of employees potentially affected by the proposed layoff. The District agrees to provide the Union with a copy of its official reduction in force lists and seniority lists as soon as possible after the Board has given its approval to the initiation of a workforce reduction.

- 143) Layoff:** A layoff is elimination or reduction of hours of a position by action of the Governing Board for lack of work or lack of funds.
- 144) Seniority:** Seniority or "length of service" shall be determined by date of hire in a permanent status, including probationary service, in a job classification.
- 145) Substitute:** A person employed to perform the work of an absent employee in a regularly assigned position.
- 146) Position:** A work assignment established by the Governing Board in the Classified Staffing model.
- 147) Class:** A class is any group of positions sufficiently similar in duties, responsibilities and required minimum qualifications assigned the same job title and salary range. A class may consist of a single position.
- 148) Voluntary Demotion:** Voluntary demotion occurs when an employee accepts an assignment in a lower classification in lieu of layoff. An employee may request or accept a voluntary demotion for other reasons than "in lieu of layoff."
- 149) Voluntary Reduction in Hours:** An employee who voluntarily consents to a reduction in hours of employment in lieu of layoff.
- 150) Layoffs, Application of:** Layoffs will only be implemented after the Governing Board has voted to eliminate or reduce a position in a formal resolution, or not earlier than forty-five (45) days after the notice has been hand delivered to or placed in the mail to the employee in accordance with Section 164. The Union shall receive a list of the employees who have been served with such notice.
- 151)** The employee with the least seniority in the affected class as defined in Section 147 shall be laid off first.
- 152)** If, in order to avoid interruption of employment, an employee who would have been laid off voluntarily consents to a demotion or reduction in hours, that action shall be considered a layoff.

- 153) An employee laid off in one position may bump an employee in another position in the same classification, equal classification, or lower classification provided:
- a) The laid-off employee has permanency in such classification; and
  - b) His/her seniority is greater than the least senior employee in such classification.
- 154) An employee bumped from his/her classification shall have the same bumping rights in a lower or equal class as other laid-off employees, providing the employee's seniority is greater than those employees remaining in the lower or equal classification.
- 155) The District agrees that when a layoff occurs, it will maintain the relative ranking of the employee's seniority existing at the time of the layoff.
- 156) If two (2) or more employees subject to layoff have equal seniority in a class, the determination as to who will be laid off will be made on the basis of the first hire date in a probationary status in the District. If that be equal, the determination shall be made by lot.
- 157) As a result of layoffs, where two (2) or more positions within an existing classification are eliminated or reduced in hours, and two (2) vacancies exist within the same or lower level class, the preference of the employees electing to exercise their displacement rights will be considered in seniority order.
- 158) The District will make the final determinations of assignments, given the reasons are neither arbitrary nor capricious.
- 159) **Election of Retirement:** Any employee laid off for lack of work or lack of funds and who elects service retirement from PERS shall be placed on an appropriate reemployment list. The District shall notify the Board of Administration of PERS of the fact that retirement was due to layoff for lack of work or funds. If the employee is offered and accepts, in writing, an appropriate vacant position, the District shall maintain the vacancy until the Board of Administration of PERS has properly processed the employee's request for reinstatement from retirement. The District may elect to fill the position with a temporary employee while the Board of

Administration of PERS is processing the request for reinstatement from retirement.

- 160) Notice of Layoff:** A layoff notice shall contain: a statement of effective date of layoff; a statement of the employee's displacement (bumping) rights, if any; a statement of the employee's reemployment rights; a statement of the employee's rights to apply for unemployment benefits and election of retirement options, if any.
- 161)** The notices shall be delivered personally to the employee or mailed by Certified or Registered mail to the employee at his/her last known address, not less than forty-five (45) days prior to the effective date of layoff.
- 162)** Employees who have been given notices of layoff shall respond in writing within ten (10) calendar days, after postmark of such notice by Certified/Registered mail, or by personal service, of their intent to exercise bumping rights, consent to a voluntary demotion/reduction, or retire in lieu of layoff.
- 163)** Notice to employees shall include the employee's right to a conference with the Director of Classified Personnel or designee regarding his/her options related to the layoff. The employee shall be informed that he/she may have his/her Union Representative present at such a meeting.
- 164)** After the Board's action initiating layoffs of employee(s), the District will notify each employee and the Union. Notices to employees shall be in conformance with this Article. Notice to the Union will include Local 21 positions reduced or eliminated. The Union may request a meeting to review the application of the layoff to the bargaining unit.
- 165) Reemployment Rights:** A person laid off because of lack of work or lack of funds is eligible for reemployment for a period of thirty-nine (39) months and shall be reemployed in preference to all applicants.
- 166)** Employees who take voluntary demotions or voluntary reductions in assigned time in lieu of layoff, or who remain in their present positions rather than be reclassified or reassigned, shall have the same rights as persons laid off and shall retain eligibility to be considered for reemployment in the classification from which laid off for an additional

period of twenty-four (24) months, provided that the same tests of fitness under which they qualified for appointment to the class shall still apply. When there is a valid reemployment list, employees voluntarily demoted or reduced in time in lieu of layoff, shall be ranked on that list in accordance with their proper seniority for each classification. Employees who take voluntary demotions in lieu of layoff, shall be, at the option of the employee, returned to a position in their former class as vacancies become available. Employees who take a voluntary reduction in assigned time in lieu of layoff shall be, at the option of the employee, returned to a position with increased time as vacancies become available. When there is a valid reemployment list, employees voluntarily demoted or reduced in time in lieu of layoff, shall be ranked on that list in accordance with their proper seniority for each classification.

- 167)** Employees who wish voluntary demotions in lieu of layoff to classes not previously held, may be reclassified to vacant positions for which they qualify. The determination of eligibility for reclassification shall be made by the Personnel Commission.
- 168)** Employees shall be reemployed in the classification from which layoff occurred. When a position to which a laid off employee has reemployment rights becomes available, such employee shall be notified by certified mail sent to the last known address, and offered reemployment.
- 169)** Any employee who is laid off due to District error shall be reemployed immediately upon discovery of the error with full reinstatement of lost pay and benefits.
- 170)** Upon written request, an employee laid off, or who retires in lieu of layoff, shall be notified of available positions for which the employee is eligible at his/her last known address. The employee shall have ten (10) calendar days from the date of postmark to accept or reject the position. Failure to respond in a timely manner shall waive the right to the vacancy. This obligation to notify in writing shall cease twelve (12) months after the effective date of layoff or retirement in lieu of layoff, unless the employee renews the request in writing.

**171) Right to Refuse:** An employee on a reemployment list may decline two (2) offers of reemployment in his/her former classification or hours. After the second refusal, the employee's name shall be placed in inactive status. The employee may notify the District of his /her availability for work. No additional offers need be made, except upon a good cause the District may permit additional offers.

**172) Benefits of Laid-off Employees:** Benefits of any laid-off employee shall include but not be limited to the following:

a) Entitlement to payment for accrued vacation pay and earned wages. Such pay shall be issued during the normal pay cycle of the District.

b) Entitlement to health/medical/dental coverage through the end of the month in which the layoff occurs, under the same conditions that existed prior to the layoff.

c) A laid-off employee shall have the right to take promotional examinations during the period of thirty-nine (39) months if they meet the minimum qualifications for the job.

**173) Layoff Appeal Rights:**

a) Layoffs and reemployment in accordance with the above procedures shall be exempt from arbitration.

b) Procedural violations of the layoff provisions may be appealed to arbitration in accordance with the grievance procedure.

## **Article XXVI. REOPENERS**

**174) Termination of Merit System:** In the event that the Merit System is discontinued, either party may present proposals to include items to replace the Rules and Regulations of the Personnel Commission (within the scope of negotiations) into this Agreement.

**175) Re-Opener:** Each side agrees that, for 2016-2017 and 2017-2018, the parties shall have the right to re-open Article XIII (Vacation Leave) and two other Articles of each party's choice. The parties agree to start the

meet and negotiate process for the 2016-2017 re-openers after November 30, 2016, and November 30, 2017 for the 2017-2018 re-openers.

- 176) Retirement Benefit Re-Opener:** Upon completion of an actuarial to quantify the District's unfunded liability for retiree benefits, the District may re-open negotiations on Article XI, Section 41.
- 177) Negotiation Procedures:** If either party desires to alter or amend this Agreement, it shall notify the other party by February 28, 2018. The party shall provide written notice in the proposal to the other party of said desire and the nature of the amendments and cause for public notice provisions of the law to be fulfilled.
- 178) Commencement of Negotiations:** The parties agree to start the meet and negotiate process for the Successor Agreement on or before March 15, 2018, Negotiations shall commence at a mutually acceptable time and place for the purpose of negotiating an agreement.

#### **Article XXVII. NO STRIKES OR LOCKOUTS**

- 179)** The Union agrees that during the life of this agreement it will not promote or engage in any strike or interference with required activities of the District.
- 180)** The District agrees that during the life of this contract, it will not lock out any of the members of the bargaining unit.

#### **Article XXVIII. SAVINGS CLAUSE**

- 181)** If any provisions of this Agreement are held to be contrary to law by a court of competent jurisdiction, such provisions will be deemed invalid and subsisting only to the extent permitted by law, but all other provisions will continue in full force.
- 182)** If any provision is held contrary to law by a court of competent jurisdiction, the parties will meet within thirty (30) days to negotiate a replacement for that provision if it be legally possible to do so.

183) If, during the term of this Agreement any federal, state or local law invalidates or modifies any provision of this Agreement, the parties shall meet within thirty (30) days to negotiate a replacement for that provision if it be legally possible to do so.

**Article XXIX. COMPLETION OF AGREEMENT**

184) The Agreement sets forth the full and entire understanding of the parties regarding the matters herein. This Agreement may be modified, but only in writing, upon the mutual consent of the parties.

185) The parties agree that this Agreement shall not be altered except by mutual agreement by the Governing Board and the Union or by virtue of the reopening of the Agreement. The parties agree to meet and negotiate within one hundred (100) days after so requested on any issue deemed within the scope of representation by the Public Employment Relations Board during the term of this Agreement, which issue the parties have not included in this Agreement.

FOR THE DISTRICT:

FOR LOCAL 21:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

**APPENDIX A**

**APPENDIX B**

## APPENDIX C

### DOMESTIC PARTNERS

Policy: The Berkeley Unified School District will extend benefits to the same and opposite gender employees living in domestic partnerships.

It shall be contrary to the policy of the Berkeley Unified School District, within any program, procedure, or contract, to grant benefits or assign liabilities on the basis of a marital relationship unless a substantially equal application to a broader category of relationship or persons which includes within it the domestic partnership relationships shall also be a proper compliance with this policy.

Berkeley Unified School District employees in domestic partnerships as defined below, are entitled to dental benefits, bereavement leave, and other district controlled benefits heretofore available to employees solely on the basis of marriage.

Berkeley Unified School District administration will continue to negotiate with its health insurance providers to permit the inclusion of domestic partners in employees' health plans. After such negotiations with health insurance providers, if health plan costs are increased, the District and the Union shall meet to re-negotiate this section prior to Implementation.

#### Domestic Partnership Defined:

A domestic partnership shall exist between two persons regardless of their gender and each of them shall be the domestic partner of the other if they both complete, sign, and cause to be filed with the Berkeley Unified School District Personnel Department an Affidavit of Domestic Partnership, attesting to the following:

- a. The two parties reside together and share the common necessities of life;
- b. The two parties are: not married to anyone, not related by blood closer than would bar marriage in the State of California, and mentally competent to consent to contract;
- c. The two parties declare that they are each other's sole domestic partner and they are responsible for their common welfare;
- d. The two parties agree to notify the Berkeley Unified School District if there is a change of the circumstances attested In the Affidavit;
- e. The two parties affirm, under penalty of perjury, that the assertions in the Affidavit are true to the best of their knowledge.

## Termination

A member of a domestic partnership may end said relationship by filing a statement with the designated Berkeley Unified School District department. In the statement the individual filing must affirm, under penalty of perjury, that: (1) the partnership is terminated, and (2) a copy of the termination statement has been mailed to the other partner.

## New Statements of Domestic Partnership

No individual who has filed an Affidavit for Domestic Partnership may file another such Affidavit until six (6) months after a statement of termination of the previous partnership has been filed with the designated Berkeley Unified School District department.

## Civil Actions

Any person defrauded by a false statement contained in an Affidavit of Domestic Partnership may bring a civil action for fraud to recover his or her losses.

## APPENDIX D

### Section 60.1000, DISCIPLINARY ACTION AND APPEAL

Rules and Regulations of the Merit System Personnel Commission of the Berkeley Unified School District

#### 60.1000 DISCIPLINARY ACTION AND APPEAL

##### 60.1000.1 Causes for Suspension. Demotion, Dismissal (EC 45302)

- A. Permanent employees in the classified service may be reprimanded, demoted or dismissed for any of the following causes provided that specific instances must be set forth as to any causes enumerated in the headings below. This section shall not be construed to prevent layoffs for lack of *work* or lack of funds
1. Incompetency and inefficiency in the performance or assigned duties (Cumulative).
  2. Insubordination (Including but not limited to assigned work) or any willful and persistent violation of the provisions of the Education of rules, regulations or procedures adopted by the Board of Education, Superintendent or the Personnel Commission pursuant to it.
  3. Dereliction of or inattention to duty. (Cumulative)
  4. Failure to maintain the requirements of the classification: e.g. license or certification.
  5. Failure of good conduct tending to injure the public service.
  6. Dishonesty on matters pertaining to employment and duties.
  7. Discourteous, offensive or abusive conduct or language toward other employees, pupils, or the public. (Cumulative)
  8. Use of alcoholic beverages. non-prescribed narcotics or restricted substances while on duty or reporting to work while under the influence of alcohol, non-prescribed narcotics or restricted substances. (Cumulative)
  9. Conviction of any criminal act by a court of law involving moral turpitude or other serious crime, which indicates the person is a poor employment risk.
  10. Political activities engaged in by an employee during his/her assigned hours of employment. (Cumulative)

11. Unexcused absence or abuse of sick leave privileges *or* repeated and unexcused tardiness.
12. The discovery or development during an initial probationary period of any physical, emotional, and/or mental condition which would have precluded acceptance as eligible for assignment.
13. Abandonment of position--that is absences without permission in excess of five working days.

B. This section shall not be construed to prevent layoffs lack of work or lack of funds.

#### C. SUSPENSION OF CLASSIFIED EMPLOYEE: DUE TO ACCUSATION OF CRIME:

A regular employee charged with the commission of any offense as specified in Section 45304 of the Education Code by complaint, information, or indictment filed in a court of competent jurisdiction may be suspended as provided for in Section 45304 of the Education Code. Such a suspension will be processed as an involuntary personal leave in accordance with the provisions of the Rule relative to suspensions. The employee may receive compensation as provided for in the Education Code Section. Such suspension shall be reviewed by the Personnel Commission every 90 days. (EC Code 45304).

#### 60.1000.2 Procedure for Disciplinary Action

- A. No employee in the classified service shall be reprimanded, suspended, demoted, dismissed, or in any way discriminated against because of his/her political or religious affiliations or race, color, sex, national origin *or* ancestry, or marital status or pregnancy, subject to the provisions of Paragraph A.3. Rule 60.1000.1
- B. In handling disciplinary matters involving suspension, demotion, and dismissal, it is intended that progressive steps be utilized to the greatest extent permitted by individual circumstances and that discipline shall be commensurate with the offense. Such progressive steps may be as follows, except that steps 1 and 2 are mandatory in dealing with cause of a cumulative nature unless the severity of the offensive warrants disciplinary action at a higher appropriate level.
  1. Verbal reprimand.
  2. Written reprimand with a copy to the employees' personnel file.
  3. Suspension without pay.
  4. Involuntary demotion.
  5. Dismissal.

Causes of cumulative nature are those contained in 60.1000A, 1,3,7,8 and 10.

- C. Supervisors shall have orally or in writing recommended corrective action whenever an employee fails to meet the required standards or conduct or performance for a cumulative offense.
- D. If disciplinary action includes suspension, demotion or dismissal, written notice shall be given to an employee prior to the effective date. Such notice shall include:
  - 1. The reasons for disciplinary action.
  - 2. A copy of the charges and material upon which the disciplinary action is based.
  - 3. Notice that the employee has the right to respond within five working days to the authority imposing discipline either orally or in writing.

If disciplinary action is a written reprimand, the employee shall be given a copy and it shall include notice of the employee's right to respond within ten working days before the reprimand is included in the employee's personnel file.

- E. When a regular employee is to be suspended, demoted or dismissed, specific written charges shall be prepared and presented for action of the Governing Board. The charges must be so clear that the employee will know the exact complaints and may be expected to respond to them.
- F. When formal disciplinary action has been taken by the Governing Board, the action and the charges shall be reported to the Personnel Director, who shall within 10 working days notify the employee and shall report the action to the Commission.
- G. Notice to the employee shall include a copy of the charges and a statement of his/her right to appeal, if any, together with a copy of Rule 60.1000.3. Such notice shall be transmitted by registered or certified mail to the last known address of the employee within 10 working days of the effective date of the disciplinary action.
- H. Notwithstanding the procedures prescribed herein, an employee may be suspended prior to the Board approval when in the opinion of the Superintendent, or in his/her absence the Superintendent's designee, such suspension is necessary to protect the interest of the District. Such suspension is subject to later ratification by the Board and approval of charges, which must be transmitted to the employee within 10 working days after the date of suspension. Requirements in regard to charges and notifications must be met when the Board ratified the administrative action.
- I. A regular employee charged with the commission of any sex offense as defined in Section 44010 or any narcotics offense as defined in Section 44011 of the Education Code by complaint, information, or indictment filed in a court of

competent jurisdiction may be suspended as provided for in Section 45304 of the Education Code. Such a suspension will be processed as an involuntary personal leave in accordance with the provisions of this rule relative to suspensions. The employee may receive compensation as provided for in the Code section. Such suspension shall be reviewed by the Personnel Commission every 90 calendar days.

- J. Dismissal shall cause removal of the employee's name from all employment lists.
- K. Failure to appeal as provided below shall make the action of the Governing Board final and conclusive.
- L. Suspension, without pay, shall not exceed the time limitations prescribed in Education Code Section 44304.

#### 60.1000.3 Appeal

- A. A permanent employee who has been suspended, demoted, or dismissed may appeal to the Personnel Commission within 14 working days after having been furnished with a copy of the written charges by filing a written answer to such charges. Appeal can be made only on the grounds:
  - 1. That the procedures set forth in these rules have not been followed.
  - 2. That the action was taken because of political or religious acts or opinions or affiliations, or race, color, national origin or ancestry, sex, or marital status or pregnancy.
  - 3. That there has been abuse of discretion.
  - 4. That the action taken was not in accord with the facts.
  - 5. Penalty invoked is excessive.
- B. A permanent employee who has not served the full probationary period for the class and who is demoted in the class from which promoted may request an investigation by the commission within 14 days after the receipt of the copy of written charges. The request for the investigation shall be based only on one or more of the five grounds provided above for appeals. The Commission shall conduct an investigation confined to the grounds set forth in the charges and in the request for the investigation but shall not be required to follow the procedures for appeals and hearings set forth in these rules. The Commission shall notify the Governing Board and the employee in writing of its findings. If the Commission's investigation and findings, however, indicate any discriminatory action, the Commission may order a formal hearing. The decision of the Commission shall be binding on the Governing Board.

#### 60.1000.4 Hearing Procedure (EC 45311)

- A. When the Commission has determined that it had jurisdiction over an appeal, a hearing shall be held. The Commission shall appoint a hearing officer, who may be the Commission, a Committee of the Commission, a Commissioner or hearing officer employed by contract or as a professional expert to hear and determine the charges.
  - 1. The Commission, Committee of the Commission, or hearing officer shall determine the time and place when the charges will be heard and notify the Director of Classified Personnel who shall inform the employee concerned and the employee's representative.
  - 2. Notification shall be by letter normally three weeks preceding date of hearing. Letter shall request names of witnesses to be subpoenaed and date by which witnesses' names must be given to the Director.
  
- B. Duties of the Commission, Committee of the Commission, or Hearing Officer at hearing.
  - 1. When a Committee of the Commission is assigned to hear an appeal, it shall elect one of its members to be Chairperson. The Commission Committee, or Hearing Officer shall have full authority and responsibility for the proper and orderly conduct of the hearing.
  - 2. Proceed with the hearing at the time, place and date previously set, regardless of the presence or absence of the parties concerned, unless good cause exists for postponement.
  - 3. Have full recourse to the resources of the District in the orderly conduct of the hearing.
  - 4. Adjourn, postpone, continue or reopen a hearing as deemed advisable.
  - 5. Have a stenographic report made of the proceedings. A court reporter shall be hired at the discretion of the Commission, Committee, or Hearing Officer in those cases in which the nature or the charges is serious or when appellant is represented by counselor for other reasons when deemed appropriate.
  
- C. Conduct of the hearing:
  - 1. Establish the issue by reading the charges forming the basis for its action.
  - 2. Administer oaths to all parties testifying.
  - 3. Assure proper identification of parties' representatives.

4. District shall present its case first, as appropriate.
5. Appellant shall be responsible for the conduct of his case.
6. Both the District and the appellant shall have the right of rebuttal and cross examination.
7. Participating Commissioners, or the Hearing Officer, shall have the prerogative to question witnesses at any time.
8. Closing argument shall be given by the appellant or his/her representative followed by the District's closing arguments.
9. Assigned Commission, Committee, or Hearing Officer shall adjourn the hearing when satisfied that testimony taken is adequate to serve as basis or decision.
10. After completion of testimony by parties the Commission or Committee, or Hearing Officer, shall notify parties that a written decision will be mailed to the appellant and the District within a reasonable time of the hearing.

D. Recommendation:

1. The decision should be written.
2. The decision should touch on all pertinent allegations made in the Statement of Charges.
3. The decision should clearly state the result.

E. Hearing Officer's Recommendation to Full Commission:

1. Recommendations concerning the findings should be made to the Commission within 30 days after conclusion of the hearing. The Commission may accept, reject or call for additional evidence deemed material, and the Commission's order or decision, with or without such additional evidence, shall be final. Any rejection or amendment shall be based on a review of the transcript of the hearing or upon results of such supplementary hearing or investigation as the Commission may order.
2. The Commission shall render its judgment as soon as possible after receipt of recommendation of the Hearing Officer and in no event later than 15 days unless unusual conditions prevent a decision within the allotted time.
3. The decision of the Commission is final.

#### 60.1000.5 Reinstatement

If the Commission sustains the employee, it may order paid all or in part of his/her full compensation from the time of suspension, demotion or dismissal, and it shall order his/her reinstatement. Upon notification of the Commission's decision, the Board of Education shall reinstate the employee and authorize such compensation as the Commission directs.

#### 60.1000.6 Cost of Hearing

All costs for the services of a Hearing Officer employed by contract or as a professional expert and the court reporter including but not limited to per diem expenses the Hearing Officer and court reporter's travel and assistance expenses and cost of any hearing room will be borne equally by the District and the employee's participating representative. All other costs will be borne by the party incurring them. Costs of transcripts shall be equally borne by the District and the participating parties, if the transcript is requested by the hearing officer or both parties, if a copy of the transcript is requested by only one party, that party shall incur the expense.