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AGREEMENT

BETWEEN

FREMONT PUBLIC SCHOOLS
BOARD OF EDUCATION

AND

FREMONT EDUCATIONAL SUPPORT
PERSONNEL ASSOCIATION
(FESPA)

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July 1, 2004 to June 30, 2006

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AGREEMENT

This agreement is entered into this **6th** day of **July**, 2005, by and between the Fremont Public Schools Board of Education, Fremont, Michigan, (hereinafter called the "Board" or "Employer,") and the Fremont Education Support Personnel Association, (hereinafter called the "Association" or "Union").

ARTICLE 1 **PURPOSE**

1.1 This agreement is negotiated pursuant to the Public Employment Relations Act, as amended MCLA 423.201 et. seq.; MSA §17.455(1) et. seq. ("PERA"), to establish the wages, hours, terms and conditions of employment for the employees herein defined.

1.2 The Employer and the Union recognize the importance of orderly and peaceful labor relations for the mutual interest and benefit of the Employer, Employees, and the Union.

1.3 This agreement shall constitute the full and complete commitment between both parties and may be altered, changed, added to, deleted from, or modified only through the voluntary, mutual consent of the parties in written and signed amendment to this agreement. Should any provision of this agreement be found contrary to law, the contrary provision shall not be deemed valid and subsisting except to the extent permitted by law, and the balance of the agreement shall remain in effect for the duration of the agreement. The parties shall meet at a mutually agreed time to negotiate the provision found to be contrary to law.

ARTICLE 2 **RECOGNITION**

2.1 The Board hereby recognizes the Fremont Educational Support Personnel Association as the exclusive bargaining agent, as defined in applicable Michigan statutes, including Act 451, Public Acts of 1976 as amended, in regard to wages, hours, and other terms and conditions of employment for the following described and designated positions as set forth in MERC Case No. ROO A-5: All full-time and regular part-time office secretarial/clerical, teacher assistants, Media Center assistants and building assistants; excluding managerial, supervisory, confidential, substitute, temporary, seasonal and contractual persons, volunteers and all other employees.

2.2 Substitute employee shall be defined as a person scheduled to work, typically on a per diem or hourly basis, in the absence of a regular or temporary

employee on a leave of absence (paid or unpaid) including vacation, and during time required to post and fill vacancies.

2.3 Temporary employee shall be defined as a person employed by the Board to meet seasonal needs or to fill employment demands of a particular temporary situation, as provided in this agreement. Temporary employees work a period of time equal to a normal semester or less in any school year or as provided in this agreement.

2.4 Seasonal employee shall be defined as employees who are hired to meet specific seasonal needs.

2.5 Volunteer shall be defined as a person who performs services on a sporadic or regular basis without compensation.

2.6 Contractual person shall be defined as a person who is contracted by the Board to perform work if and to the extent permitted by PA 112 or this Agreement.

2.7 In accordance with the parties' past practice, supervisory employees and non-bargaining unit members may perform duties normally performed by bargaining unit members as they have done in the past.

2.8 The employees within the bargaining unit shall be assigned to one of the four classifications generally described in Appendix C. See the job descriptions for more detailed information.

2.9 Unless otherwise indicated, the term "employee" when used in this agreement refers to individuals employed in positions within the above-defined bargaining unit. The terms "Board" or "Employer" refer to the Board of Education of the Fremont Public Schools, its administrative personnel or authorized agents of the Fremont Public School District.

2.10 Employees whose work assignment is the school year, plus more than five (5) additional weeks, shall be called Full-Time Employees.

2.11 Employees whose normal work day, week, and year corresponds to the School Day, Week and Year, with the possible addition of a total of five weeks either before and/or after the commencement of the school year, shall be called School-Year Employees. The school year is defined as the period commencing upon the first day of class and ending on the last day of class.

If a previously designated "school-year" employee works more than the "additional" five weeks per school year in her/his current position, as defined for that group, then that employee would be re-designated as a "full-time employee,"

and would be eligible for benefits available to full-time members as outlined in this agreement. Work performed for summer school sessions would not be included in the computation. Days worked in July and/or August would be included in the upcoming school-year calculation, and days worked in June would be included in the just-completed school year.

2.12 The term "Supervisor" as used in this agreement shall be limited to members of the School Administrative Staff. Teachers or members of other bargaining units may provide functional direction, but are not to be construed as being the "Supervisor" of employees covered by this agreement.

ARTICLE 3 **EMPLOYEE RIGHTS**

3.1 Pursuant to the Michigan Public Employment Relations Act, the Board agrees that every employee of the District has the right freely to, or not to, organize, join and support the Association for the purpose of engaging in collective bargaining or negotiations and other concerted activities for mutual aid and protection. As a duly elected body exercising the governmental power under the color of the law of the State of Michigan, the Board undertakes and agrees that it will not directly or indirectly discourage or deprive or coerce any employee in the enjoyment of any rights conferred by the Act or other laws of Michigan or the United States or the Constitutions of Michigan and the United States; that it will not discriminate against any employee with respect to hours, wages or any terms or conditions of employment by reason of his/her membership in the Association, his/her participation in any lawful activities of the Association or collective negotiations with the Board, or his/her institution of any grievance, complaint, or proceeding under this Agreement or otherwise with respect to any terms or conditions of employment.

3.2 As a duly-elected body exercising governmental power under color of law of the State of Michigan, the Employer undertakes and agrees that it will comply with PERA, as amended.

3.3 Employees may wear insignia, pins or other identification of union membership at any time.

3.4 **Individual Rights** - Nothing contained within this agreement shall be construed to deny any employee rights he/she may have under applicable state or federal laws. The rights granted to employees in this agreement are in addition to those provided by law.

3.5 **Personal Life** - In general, the private and personal life of any bargaining unit member is not within the appropriate concern or attention of the employer as long as it does not bear on the member's employment. Any employee who, while employed by the Board, is convicted of a felony that bears on his/her

employment responsibilities, shall be discharged. A conviction of criminal misconduct involving minors is of appropriate Board concern for discipline or discharge whether or not such misconduct occurs at work or on school premises.

3.6 Non-Discrimination - The Board will continue to comply with applicable laws that prohibit discrimination upon and during employment because of age, race, religion, color, national origin, sex, marital status, non-disqualifying disability, or other protected characteristic identified in applicable nondiscrimination statutes.

3.7 Discipline and Discharge - Non-probationary employees shall not be disciplined without just cause. Discipline and non-renewal of probationary employees shall not be subject to this provision.

3.8 Progressive Discipline - In administering discipline, the Board agrees to a concept of progressive discipline. There may be a combination or acceleration of discipline when the circumstances warrant.

3.9 Disciplinary Records - In the event of any discipline, at the employee's request, a meeting will be scheduled with the affected administrator, employee and, at the employee's request, a Union representative, if no meeting has previously occurred in which the employee has had an opportunity to respond to the events giving rise to the disciplinary action. A copy of written disciplinary material shall be given to the employee and the Union before being placed in the employee's personnel file. The employee may be required to acknowledge receipt of a copy by signing it, such signature acknowledges receipt and does not signify agreement with the content. If material placed in the file is found to be false or unsubstantiated by the Employer or an arbitrator, the material will be corrected or expunged from the file, as appropriate.

3.10 Complaints - Any complaint made against an employee shall be promptly called to the attention of the employee if the Board intends to make the complaint, or action concerning the complaint, part of the employee's personnel file. If the complaint is not brought to the employee's attention within fifteen (15) work days after the Board learns of the complaint, the employee will be advised of the need to meet regarding the complaint within such 15 day period, and offered a time and date to meet and discuss the complaint. The identity of the complainant may be withheld for proper cause.

3.11 Employee Response - Any employee may submit a written response to a written disciplinary action or written complaint no later than twenty (20) work days after receipt of the written discipline or within twenty (20) work days after a copy of a written complaint is placed in the employee's personnel file. Any such response shall be placed in the employee's personnel file attached to a copy of the written disciplinary action or written complaint.

3.12 Representation - An employee shall be entitled to have present a representative of the Union, during any meeting or interview which will or may lead to disciplinary action by the Employer. The Board shall advise the employee if the meeting or interview is reasonably likely to lead to discipline. When a request for such representation is made, no action shall be taken for up to 24 hours so that the Union can arrange for a representative of the Union to be present, unless other arrangements are agreed upon between the parties. In the event the incident is of a serious and a time-sensitive nature, the Union will work with the Board to arrange expeditious representation. The Board may also advise the Union of an anticipated need for representation.

3.13 Personnel Files - At reasonable times, an employee may review the contents of his/her personnel file, excluding initial references for the Board pertaining to said individual prior to initial employment. A representative of the Union may accompany him/her in such review.

3.14 Requests for Personnel Files - The Board will notify any employee when a copy of his/her personnel file is requested to be reviewed by a third party pursuant to the FOIA. Such employee shall be provided a copy of the request and given an opportunity to review the records the Board believes it must disclose, before a disclosure occurs. Upon request, one copy of all records disclosed by the Board shall be given to the employee.

3.15 Adverse Material - Complaints and letters of reprimand more than five (5) years old shall not be considered for disciplinary reasons, provided the employee has not had a similar occurrence in the intervening time period and provided the reprimand does not reference unprofessional conduct as defined in MCLA §380.1230B. Such reprimands may remain in the file unless the Superintendent grants a request to remove them.

3.16 Assault - Any case of assault upon an employee or damage to the employee's property, while the employee is performing duties, shall be promptly reported to the employer. The employer shall promptly render necessary assistance to the employee, when possible, to prevent injury and/or loss of property. Upon request, the employee may consult with a Board provided lawyer concerning any ensuing legal proceeding to advise the employee of his/her rights and obligations with respect to such assault as well as in connection with the handling of the incident by law enforcement and judicial authorities. This provision does not require the actual filing or processing of an action on behalf of the employee, nor the presence of Board counsel at any proceedings.

3.17 Health Related Services - Bargaining unit employees shall continue to administer medication and perform health related tasks as assigned by the Board. Individual employee preferences shall be considered in making such assignments. The supervisor, in consultation with the school nurse, may delegate student health related tasks (e.g., tube feedings, catheterizing, and

other health related procedures) to the assigned employee who shall receive appropriate training and supplies from the school nurse or other appropriate personnel. If the nurse and supervisor believe that the tasks should be reassigned, or the employee is unable or unwilling to perform the assigned tasks, volunteers will be solicited. Where feasible, such tasks will be reassigned for the balance of the school year to a qualified volunteer, provided there is minimal disruption to the building's educational program. If no qualified volunteers are available, a special conference will be held with the supervisor, school nurse, affected employees and a Union representative, to discuss and identify possible solutions. If agreement is not reached an appeal may be made to the Superintendent whose decision shall be from among the identified solutions and is final.

Where feasible, such services shall be carried out in the presence of another adult. Except that reasonable effort shall be made so that special toileting, diapering and catheterizing occur either in the presence of another adult or within reasonable proximity of another adult.

Upon request of the employee's supervisor, employees shall be provided with copies of documentation authorizing and describing the health related service and providing information about the student's health care provider (including an emergency number if available) that are in the District's possession.

Upon request of the employee's supervisor, employees shall be provided with an appropriate protocol for emergency situations. Procedures will also be developed for handling problems that may occur. The procedures will include a protocol for contacting medical personnel, as needed.

The Board will continue to provide liability insurance coverage to employees acting within the scope of their employment.

3.18 In each school, the Employer shall designate lunchroom and restroom facilities for employee use. Telephones shall also be designated for employee's private use.

3.19 Bargaining unit employees shall be offered seasonal positions prior to offering the work outside the unit provided (1) the work is in addition to the employee's regular work assignment; (2) the bargaining unit employee can perform the work without disruption of his/her regularly assigned work; (3) the bargaining unit employee is, in the opinion of the Board, qualified to do the work; and (4) by adding this work to the employee's assignment the Board does not assume an overtime pay obligation. If no bargaining unit employee applies for the seasonal work, the District can hire temporary employees from any source.

3.20 The Board shall annually make available to employees copies of Board policies which describe the Board's compliance with applicable state and federal

laws (such as EEO laws) and the complaint procedures available to employees who believe they are the victim of unlawful discrimination, including sexual harassment.

ARTICLE 4
ASSOCIATION SECURITY AND CHECKOFF

4.1 In that the Union is required under this agreement to represent all of the employees in the bargaining unit fairly and equally without regard as to whether or not any employee is a member of the Union, and in consideration that the terms of this agreement have been equally made for all employees in the bargaining unit, accordingly, it is agreed that while membership in the Union is not compulsory, it is fair that each employee in the bargaining unit pay equally for benefits received and that each assumes her/his fair share of the cost of representation.

4.2 Each employee in the bargaining unit shall, as a condition of employment:

4.2.1 On or before thirty (30) days from the date of commencement of duties or the effective date of this agreement, whichever is later, join the Union, or

4.2.2 Pay a service fee to the Union, pursuant to the Union's "Policy Regarding Objections to Political Ideological Expenditures" and the administrative procedure adopted pursuant to that policy. The service fee shall be lawfully determined and shall not exceed the amount of Union dues collected from Union members. The employee may authorize payroll deduction for such fee.

4.2.3 In the event that the employee shall not pay such service fee directly to the Union, or authorize payment through payroll deduction, the employer shall, pursuant to MCLA 408.477; MSA 17.277(7) and the request of the Union, deduct the service fee from the employee's wages and remit same to the Union. Payroll deductions made pursuant to this provision shall be made in equal amounts, as nearly as may be, from the paychecks of each affected employee. Monies so deducted shall be remitted to the Union, or its designee, no later than twenty (20) days following deduction.

4.3 **Objections Policy** - Pursuant to Chicago Teachers Union v Hudson, 106 S Ct 1066 (1986), the Union has established a "Policy Regarding Objections to Political Ideological Expenditures." That policy, and the administrative procedures (including the timetable for payment) pursuant thereto, applies only to non-Union bargaining unit members. The remedies set forth in that policy shall be exclusive, and unless and until such procedures, including any administrative or judicial review thereof, shall have been availed of and exhausted, no dispute,

claim or complaint by an objecting bargaining unit member concerning the application and interpretation of this article shall be subject to the grievance procedure set forth in this agreement, or any other administrative or judicial procedure.

4.4 Dues Deductions - Any bargaining unit employee who is a member of the Union, or who has applied for membership, may sign and deliver to the employer an assignment authorizing deduction of dues, assessments and contributions to the Union as established by the Union. Such authorization shall continue in effect from year-to-year unless revoked according to the procedures outlined in the Michigan Education Association (MEA) constitution, bylaws and administrative procedures. Pursuant to such authorization, the employer shall deduct one-tenth of such dues, assessments and contributions from the regular salary check of such bargaining unit employee each month for ten (10) months, beginning in September and ending in June of each year.

4.5 Limitation of Employer Responsibility - The employer shall use its best efforts to make the aforesaid deductions but assumes no responsibility for any errors in making the deductions other than to correct such errors.

4.6 Payroll Deduction - Upon appropriate written authorization from the bargaining unit employee, the employer shall deduct from the wages of any such bargaining unit employee and make appropriate remittance for MEA financial services programs and annuities, MESSA programs not fully employer paid, credit union, savings bonds, charitable donations, MEA-PAC/NEA-PAC contributions or any other plans or programs jointly approved by the Union and the employer.

4.7 Indemnification. The Association agrees to assume the legal defense of any suit or action brought against the Board regarding this article of the collective bargaining agreement. The Association further agrees to indemnify and hold harmless the Board (including each individual school board member) for any costs, including back pay or damages and court or agency costs which may be assessed against the Board as a result of said suit or action, subject, however, to the following conditions:

a. The damages have not resulted from the negligence, misfeasance or malfeasance of the Board or its agents.

b. The Association, after consultation with the Board, has the right to decide whether to defend any said action or whether or not to appeal the decision of any court or other tribunal regarding the validity of the action or the defense which may be assessed against the Board by any court or tribunal.

c. The Association has the right to choose the legal counsel to defend any said suit or action.

d. The Association shall have the right to compromise or settle any claim made against the Board under this section after consultation with the Board.

For the purposes of this article, "Board" shall mean the Fremont Public School District, its Board of Education, its Administrative Personnel or legitimate agents, as well as past and present Board of Education members.

4.8 Invalidation. Should a court of competent jurisdiction rule that the mandatory deduction of the service fee is contrary to law, the parties shall negotiate a successor provision to address this matter and bring this agreement into compliance with the law.

4.9 Impact of invalidation. Should the indemnification provision set forth in Section 4.7 above be declared unenforceable or void by a court of competent jurisdiction, this article shall be declared nugatory and the parties will meet to negotiate this provision and bring this agreement into compliance with the law.

ARTICLE 5 **ASSOCIATION RIGHTS**

5.1 Information - The Board, upon reasonable request, shall make available to the Union the information necessary to assist in the preparation and processing of grievances, the administration of this agreement, and the preparation for all negotiations, to the extent limited by law.

5.2 Use of Facilities and Equipment - The Union and its representatives shall have the right to conduct Union business on the employer's property at reasonable times provided the employee's work is not disrupted, and notice is given to the building administration's office upon arrival, and provided that when special custodial service is required, the Board may make a reasonable charge therefore. The Union and its representatives may also use the employer's equipment and premises in accordance with Board policy without rental charge at times which do not interfere with or interrupt normal operations or the employee's duty time.

5.3 Mail - The Union shall have the right to post notices of activities and matters of Union concern at designated bulletin boards in each building or facility to which employees may be assigned. The Union shall have use in accordance with applicable Board policy of the internal delivery system of the employer, both surface and electronic, without cost, and the employer shall provide mailboxes for all employees. This shall include the continued use of the District mail service, however the Union shall pay for the reasonable cost of all materials and

supplies incident to such use, and for any U.S. Postal Service postage expenses that may be required. Employees shall not give Association materials to students without prior approval of the Superintendent or designee.

5.4 **Union Leave** – A total of 12 paid hours of leave time shall be available each year for Association leave. Up to an additional 48 hours may be used provided the Union pays for the sub cost, if any. The Board shall determine whether a sub is needed in accordance with its usual practices. The Union shall normally provide written notice to the Superintendent at least 5 school days in advance, but in no case will the notice be less than 2 school days.

ARTICLE 6 **BOARD RIGHTS**

6.1. The Board and its agents have the responsibility and the authority to manage and direct all of the operations and activities of the District to the full extent authorized by law. All of the rights and powers that the Board had prior to the execution of this Agreement are retained by it. Nothing in this Agreement shall be deemed to limit or control the exercise of the same unless, and only to the extent, they are expressly and specifically limited by this Agreement.

6.2 These rights and powers include, but are not limited to: the rights to the executive management and administrative control of the school system, employees, properties and facilities; the rights to hire, direct, assign, evaluate, recall, demote and promote employees; to determine the qualifications of employees to perform available work; to reprimand, suspend, and discharge employees (non-probationary employees for just cause); to maintain discipline, order and efficiency of employees; to lay off employees for lack of work or other legitimate reason as provided herein; to increase or reduce the work hours, day or week; to schedule shifts and hours of work not in conflict with this Agreement; to change, eliminate or establish new job classifications after notice to the Association in accordance with this Agreement as written; to establish the work content of existing or new classifications; to plan for and manage its affairs efficiently and economically including the determination of the quantity of service to be performed; to determine the number of employees and to determine and adjust the size of the management work force and to determine and adjust the schedules and location or relocation of work; to determine, adjust and eliminate the means, methods and procedures of work and to introduce new and improved means, methods and procedures; to discontinue any service, function or operation; to establish, revise and maintain and enforce work standards; to determine the policy affecting selection, training or testing of employees, providing such selection shall be based upon lawful criteria; to determine the financial policies, including all accounting procedures, and all matters pertaining to public relations; and to determine the supplies, services and equipment

necessary to continue its operations. The exercise of such Board rights shall only be limited by the terms of this Agreement as written.

6.3 Except as otherwise provided herein, all reasonable rules, regulations, policies, and procedures of the employer shall remain in full force and effect and may be changed, updated and supplemented from time to time, provided that they do not conflict with an expressed limitation in this agreement.

6.4 Without limiting the generality of the foregoing, the employer shall have the responsibility and authority to adopt reasonable rules and regulations to the extent authorized by law not in conflict with this agreement as it may from time to time deem best for the purpose of maintaining safety, discipline, security, efficient and/or effective operations.

6.5 The employer shall notify the Association of the existence of all new or revised rules and regulations and copies shall be made available to the Association for inspection and review if such rules and regulations concern working conditions. If the Association believes that any rule or regulation violates the terms of this agreement, a grievance may be filed.

6.6 The employer shall also make the employees aware of new or modified rules and regulations prior to implementation. The rules and regulations shall not limit the employer's right to discipline or discharge employees under appropriate circumstances in accordance with this agreement. It is understood that no list of rules and regulations is all inclusive.

ARTICLE 7 COMPENSATION

7.1 The compensation of employees covered by this agreement is set forth in the Wage Schedule which is attached hereto as Appendix A, and incorporated in this agreement. Such wage schedule shall remain in effect during the term of this agreement. In addition to regular daily duties, members will get compensation for other mandatory work such as extra hours for committee assignments, field trips, etc.

7.2 The monthly rates of pay shown on the salary schedule are based on full-time employment in the specified position as enumerated in Appendix A of this agreement. Monthly pay for positions that are less than full-time, as defined in this agreement, shall be prorated based on the hours worked.

7.3 When an employee is requested by his/her supervisor to work in excess of 40 hours per week, he or she shall be reimbursed at 1 1/2 times his or her hourly rate.

7.4 An Association member engaged during the working day in negotiating on behalf of the Association with any representative of the school, upon request of, or with approval of the Board, shall be released from regular duties without loss of salary.

An employee engaged during the working day in any grievance procedure, upon the request of, or with the approval of the Board, shall be released from regular duties without loss of pay.

7.5 Previous experience may be considered when placing an employee on a salary schedule. However, a new employee may not start higher than a step 4 on the salary schedule.

7.6 When an employee is changed to a higher classification, that employee will be assured no reduction in pay. The highest Classification is Class IV, followed by Class III, Class II, and Class I.

7.7 **Payment Schedule** - The basic compensation for each employee shall be as set forth in Appendix A. On or before the last Friday in May, School Year employees may elect to receive their compensation for regularly scheduled hours in one of the following ways: 1) Actual pay for the payroll period worked; 2) Twenty-six equalized pays. If no election is made, employees will receive actual pay for the payroll period worked. Compensation for additional work will be paid in the payroll period earned.

ARTICLE 8 **HOURS OF EMPLOYMENT**

8.1 The Board shall determine the work day and work week and reserves the right to adjust schedules within the normal school day or work day as needed. An employee's work hours shall normally be scheduled consecutively with no break in the scheduled work time, except for paid breaks and unpaid lunch time as provided in this Agreement.

8.2 The normal full-time work day shall generally be 8 hours. These hours, unless otherwise determined by the school, shall be 8:00AM to 5:00PM. The normal work week shall generally not exceed 40 hours, Monday through Friday.

8.3 If the Board determines it is necessary to reduce hours, the following procedures shall be followed:

8.3.1 If work hours are reduced, qualified volunteers shall be solicited through a special posting or some similar process in the affected sites. Voluntary reduction of hours shall be done by seniority, the most senior volunteer will be given priority consideration for the voluntary reduction, provided qualified employees exist to perform the remaining work.

8.3.2 The Board will consider the volunteers in determining which hours will be reduced.

8.3.3 Employees who have their regularly scheduled hours reduced by more than one hour per week from their schedules as they existed in the beginning of the 2004-2005 school year, shall have the right to bump the least senior employee within his or her classification. In the event that more than one employee suffers a reduction in hours, thus activating this provision of the contract, then the affected employees shall bump the least senior employee based on their seniority order from least to most senior. (Least senior bumps least senior) The bumped employee may take the position of the employee whose hours are reduced if that bumped employee can properly perform the work without training to do the core of the job. If the bumped employee cannot perform the work of the employee whose hours are reduced, s/he shall be considered a reduced employee and able to exercise rights under the layoff and recall section. (section 12.6) The Board reserves the right in its sole discretion to provide a transition period in the event a one-on-one special education teaching assistant is bumped as a result of this provision. The transition period may include delaying the bump until the end of a marking period in which the bump would otherwise occur. If the bump is delayed, the reduction in hours for the reduced employee will also be delayed until the bump occurs.

8.3.4 Additionally, hours can be reduced on days when the school calendar has students in school for less than a full day, or not at all, without following the above procedures.

8.4 All employees who are scheduled to work in excess of four and one-half (4.5) consecutive hours shall be entitled to a duty-free, uninterrupted, unpaid lunch period. Length of lunch period is not to exceed one hour and not to be less than one-half hour.

8.5 Employees shall have a relief break of not more than 15 minutes in the morning and in the afternoon, or for each 3 to 4 successive work hour period; such relief break to be scheduled at the approximate mid-point of the morning, afternoon, or 3 to 4 hour work period.

8.6 On days school is closed due to severe weather the start time for full year employees will be 10:00AM. Employees will work to their normal quitting time and receive their full day's wage. Employees unable to report by 10:00AM will be permitted to make up the lost time at a time mutually acceptable to the immediate supervisor. (also see Art. 14.8)

ARTICLE 9
PROBATION AND SENIORITY

9.1 **Probationary Employee** - Each new employee shall be considered to be on probation and shall have no seniority (as defined herein) until such employee has worked sixty (60) working days for the Board. During the probationary period, employment shall be at the discretion of the Board, without regard for the provision of this agreement and without recourse to the grievance procedure. The Board shall have no obligation to rehire or recall any employee who is laid off or discharged during the probationary period, nor to retain any employee for the length of probation. Upon successful completion of the probationary period, an employee shall attain seniority effective as of the employee's last date of hire (as defined herein in this Article). During the probationary period, a probationary employee shall receive no fringe benefits.

9.1.1 At the completion of the probationary period, the employee shall be notified in writing by the Board, whether or not the employee is to be continued and placed on seniority status, the placement of which would then attain regular status.

9.1.2 If a temporary employee attains a non-temporary position, the employee's probationary period shall commence on the date of hire into that position.

9.2 **Seniority** - Seniority shall be defined as the length of an employee's continuous service in the employ of the Board in a bargaining unit position since the employee's last date of hire.

9.2.1 The term "last date of hire" shall mean the date upon which an employee first reported to work at the instruction of the Board, and was subject to the terms of this agreement as a probationary or bargaining unit employee, since which the employee has not quit, been discharged, or otherwise had such employment terminated as stated in section 4 below.

9.2.2 If two or more employees have the same initial day of work in the unit, seniority will be determined among them by the last four digits of their social security numbers. The higher number shall have the greater seniority.

9.2.3 All new employees shall be placed on probation until each employee has worked 60 working days for the Board. At the end of this probationary period, if the employee is still in the employ of the Board, the employee's name shall be placed on the seniority list as of his or her last date of hire.

9.3 Seniority Lists - The Board shall prepare and maintain the seniority list. A current seniority list shall be provided to the Union President by November 1st each year. It is the Association's responsibility to notify the Superintendent or designee in writing of any error within twenty (20) working days from receipt of the list.

9.3.1 If written notice of error is not timely provided, the Board is entitled to rely on and act upon the list. After that date the list will be considered correct unless satisfactory evidence of the need for correction is presented or a new list is printed. The Board shall rely on and act upon any corrected list as they would any list confirmed by the union as outlined above. No grievance shall be filed that requires retroactive relief prior to the date of discovery as a remedy, if the Board has in good faith, acted in reliance upon the list confirmed by the Union in accordance with this section.

9.3.2 There will be two separate seniority lists. Employees will exercise their seniority only within the group where they are currently assigned, except as provided for in Article 8, 11, 12:

Group A - employees in position classifications III and IV.

Group B - employees in position classifications I and II.

9.4 Loss of Seniority - An employee shall lose all seniority, shall terminate the employment relationship, and forfeit all bargaining unit rights upon the happening of, but not limited to, one of the following events:

9.4.1 The employee quits.

9.4.2 The employee is discharged and is not reinstated through any proceedings.

9.4.3 The employee retires.

9.4.4 The employee leaves the bargaining unit for another position within the District.

9.4.5 The employee is on an unpaid leave of absence for illness, injury or disability in excess of twenty-four (24) months.

9.4.6 The employee is absent for three (3) consecutive working days or more without any notice to the Board.

9.4.7 The employee fails to return from leave on the agreed upon date without providing notice to the Board as provided in Article 14.

9.4.8 The employee does not return from layoff as set forth in the recall procedure without providing notice to the Board.

9.4.9 The employee has not been recalled from layoff after: Twelve (12) months if the employee was employed less than 4 years as of date of notice of the layoff; Twenty-four (24) months if the employee was employed four but less than seven years as of date of notice of layoff; and Thirty-six (36) months if the employee was employed for seven or more years as of date of notice of layoff.

9.5 Temporary Employees - In the event an employee being temporarily replaced quits the position or her/his employment with the district is terminated, the position shall be posted as a vacant position as soon as reasonably possible if the Board does not intend to reduce the position. The temporary employee or substitute may remain in the position until the vacancy is filled, or until the end of the current semester, if the Board intends to reduce the position. The Board may fill the vacancy when it deems appropriate, but no later than the beginning of the next school year. In such cases, the temporary or substitute employee, if continued for more than a semester, shall then be paid at step 1 until the vacancy is filled, in no event shall this arrangement continue past the beginning of the next school year. If the temporary or substitute employee has been hired into a posted vacant position during the course of the temporary assignment the employee will assume that position when the vacant position becomes available or upon the conclusion of his temporary assignment, as determined by the Board.

ARTICLE 10

GRIEVANCE PROCEDURE

10.1 Grievance Procedure - A grievance is defined as any alleged violation or misapplication of a specific provision of this agreement.

10.2 A "day" is a "work day" which is defined as a day when the grievant is regularly scheduled to work. The parties will attempt to process a grievance involving a school year employee filed after the end of the school year in as expeditious a manner as possible. The work days of the grievant will be the "outside" time limit for summer-time grievances referred to here.

10.3 All grievances shall be processed during time which does not interfere with the performance of employee job responsibilities. This does not preclude the processing of grievances during work hours and during release time as long as it does not disrupt the employee's work.

10.4 Informal Level - An employee having a grievance may meet with his or her supervisor, and at the employee's choice a Union representative, in an effort to resolve the matter informally within ten (10) work days of the incident or circumstances giving rise to the alleged violation, or within ten (10) work days from the time that the involved grievant first knew or could have known of the facts giving rise to the grievance in situations where the employee could not

reasonably have known at the time of the actual occurrence of such facts. If the grievant is not satisfied with the outcome of the meeting, she/he may file a written level one grievance with her/his immediate supervisor within ten (10) work days of the meeting.

10.5 Formal Level

Step One:

10.5.1 Any grievance may be formally initiated at this level. A grievance processed at this level must be reduced to writing, state the facts upon which it is based and when they occurred, specify the section(s) of this agreement which has allegedly been violated, specify the relief requested, and be signed and dated by the aggrieved employee and the Association.

10.5.2 A Level One grievance shall be filed no later than ten (10) work days after the informal level meeting. If an informal level meeting did not occur, the level one grievance shall be filed no later than ten (10) work days after the time the involved grievant first knew or could have known of the facts giving rise to the grievance in situations where the grievant could not reasonably have known at the time of the occurrence.

10.5.3 If a meeting was not held at the Informal Level, within ten (10) days of receipt of the grievance, the supervisor shall hold a meeting with the grievant and a Union representative to discuss and attempt to resolve the grievance. The supervisor shall provide the grievant with a written response within five (5) days of the meeting, or within ten (10) days of the receipt of the grievance if no meeting is held.

10.5.4 Association grievances must be signed by the Association President or her/his designee, and shall identify aggrieved employees, if any. If the alleged contract violation or misapplication originated with the Administration Office in the first place or if it involves more than one supervisor, the Association grievance shall be initiated with the Superintendent.

10.6 **Step Two** - If the grievance is not settled in Step One, and the aggrieved employee and the Association desire to advance the grievance to the Second Step, the employee and/or Association must serve written notice of such appeal upon the Superintendent, or designee within ten (10) working days after receipt of the Supervisor's written Step One answer. The Superintendent shall meet with the aggrieved employee(s) and Union representative(s) and shall give the aggrieved employee and the Association a written, Step Two response within ten (10) working days after receiving the grievance at this Step.

10.7 **Step Three** - If the grievance has not been settled at Step Two, and the Association desires to appeal it to the Third Step, a written notice of such appeal

must be served upon the Superintendent of Schools, or in the event of his unavailability, upon his designee within ten (10) working days after the Step Two answer. The Superintendent of Schools shall submit the grievance to the Board or a Board committee at the Board's option. A hearing shall be held before at least three (3) members of the Board of Education at the next regularly scheduled Board or committee meeting or within thirty (30) calendar days, whichever occurs first, after receipt of the Step Three grievance. The Board or its designated committee shall give to the Association a written answer of disposition to the grievance within twenty (20) calendar days following the above-referenced hearing or at its next regularly scheduled meeting following the grievance hearing whichever is sooner.

10.8 Step Four - If the grievance is not settled at Step Three and the Association desires to appeal it to the Fourth Step, the Association must file a written request for binding arbitration with either the American Arbitration Association (AAA) or Michigan Arbitration & Mediation Association (MAMA) and must serve a written copy of such request upon the Superintendent, all within fifteen (15) working days after the Board's Step Three answer. AAA or MAMA shall appoint an arbitrator in accordance with their rules.

10.8.1 Any such binding arbitration proceeding shall be subject to all of the following terms and conditions:

a. The recommendation(s) of the arbitrator shall be binding upon the Board and the Association. However, each party may have its legal remedies if the arbitrator exceeds the powers described in this Agreement.

b. Not more than one (1) grievance shall be heard by any arbitrator at any one time unless the parties mutually agree otherwise. The arbitration hearing shall be held in Board offices; or at a mutually agreeable site.

c. The arbitrator shall have no authority, directly or indirectly, to add to, subtract from, disregard, alter or modify any provision or provisions of the Agreement; her/his powers are limited to interpreting this Agreement.

d. The arbitrator shall not base his/her recommendation(s) on state or federal law, or interpret state or federal law or the Constitution, but must make recommendation(s) solely on the basis of the provisions of this Agreement.

e. The arbitrator shall not recommend any alteration in any policies, rules and/or actions of the Board which are not specifically in violation of this Agreement.

f. The arbitrator shall not recommend any monetary or financial adjustment or settlement of a grievance retroactively more than twenty five (25) working days before the date of filing the grievance, or the payroll period

immediately preceding initiation of the grievance at the Informal Level, whichever is longer; and any claim for or recommendation of back wages shall be offset by any unemployment compensation paid, and by any compensation derived from any substitute employment or interim earnings (provided such earnings were not part of grievant's earnings prior to the incident precipitating the grievance), during the period for which back wages are sought.

g. The arbitrator shall not recommend any punitive damages.

h. The arbitrator shall have no power to recommend new salary schedules, or to recommend any monetary adjustment where there has been no wage loss.

i. The costs or expenses of the arbitrator shall be borne by the party least supported by the arbitrator's decision as determined by the arbitrator. Any costs or expenses individually incurred by the parties, however, including any transcript of an arbitration proceeding ordered by a party shall be borne by the party incurring the cost of expense.

j. Any grievance which is not appealed to binding arbitration within the time limit hereinabove provided shall be considered adjusted and may not thereafter be so appealed.

k. The arbitrator shall have no power to decide any question which, under this agreement, is within the responsibility of management to decide, except as they may be specifically limited by this agreement.

l. Grievances which are not filed or appealed in the manner or within the time limits specified in the grievance procedure shall be considered to have been withdrawn or abandoned and shall not be resubmitted. If the Board fails or neglects to answer a grievance within the time limits specified at the various steps of the grievance procedure, the grievance shall automatically be referred to the next higher step in the grievance procedure.

It is understood and agreed, however, that the time limits specified in this grievance procedure may be extended by mutual agreement in writing between the aggrieved employee or Association and the Board.

m. Notwithstanding any other provisions hereof, any individual employee may at any time present a grievance through Step Two on the employee's own behalf and have the grievance adjusted, without intervention by the Association, if the adjustment is not inconsistent with the terms of this agreement, provided the Association has been afforded an opportunity to be present at such adjustment. A copy of any adjusted grievance under this paragraph will be forwarded to the Association President.

n. The decision of the arbitrator shall be final as to all parties and shall be enforceable through application of the Circuit Court for the County of Newaygo for enforcement.

o. Students' FERPA rights will be honored throughout the process.

p. Any grounds or evidence not identified in the grievance procedure by written reference shall not be admitted at arbitration, except in the event that testimony provides newly discovered evidence, as the parties agree that the purpose of this procedure is to resolve all disputes at the earliest possible phase, and surprising the other party with new evidence or grounds at arbitration is contrary to that mutually recognized goal.

q. The grievance and arbitration procedure shall not apply to:

1. The discharge, discipline, failure to re-employ or suspension of a probationary employee.
2. Any matter involving the content of an employee's written evaluation, unless specifically stated otherwise herein.
3. Any provision of this agreement which contains an express exclusion from this procedure.
4. Any matter prescribed by law over which the Board either has no power or discretion, provided the matter and/or its impact is not addressed specifically in this Agreement. However, alleged contract violations that arise from the contractual impact of such matters prescribed by law are fully arbitrable, except for the nonnegotiable impacts identified in PA 112.

r. The following matters shall not be advanced to arbitration, though they may be processed through the grievance procedure:

1. Any matter or complaint for which there is recourse under state or federal statutes, (specifically EEOC, MDCR and OCR).
2. The content of any job description or posting, the qualifications or performance expectations required of any position.

3. Alleged procedural violations of Article 17 may advance to arbitration, but no evaluation shall be rescinded solely due to alleged procedural defects, unless such defects resulted in discipline or financial loss to the employee.

ARTICLE 11

VACANCIES AND PROMOTION

11.1 Vacancy Defined - A vacancy shall be defined as a newly created position, or a present position that is not filled and that the Board intends to fill.

11.2 Vacancy Posting - All vacancies shall be posted in a conspicuous place in each building of the District and shall remain open for application for a period of five (5) work days from the day after the vacancy posting was actually faxed or delivered to the buildings and sites. Said posting shall contain the following information:

1. Type of work
2. Location of work
3. Starting Date
4. Rate of Pay
5. Hours to be Worked
6. Classification
7. Summary of Job Requirements, including minimum requirements as reflected in the job description.

11.3 Vacancy Notification - Interested employees may apply in writing to the Superintendent, or designee, within the posting period. The Employer shall notify employees who provide it with stamped, self addressed envelopes of vacancies occurring during the summer months (June, July, August).

11.4 Filling of Vacancies - The vacancy shall be filled with the applicant who is most qualified based on the job description, posting, prior experience and job attainments, recommendations, evaluations, attendance, work record, and length of service within the unit, where applicable.

11.4.1 In the event that the Board determines that two or more internal applicants are equally qualified for the vacant position, the Board shall give priority to qualified applicants from within the affected classification. Seniority shall be used as a determiner, with the most senior applicant being awarded the position, when two or more internal applicants are equally qualified.

11.4.2 The Board supports a policy of promoting from within existing bargaining unit. The Board shall first give priority to applications from within the bargaining unit, providing the bargaining unit applicant(s) has the necessary

qualifications, ability, training and/or experience to perform the work as outlined in the job description of the vacancy, in an efficient and effective manner. If the bargaining unit applicant does not possess these qualities, then the Board may accept qualified candidates from existing staff, including temporary employees who may not be members of the bargaining unit. If there are no qualified candidates from the bargaining unit or from existing staff, then the Board may solicit candidates from outside the District.

11.5 Selection - Within twenty (20) workdays after the expiration of the posting period, the Employer shall make known its decision as to which applicant has been selected to fill a posted position. Each applicant interviewed for the position shall be so notified in writing with a copy provided to the Union President.

11.6 Transfer Rights - In the event that an employee is upgraded or promoted to a higher classification pay scale, she/he shall be placed on the Step immediately above the Step that most closely reflects the employee's wage rate at the date of the promotion or upgrade. In no event will the employee be paid less than her/his pay rate at promotion or upgrade.

11.7 Involuntary Transfers - A transfer is a change in building (except that building changes that occur with the transfer of a one-on-one special education student/aide shall not be considered involuntary). A change of assignment within a building is not a transfer. Involuntary transfers of employees shall not be capricious and shall be minimized to the extent reasonably possible. In the event that the Board determines that a transfer is needed, the Board will first seek qualified volunteers willing to accept the transfer.

11.7.1 If no qualified volunteer is available, the Board may involuntarily transfer either the least senior employee in the affected classification, or if a specific building is determined by the Board to have excess staff, the least senior employee within that classification within the identified building. In either case, the employee must be qualified to do the job without training to do the core of the job. The parties also agree that involuntary transfers shall be made with due regard to preserve the District's educational programming.

11.7.2 If a regular education TA is involuntarily transferred to a special education TA assignment, the employee so transferred shall receive priority consideration for the next regular education TA vacancy for which the TA is qualified. In such event it is understood that the timing of an award of a regular education TA vacancy to an involuntarily transferred special education TA shall be made with minimal disruption to the educational program of the affected student.

11.8 Temporary Assumption of Duties - Employees shall not be placed on a lower step (wage schedule) due to transfers, nor shall they suffer any loss of accrued seniority, vacation, holiday or leave benefits.

ARTICLE 12
STAFF REDUCTION

12.1 **Layoff Defined** - Layoff shall be defined as a necessary reduction in the work force beyond normal attrition as determined by the Board. A reduction in staff does not include a reduction in hours except only as described in Section 8.3.3.

12.2 For the purpose of layoff and recall, there will be two separate seniority lists. Employees will exercise their seniority within the group where they are currently assigned, as follows:

Group A: All seniority employees in position classification III and IV.

Group B: All other seniority employees, in position classification I and II.

12.3 An employee identified for staff reduction shall be notified in writing as soon as reasonably possible but not less than at least two weeks prior to the effective date by the Board. Such notice will not apply when layoffs are due to work stoppages or Acts of God.

12.4 In the event the Board determines a reduction in staff is needed, these procedures will be followed:

12.4.1 The Board shall determine the number of positions in the seniority group to be reduced and identify specific, if any, positions that are to be reduced.

12.4.2 Long term substitutes, temporary and probationary employees shall be laid off first in the affected seniority group, provided the remaining employees are presently qualified to perform the duties of the available positions.

12.4.3 Volunteers will be solicited for the necessary layoff provided the remaining employees are presently qualified to perform the duties of the available positions without training to do the core of the job. In the event that there are not adequate volunteers, seniority employees will be laid off in inverse order of seniority (least senior employee first) within the affected seniority group, provided the remaining employees are presently qualified, as determined by the Board, to perform the duties of the available positions without training to do the core of the job.

12.4.4 The employee(s) laid off shall have the option of bumping the least senior employee within the unit, from any classification, provided the laid off

employee has more seniority than the employee bumped, and is presently qualified, as determined by the Board, to perform the least senior employee's duties without training to do the core of the job.

12.5 The employer shall not hire a new employee while there are employees on layoff presently qualified to perform the available work without training to do the core of the job, as determined by the Board, for a vacancy or newly created position.

12.6 In the event that a building or program is reduced or closed, employees whose positions are eliminated shall have the right to bump the least senior employee in her/his classification for which the senior employee is presently qualified (without training to do the core of the job), to perform the duties and which allow the employee as much as possible to maintain his/her previous work hours. If there is no one to bump within the classification, the employee may bump the least senior employee in another classification, provided the reduced employee is presently qualified without training to do the core of the job, to perform the least senior employee's duties in an efficient and effective manner. It is understood that any bumping of special education one-on-one teaching assistants shall generally occur at the end of a marking period or semester to minimize disruption to the affected student. If a bump is delayed pursuant to the foregoing sentence, the reduced staff member will not be reduced in hours or pay, or will continue in the original position until the bump can occur.

12.7 **Substitute Priority** - A laid-off employee shall, upon application and at his/her option, be granted priority status for substitute assignments according to his/her seniority.

12.8 Laid-off employees may continue their health, dental and life insurance benefits by paying the regular monthly subscriber group rate premium for such benefits to the employer.

12.9 **Recall** - The Board will recall laid off employees in order of seniority, with the most senior recalled first, provided the most senior person on layoff is presently qualified to perform the available work without training to do the core of the job. The Board is not required to recall probationary, temporary or substitute employees.

12.10 Notices of recall shall be sent by certified or registered mail to the last known address as shown on the employer's records. The recall notice shall state the time and date on which the employee is to report back to work. It shall be the employee's responsibility to keep the employer notified as to his/her current mailing address.

12.11 A recalled employee shall be given ten (10) business days from receipt of notice, excluding Saturday, Sunday and holidays to return to work, exceptions

may be made by the Superintendent or designee. The Employer may fill the position on a temporary basis until the recalled employee can report for work.

12.12 Employees recalled to full-time work of equal pay and benefits for which they are qualified are obligated to take said work. An employee who declines recall to full-time work of equal pay and benefits for which he/she is qualified shall forfeit his/her seniority rights.

12.13 Employees on layoff shall not forfeit seniority until recall rights end as stated in Article 9.4.9.

12.14 Acceptance or refusal of recall to a position which is lower in pay and/or benefits than the position from which the employee was laid-off shall not affect his/her rights to recall to an equivalent position and the employee shall continue to be considered eligible and available for recall.

ARTICLE 13 **RESIGNATION**

13.1 Any employee who resigns shall notify his/her immediate supervisor in writing at least two weeks prior to the effective date of resignation.

13.2 Any employee who discontinues his/her services does not forfeit his/her right to earned vacation time, provided proper notice is given as stated in 13.1.

ARTICLE 14 **LEAVES**

14.1 Sick leave allowance for full-time employees shall accrue at the rate of 12 days per fiscal year accumulative to 120 days. Sick leave allowance for School Year employees (defined in Article I, Section D) shall accrue at the rate of 10 normal days per fiscal year accumulative to 91 days (02-03), 92 days (03-04).

Employees with less than 90 sick leave days accrued at the end of the previous fiscal year may use up to 2 personal leave days per current fiscal year. Employees with 90 or more sick leave days accrued at the end of the previous fiscal year may use up to 3 personal leave days per current fiscal year for business which cannot be handled any other time than during the school day, charged to the sick leave allowance.

Personal leave must be requested in writing at least 24 hours in advance. Such personal leave days must be taken in increments of no less than one-half day.

Sick leave allowance is intended primarily for the employee; however, it may be used for family illness – including children, stepchildren, foster children, spouse,

and parents or stepparents. Sick leave is not to be used for the routine care of the family.

It is the intent of this agreement that each employee shall be entitled to utilize up to 2 sick leave days annually for dental or medical appointments. Sick leave allocated for this purpose may be taken in such time increments as is necessary to insure the least amount of lost work time.

14.2 When an employee is ill, s/he must notify the principal or immediate supervisor one hour prior to the usual starting time.

14.3 If accumulated sick leave is exceeded, full deduction of pro-rated daily salary will be made for the period of absence.

14.4 Probationary employees will not receive sick leave benefits during the probationary period. If, at the end of the probationary period, the employee is retained in a regular position, sick leave will be granted at that time and pro-rated for the first year per Section 14.1.

14.5 In cases of illness that exceed 3 or more sick days in any one month, or any questionable absences, the Board shall have the right to require verification of the illness or absence. If the Board requires a form of verification that causes additional expense to the employee and the expense is not covered by insurance, the Board shall reimburse any reasonable expense for an office visit to a health provider to obtain the verification, provided that the questioned absence is justifiably excused as a result of such verification.

In accordance with applicable law, such as the ADA and the FMLA, the District may require verification of an illness or absence that falls under the purview of the law within the timeframe established in the law.

14.6 A bereavement leave, with pay, not to be charged against sick leave or vacation, to a maximum of 3 working days for each death in the immediate family shall be made available for each non-probationary employee, if the bereavement period occurs during their normal working schedule.

For purposes of bereavement leave, "immediate family" shall be defined as an employee's wife, husband, children, mother, father, sister, brother, mother-in-law, father-in-law, and grandchildren.

In addition to the above, each employee will be entitled to one day bereavement leave for the following family members: niece, nephew, grandparents, brother or sister-in-law, aunt or uncle; provided this bereavement leave time does not exceed two full days in any given school year. In case of an emergency, this leave may be extended with the approval of the immediate supervisor. The

extended period of absence may be charged to vacation time, sick leave, or personal leave or shall be deducted at the prorated daily salary.

14.7 If it is necessary to lose part of a day, two hours or less, for appointments with a doctor, dentist, or a lawyer, all seniority employees, may with the approval of the immediate supervisor, be permitted to make up the lost time at a time mutually agreed upon with the supervisor.

14.8 Instructional Assistants, Media Center Assistants, and School-Year Secretaries shall receive pay equal to their regular scheduled hours for school closings caused by acts of God or other unplanned closures such as bomb threats, boiler malfunctions or loss of electricity, provided the District is paid for the day or part of the day by the State. In the event an employee is on paid leave, sick leave or bereavement leave during part or all of the school closure days as defined in this section, then the pay for the school closure time and that time on leave will not be charged against the employee's paid leave time.

14.9 The granting of sick leave without pay guarantees to the employee their right to return to his/her previous job upon return from sick leave providing the employee returns within 12 work weeks. A "work week" in this case shall be defined as a week, or part of a work week, that the absent employee would have been scheduled to work if not absent. Subject to Article 9, Section 4, Item 5, any employee who is on sick leave without pay and returns to work beyond the 12 work weeks cited above shall resume her/his previous position if it is filled by a temporary employee or substitute. If the position is not available, he/she shall be offered the first available position the employee is qualified to fill.

During said leave, the employee shall receive no benefits whatsoever granted under this contract with the exception of health insurance which shall be continued in force at the expense of the Board as required by the FMLA.

14.10 **General Leave** - Unpaid leaves of absence not exceeding one calendar year may be granted to an employee after completion of the employee's probationary period. The granting or denial of any such leave of absence shall be in the sole and absolute discretion of the Board or administration, and the granting or denial of any such leave of absence in any one case shall not constitute any practice or precedent whatsoever insofar as any other case is concerned. No such leave of absence shall be granted, if at all, before the same has been requested in writing to and approved in writing by the Superintendent; and any extensions or renewals shall be in the sole discretion of the Board and may not be grieved.

Upon return from leave, an employee shall return to her/his position if the leave has been for a semester or less. If the leave is more than a semester in length, the employee shall return to the first available position for which she/he is qualified.

Any leave of absence shall be considered null and void should the employee permanently change his/her place of residence in such a manner as to make said employee unavailable for work upon the expiration of the leave.

14.11 Proration of Benefits - After an employee has successfully attained non-probationary status, the benefits available as specified elsewhere in this agreement will be prorated during the first year of employment using the number of months scheduled to work divided by the number of months normally worked in a year for that position. Example: Class IV, full-year new employee starting work on 11/8/98 would be entitled to 8.0 sick leave days ($8/12 \times 12 = 8.0$) during the 98-99 school year. On each July 1 thereafter, that employee would be entitled to an additional 12 days.

14.12 Jury Duty - An employee called for jury duty shall be granted leave of absence from the District for those days required to serve. The employee will be paid his/her regular wages for jury duty time served that does not exceed four (4) work weeks. The Board may, at its discretion, pay for additional days served on jury duty beyond the four work weeks. Jury duty pay (less travel expenses) earned during such time shall be paid by the employee to the District. Jury duty pay received on days in which the employee is not paid by the District would be retained by the employee.

14.13 Family and Medical Leave - Nothing in this agreement shall be interpreted to interfere with employees' rights under the Family and Medical Leave Act (FMLA). An explanation of FMLA rights is included in Appendix B. All FMLA leaves shall run concurrently with paid or unpaid sick leaves as permitted by the FMLA and to the extent that the sick leave qualifies for FMLA leave. Paid vacation and personal leave shall also be applied to FMLA leave at the discretion of the employee. If an employee requests intermittent or reduced schedule leave, the District may temporarily transfer the employee to an available alternative position (with equivalent pay and benefits) to better accommodate recurring or intermittent periods of leave. If an employee does not return to work after an FMLA leave, for reasons other than the continuation of the condition giving rise to the leave or for other reasons beyond the employee's control as defined in the FMLA regulations, the Board may deduct from any monies then owed the employee, the insurance premiums paid during the FMLA leave. Any alleged Board violations of the FMLA shall be dealt with under the FMLA procedures. (see Appendix B for the DOL Fact Sheet)

14.14 If an employee violates a restriction of an approved leave of absence, gives a false reason for obtaining a leave, or works for remuneration while on an approved leave, unless the work for remuneration is done with the prior written consent of the Board or existed prior to the leave, the employee may be subject to discipline for abuse of leave in accordance with this agreement.

If an employee overstays a leave without giving notice, or applies for an extension but fails to provide substantiation for the extension as requested as soon as is reasonably possible, the employee is deemed to have quit her/his job.

ARTICLE 15

HEALTH AND ACCIDENT INSURANCE

15.1 **Plan A** - Upon acceptance of written application, the Board agrees to contribute toward the cost of health care protection insurance for each full-time employee. The Board agrees to provide the MESSA PAK Super Care I program for each eligible employee. Effective not later than October 1, 2002, the Board shall provide MESSA PAK Super Care I, XVA2, with \$5 generic/\$10 brand name prescription co-pay (with \$2 mail in option). Effective **July 1, 2005** each full-time employee who elects 2 person or full family coverage shall pay **\$30/month** towards such coverage via payroll deduction.

15.2 **Plan B** - Upon written application to the Board, employees who do not wish to take health care protection, as described above, may select MESSA, Plan B plus any of the options available, i.e., cash per the District Cafeteria Plan, short term disability, dependent life, additional life insurance, annuities, etc., up to a set amount equal to the cost of health care protection for a MESSA Super Care I single subscriber rate of \$488 per month beginning July 1, 2005. Those employees electing Plan B shall have a cash option equal to the Super Care I single subscriber rate of \$488 per month beginning July 1, 2005. This amount for use in Plan B shall reflect an increase over the previous year of an amount equal to the same percentage of the wage increase. If the MESSA premium rate increase is less than the annual wage increase, then it shall reflect the MESSA premium rate increase in effect for the current school year.

*Effective August 1, 2005, eligible FESPA employees shall be moved to the Fremont Teacher's MESSA group plan.

The cash option may be redirected by the eligible employee toward MESSA or MEFSA non-taxable options and/or annuities via the 125 plan. In addition, employees may also re-direct the cash option toward the district's medical and dependent child care flexible spending accounts.

15.3 School-Year employees, as defined in Article I, Section D, shall not receive health and accident insurance coverage at the expense of the Board. As soon as administratively feasible, employees not eligible for health and accident insurance who regularly work 20 hours or more per week will receive a \$10,000 group term basic life insurance benefit, with AD&D, subject to the terms and conditions of the carrier to be selected by the Board.

15.4 Upon acceptance of written application, the Board agrees to provide full-time employees with Delta Dental through MESSA Care Pak, 80:80/80/80:1,300 lifetime max; 1,000 annual max class I, II, III, two cleanings per year.

15.5 Upon acceptance of written application, the Board will provide VSP 3 Vision insurance, LTD (66 2/3 %, \$5000 month maximum benefit, 90 day modified fill), and \$40,000 Life insurance AD&D through MESSA Care Pak for each full time employee covered under this agreement.

15.6 Employees may utilize the "Premium Conversion" option of the District Cafeteria Plan. "Premium Conversion" allows an eligible employee to convert after-tax contributions for health insurance premiums to before-tax contributions by reducing compensation equal to the premium. A "Summary Plan Description" and enrollment forms are available in the school district main business office.

Employees may also utilize the "Flexible Benefits" option of the District Cafeteria Plan. Flexible benefits are defined as eligible dependent care expenses and unreimbursed medical expenses. Fremont Public Schools will provide a handbook detailing this program.

15.7 All insurance benefits are subject to the underwriting rules of the named carrier.

15.8 An open enrollment period shall be held annually at a time mutually agreed to the Association, Board and carrier.

15.9 Insurance will take effect the 1st of the month following the probationary period for a new eligible employee.

15.10 In the event of a termination or resignation insurance coverage shall continue through the end of the month in which the employee's employment ended.

ARTICLE 16
HOLIDAYS AND VACATIONS

16.1 All employees shall be paid for legal holidays as listed in 16.3, which normally occur during the employee's regularly scheduled work year, provided the employee works the regularly scheduled work day before and the regularly scheduled work day after the scheduled holiday. An employee is considered to have worked if the employee is on an approved paid leave or vacation. If an employee is on sick leave the regularly scheduled work day before or after the holiday, holiday pay will be paid. The District has the right to request a valid doctor's slip indicating the employee was sick that day.

16.2 In the event the legal holiday falls on a weekend, the holiday will be taken on the Friday before or the following Monday, as agreed upon with the immediate supervisor unless otherwise determined by the District.

16.3 Employees who would normally be scheduled to work the regularly scheduled work day before and the regularly scheduled work day after any holiday listed below shall receive their average daily rate of compensation for that holiday (based on a 5 day work week).

Holidays for the duration of this contract shall include the following: (11 days)

Independence Day
Labor Day
Thanksgiving Day
Day after Thanksgiving
Day before/after Christmas
Christmas Day
Day before/after New Year's
New Year's Day
Floating Holiday*
Good Friday
Memorial Day

***ALL EMPLOYEES SHALL BE PAID FOR ONE FLOATING HOLIDAY. ALL FLOATING HOLIDAY REQUESTS MUST BE SUBMITTED ON STAFF ABSENCE FORMS.**

School year employees shall submit staff absence forms for a Floating Holiday during spring break or winter break or some other non-scheduled time, as each building site determines by a majority vote of the affected unit employees. Full year employees shall submit staff absence forms for a floating holiday after approval by the building principal.

16.4 Full-time employees will receive paid vacation time on the following schedule:

After one full year of service	10 working days
After the 2nd year of service	10 working days
After the 3rd year of service	11 working days
After the 4th year of service	12 working days
After the 5th year of service	13 working days
After the 6th year of service	14 working days
After the 7th year of service	15 working days
After the 15th year of service	16 working days
After the 16th year of service	17 working days
After the 17th year of service	18 working days
After the 18th year of service	19 working days
After the 19th year of service	20 working days

In addition, first year employees will earn vacation days to be taken after July 1 of the next school year according to how many full months they worked prior to July 1. For example, assume an employee's start date is 9/8/97. Vacation equals 9 months divided by 12 and that sum multiplied by 10 or 7.5 days ($9/12 \times 10 = 7.5$ days) for the 1998-1999 school year (to be rounded to the nearest half day).

16.5 Full-time employees may choose the time of their vacation upon mutual agreement with their immediate supervisor. Earned vacation must be used by the conclusion of the fiscal year unless the vacation is arranged for the convenience of the school system. The employee may also choose to carry over a maximum of 4 days vacation into the next fiscal year. Vacation days shall be taken in increments of at least 1/2 day at a time.

16.6 Upon resignation or termination of service, employees shall be permitted to use vacation time earned to date, provided notice is given per Article 13.

ARTICLE 17 **PERFORMANCE REVIEW**

17.1 Timely evaluation of employee performance is valuable and necessary for employees and the Board. The evaluation process should provide information to the employee about job performance and employment status.

17.2 Employees shall be evaluated by appropriate administrative personnel familiar with the employee's performance. Non-administrative professional staff employed by the Board (including but not limited to classroom teachers) familiar with the employee's job requirements and daily performance, may provide input as described herein, but shall not be responsible for evaluating employee performance.

17.3 Such professional staff may be asked to provide written input of employee performance or conduct at work, based on direct observation of the employee during the evaluation period. Any input provided by professional staff that is used as part of the evaluation process shall be signed by the professional staff member and made available to the employee upon request. If the evaluator asks for input from professional staff as part of the evaluation, the employee shall be advised of the request.

17.4 When evaluating an employee's overall performance, the appropriate building administrator or supervisor will prepare a written performance review, using Appendix C.

17.5 Non-probationary employees shall receive a performance review at least once every three (3) years, or more often if the evaluator or employee determines a need to do so.

17.6 A performance review period shall begin with written notice to the employee that her/his performance is being formally reviewed. The employee shall also be advised of the name of the evaluator, and the dates of the review period, which shall be at least 30 work days and no more than one work year (not extending beyond June 30), unless the employee or evaluator requests continuation of the review. A copy of the evaluation form (Appendix C) and appropriate job description shall also be provided to the employee at this time. The review period may also be modified by mutual agreement between the employee and evaluator.

17.7 Evaluation of an employee's overall performance shall generally be based on a composite of any or all of the following: direct observation of the employee's work performance by the evaluator(s), input from professional staff provided in accordance with 17.2 and 17.3, and other information about employee conduct or performance since the last formal evaluation, including disciplinary action, if any, brought to the employee's attention in a timely manner after the evaluator became aware of such conduct or performance. A formal observation will normally be scheduled in advance with the employee. Informal or unscheduled observations may also be conducted as part of the overall evaluation process. Evaluators should promptly advise the employee during the evaluation process if there are concerns about the employee's performance or work related conduct. If the evaluator believes an employee's performance is deficient or unsatisfactory, she/he may involve another administrator for a second opinion or to provide suggestions for improvement, and will so notify the employee. If an employee is recommended for discharge based on an unsatisfactory evaluation, the employee may ask the Superintendent to involve a second administrator to provide a second opinion.

17.8 The evaluator shall meet with the employee before the end of the employee's work year to discuss the final evaluation. At this conference, the employee shall receive a completed evaluation form, which the employee shall sign at the conference, unless the parties agree after discussion that changes should be made, in which case, the employee shall sign when presented with an amended form. The signature evidences receipt and not agreement with the contents of the evaluation. A copy of the signed evaluation shall be given to the employee and placed in the employee's personnel file.

17.9 If the employee disagrees with the evaluation, she/he may submit a written response within twenty (20) working days after receipt of the evaluation, which shall be attached to the file copy of the evaluation.

17.10 Each evaluation shall include the following statement at the end: "Considering all factors, the employee's work performance is (check one):

Satisfactory Improvement Needed Unsatisfactory"

17.11 At any time, an administrator may discuss an area of concern about an employee's performance. The parties agree that discussions about performance that may lead to discipline or an unsatisfactory rating on an evaluation shall occur within a reasonable time after the concern develops, generally no later than 15 work days after the administrator is aware of the concern. However, it is recognized that circumstances do occur that interfere with the administrator's ability to initiate such discussions within the desired timeframe. If the 15 day standard cannot be met, the administrator will inform the employee, during the 15 day period, of the need to discuss the concern, and will offer a future date and time for such purpose.

ARTICLE 18

MISCELLANEOUS PROVISIONS

18.1 The school will not penalize Association members for their activities in the Association by transferring work normally performed by Association members to employees not covered by this Agreement.

18.2 A copy of this agreement will be provided to the President and in alternate years, to each member of the Association, with the Board providing copies to each member during the first year of the agreement. The agreement will be incorporated into the Board Policy Manual and filed in the office of each Media Center.

18.3 Employees may request in writing, attendance at professional meetings or workshops. If such requests are approved, the Board shall cover reasonable expenses as approved in advance. Such requests will be submitted to the

immediate supervisor who, upon approval, will forward them to the Business Manager.

18.4 Employees who are required to attend In-Service Days will be paid their normal daily rate for such attendance.

18.5 At the completion of the probationary period, each employee covered by this contract will be assigned a position, a classification, and a salary class and step within that class (as indicated in Appendix D).

18.5.1 At the beginning of each school year thereafter, each employee will receive a notice of his/her continued assignment and step. This assignment will remain in effect until the following July 1, except in the event of a job transfer when the position, the classification and the salary class/step of the employee will be changed if applicable.

18.5.2 Any employee working at least two-thirds of a given year will advance to the next step on the salary schedule on the first July 1 following regular status placement.

18.5.3 Upon receipt of the notice, the employee will be granted a two week period in which to review his/her job status as described in the above paragraph. Any grievance under this section must be initiated within this two week period.

18.6 In the event a para-pro believes that he/she is being incorrectly asked to substitute for a classroom teacher, that para-pro has the right to immediately contact and notify the Superintendent and/or Assistant Superintendent of the situation.

ARTICLE 19

POSITION CLASSIFICATIONS

19.1 Current job descriptions have been developed and are available upon request. Each new employee shall be given a copy of their current job description.

19.2 If the Board chooses to modify the current job descriptions, or create new job descriptions, the Association will be provided copies of the proposed changes, or new job descriptions, and given an opportunity to meet with the administration to provide input on the proposed changes at least 30 calendar days prior to implementation.

19.3 Any modified or new job descriptions will be provided to the Association President and the affected employees upon adoption by the Board.

19.4 Commencing with the first year of this contract and for the entire term of this contract, an employee within a designated skill level or classification may be recommended for placement in any higher classification (for upgrading purposes only) by the employee's administrative supervisor, irrespective of the fact that the employee is a full-time or school-year employee. Final evaluation and approval to be determined by the Superintendent. This provision shall supersede any conflicting provisions of this agreement

ARTICLE 20 **WAGE SCHEDULE**

20.1 Salary and wage schedules for 2004-2005, and the 2005-2006 schedule which is effective July 1, 2006, are attached as Appendix "A". Wage schedules for 2004-2005 be retroactive to all bargaining unit employees. It should be noted that Employees will receive a 0% wage increase during the 2005-06 contract year but the salary schedule will be increased by 1% effective July 1, 2006. This does not reflect the final wage schedule for 2006-2007 which has yet to be negotiated.

20.2 Employees will advance to the next step on the salary schedule on July 1 of each year, within guidelines of 18.5.

20.3 There shall be longevity pay available for qualified employees based on the following criteria:

20.3.1 Employees who have completed 12 years of employment shall receive an additional wage increase based upon an amount which is equivalent to 3% of the Step I pay scale within the respective employee's classification. The qualification for and payment of this additional wage shall be made in accordance with the same guidelines that have been utilized in the past with respect to an employee's qualifications for a step increase.

20.3.2 The longevity pay of 3% as determined in subparagraph 1 above shall continue during the employee's 14th and 15th years of service.

20.3.3 Upon completing 15 years of employment, the employee shall be entitled to an additional wage increase equivalent to 5.5% of the Step I pay scale within the respective classification of the employee. Qualification for and payment of this increase shall be in accordance with the same procedures employed with respect to an employee's eligibility for a Step increase. Thereafter employees with more than 15 years seniority shall be entitled to longevity pay as above computed, at the rate of 5.5% of the Step I pay scale within the respective classification of the employee, until the employee completes 20 years of employment.

20.3.4 Upon completing 20 years of employment, the employee shall be entitled to an additional wage increase equivalent to 6.0% of the Step 1 pay scale within the respective classification of the employee. Qualification for and payment of this increase shall be in accordance with the same procedures employed with respect to an employee's eligibility for a Step increase. Thereafter employees with more than 20 years seniority shall be entitled to longevity pay as above computed, at the rate of 6.0% of the Step I pay scale within the respective classification of the employee.

20.4 Summer school teacher assistant pay rates to be established per the attached Exhibit "A" salary schedule at Class I - up to step 4. The pay rate would not change on July 1 to the new schedule, but would remain the same for the current position for the entire summer.

20.5 Effective August 26, 2002, employees who are assigned to perform the following health related services: catheterizations, tube feeding, injections, suctioning or special toileting, will be paid an additional premium of \$1.00 per hour in addition to the employee's regular wages for all time in which the employee performs such health related services with a guaranteed minimum of 2 hours a day for the employee performing the service, the employee shall be responsible to document such time on a form as directed by the District. (note: This provision does not provide premium wage for observers.)

ARTICLE 21

EXTENT OF AGREEMENT

21.1 Any individual contract between the employer and an individual employee heretofore or hereafter executed shall be subject to and consistent with the terms and conditions of this Agreement. If an individual contract contains any provision inconsistent with this Agreement, this Agreement, during its duration, shall be controlling.

21.2 The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Board and Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to: (1) any subject or matter referred to, or covered in this Agreement; (2) any subject or matter which was discussed during negotiations but about which no agreement was reached.

ARTICLE 22
CONTINUITY OF OPERATIONS

It is the intention of the parties hereto that the procedures set forth herein shall serve as a peaceful means for the settlement of any dispute which may arise between them as to the interpretation or application of this Agreement. Therefore, the Association and its members, individually and collectively, agree that during the term of this Agreement there shall be no strikes, stoppage of work, or interruption of work, and the Board agrees that it will not institute any lockout during the term of this agreement. The Board may grieve violations of this paragraph as well as pursue other legal remedies.

**ARTICLE 23
DURATION OF AGREEMENT**

This agreement is the complete agreement between the parties and, except as stated otherwise herein, shall become effective as of July 1, 2004 and shall remain in effect until June 30, 2006. However, Appendix A is retroactive to July 1, 2004 for all employees who remained in the bargaining unit or retired in the interim prior to ratification.

BOARD OF EDUCATION NEGOTIATION COMMITTEE

Bing Hanson Lake 3/1/06
Business Manager Date Administrator Date

Board Designee Date

FREMONT EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION

James [Signature] 2/27/06
FESPA Negotiator Date Association Rep. Date

Vicky Vazg 2-24-06
Association Rep. Date Association Rep. Date

Susan Dicks
Association Rep. Date Association Rep. Date

Christina Dantz 2-24-06
Association Rep. Date Association Rep. Date

BOARD OF EDUCATION

[Signature] 3-13-06 Anita L. Osterman 3/1/06
President Date Secretary Date

SALARY SCHEDULE: SECRETARIES AND TEACHER ASSISTANTS
 2005-06 Salary Schedule

APPENDIX A

0.00%

Hourly Base 9.59
 Monthly Base 1,761.32

Step	Index	Class I (Hour)	Index	Class II (Hour)	Index	Class III (Month)	Class III (Hour)	Class III (Bi-Wkly)	Index	Class IV (Month)	Class IV (Hour)	Class IV (Bi-Wkly)
1	1.000	9.59	1.010	9.69	1.000	1,761	10.16	812.77	1.193	2,101	12.12	969.81
2	1.088	10.43	1.093	10.48	1.096	1,930	11.13	890.77	1.302	2,293	13.23	1,058.31
3	1.124	10.78	1.161	11.13	1.163	2,048	11.82	945.23	1.371	2,415	13.93	1,114.62
4	1.163	11.15	1.222	11.73	1.236	2,177	12.56	1,004.77	1.449	2,552	14.72	1,177.85
5	1.197	11.48	1.287	12.34	1.304	2,297	13.25	1,060.15	1.517	2,672	15.42	1,233.23
6	1.235	11.84	1.350	12.95	1.368	2,409	13.90	1,111.85	1.587	2,795	16.13	1,290.00
7	1.280	12.28	1.391	13.34	1.406	2,476	14.28	1,142.77	1.627	2,866	16.53	1,322.77
8	1.327	12.73	1.411	13.54	1.421	2,503	14.44	1,155.23	1.647	2,901	16.74	1,338.92
3% Longevity		13.02		13.83		2,556	14.75	1,179.61		2,964	17.10	1,368.02
5.5% Longevity		13.26		14.07		2,600	15.00	1,199.94		3,017	17.40	1,392.26
6% Longevity		13.30		14.12		2,609	15.05	1,204.00		3,027	17.46	1,397.11

Longevity: 3% of base salary within classification after 12 years
 5.5% of base salary within classification after 15 years
 6% of base salary within classification after 20 years

SALARY SCHEDULE: SECRETARIES AND TEACHER ASSISTANTS

APPENDIX A

2004-05 Salary Schedule

2.00%

Hourly Base 9.59
 Monthly Base 1,761.32

Step	Index	Class I (Hour)	Index	Class II (Hour)	Index	Class III (Month)	Class III (Hour)	Class III (Bi-Wkly)	Index	Class IV (Month)	Class IV (Hour)	Class IV (Bi-Wkly)
1	1.000	9.59	1.010	9.69	1.000	1,761	10.16	812.77	1.193	2,101	12.12	969.81
2	1.088	10.43	1.093	10.48	1.096	1,930	11.13	890.77	1.302	2,293	13.23	1,058.31
3	1.124	10.78	1.161	11.13	1.163	2,048	11.82	945.23	1.371	2,415	13.93	1,114.62
4	1.163	11.15	1.222	11.73	1.236	2,177	12.56	1,004.77	1.449	2,552	14.72	1,177.85
5	1.197	11.48	1.287	12.34	1.304	2,297	13.25	1,060.15	1.517	2,672	15.42	1,233.23
6	1.235	11.84	1.350	12.95	1.368	2,409	13.90	1,111.85	1.587	2,795	16.13	1,290.00
7	1.280	12.28	1.391	13.34	1.406	2,476	14.28	1,142.77	1.627	2,866	16.53	1,322.77
8	1.327	12.73	1.411	13.54	1.421	2,503	14.44	1,155.23	1.647	2,901	16.74	1,338.92
3% Longevity		13.02		13.83		2,556	14.75	1,179.61		2,964	17.10	1,368.02
5.5% Longevity		13.26		14.07		2,600	15.00	1,199.94		3,017	17.40	1,392.26
6% Longevity		13.30		14.12		2,609	15.05	1,204.00		3,027	17.46	1,397.11

Longevity: 3% of base salary within classification after 12 years
 5.5% of base salary within classification after 15 years
 6% of base salary within classification after 20 years

Your Rights under the Family and Medical Leave Act of 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for their employer for at least one year, and for 1,250 hours over

the previous 12 months, and if there are at least 50 employees within 75 miles. The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances.

Reasons for Taking Leave:

Unpaid leave must be granted for *any* of the following reasons:

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son or daughter, or parent who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of *paid* leave may be substituted for unpaid leave.

Advance Notice and Medical Certification:

The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

Job Benefits and Protection:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."

- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Unlawful Acts by Employers:

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

For Additional Information:

If you have access to the Internet visit our FMLA website: <http://www.dol.gov/esa/whd/fmla>. To locate your nearest Wage-Hour Office, telephone our Wage-Hour toll-free information and help line at 1-866-4USWAGE (1-866-487-9243): a customer service representative is available to assist you with referral information from 8am to 5pm **in your time zone**; or log onto our Home Page at <http://www.wagehour.dol.gov>.



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

WH Publication 1420
Revised August 2001



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

Fact Sheet #28: The Family and Medical Leave Act of 1993

THE FAMILY AND MEDICAL LEAVE ACT OF 1993

See The CFR

The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces the Family and Medical Leave Act (FMLA) for all private, state and local government employees, and some federal employees. Most Federal and certain congressional employees are also covered by the law and are subject to the jurisdiction of the U.S. Office of Personnel Management or the Congress.

FMLA became effective on August 5, 1993, for most employers. If a collective bargaining agreement (CBA) was in effect on that date, FMLA became effective on the expiration date of the CBA or February 5, 1994, whichever was earlier. FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. The employer may elect to use the calendar year, a fixed 12-month leave or fiscal year, or a 12-month period prior to or after the commencement of leave as the 12-month period.

The law contains provisions on employer coverage; employee eligibility for the law's benefits; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; notice and certification of the need for FMLA leave; and, protection for employees who request or take FMLA leave. The law also requires employers to keep certain records.

EMPLOYER COVERAGE

FMLA applies to all:

- public agencies, including state, local and federal employers, local education agencies (schools), **and**
- private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year **and** who are engaged in commerce or in any industry or activity affecting commerce — including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee **must**:

1. work for a covered employer;
2. have worked for the employer for a total of 12 months*;
3. have worked at least 1,250 hours over the previous 12 months*; and
4. work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.

* See special rules for returning reservists under USERRA.

LEAVE ENTITLEMENT

A covered employer must grant an eligible employee up to a total of 12 workweeks of **unpaid** leave during any 12-month period for one or more of the following reasons:

- for the birth and care of the newborn child of the employee;
- for placement with the employee of a son or daughter for adoption or foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition; **or**
- to take medical leave when the employee is unable to work because of a serious health condition.

Spouses employed by the same employer are jointly entitled to a **combined** total of 12 workweeks of family leave for the birth and care of the newborn child, for placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

Leave for birth and care, or placement for adoption or foster care must conclude within 12 months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently — which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule.

- If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.
- FMLA leave may be taken intermittently whenever **medically necessary** to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

Also, subject to certain conditions, employees **or** employers may choose to use accrued **paid** leave (such as sick or vacation leave) to cover some or all of the FMLA leave.

The employer is responsible for designating if an employee's use of paid leave counts as FMLA leave, based on information from the employee.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; **or**
- Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:

(1) A health condition (including treatment therefor, or recovery therefrom) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes:

- treatment two or more times by or under the supervision of a health care provider; **or**
- one treatment by a health care provider with a continuing regimen of treatment; **or**

(2) Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence; **or**

(3) A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence; **or**

(4) A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; **or**

(5) Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

"Health care provider" means:

- doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; **or**
- podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; **or**
- nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law; **or**
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; **or**
- Any health care provider recognized by the employer or the employer's group health plan benefits manager.

MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to **before** using FMLA leave, nor be counted against the employee under a "no fault" attendance policy.

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, an employer may refuse to reinstate certain highly-paid "**key**" employees after using FMLA leave during which health coverage was maintained. In order to do so, the employer must:

- notify the employee of his/her status as a "key" employee in response to the employee's notice of intent to take FMLA leave;
- notify the employee as soon as the employer decides it will deny job restoration, and explain the reasons for this decision;
- offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; **and**
- make a final determination as to whether reinstatement will be denied at the end of the

leave period if the employee then requests restoration.

A "**key**" employee is a salaried "eligible" employee who is among the highest paid ten percent of employees within 75 miles of the work site.

NOTICE AND CERTIFICATION

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable.

Employers may also require employees to provide:

- medical certification supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;
- second or third medical opinions (at the employer's expense) and periodic recertification;
- and**
- periodic reports during FMLA leave regarding the employee's status and intent to return to work.

When intermittent leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the employer's operation.

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement may be subject to a fine of up to \$100 for each separate offense.

Also, covered employers must inform employees of their rights and responsibilities under FMLA, including giving specific written information on what is required of the employee and what might happen in certain circumstances, such as if the employee fails to return to work after FMLA leave.

UNLAWFUL ACTS

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also bring a private civil action against an employer for violations.

OTHER PROVISIONS

Special rules apply to **employees of local education agencies**. Generally, these rules provide for FMLA leave to be taken in blocks of time when intermittent leave is needed or the leave is required near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime

under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to "eligible" employees' use of leave required by FMLA.

The FMLA does not affect any other federal or state law which prohibits discrimination, nor supersede any state or local law which provides greater family or medical leave protection. Nor does it affect an employer's obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan. The FMLA also encourages employers to provide more generous leave rights.

FURTHER INFORMATION

The final rule implementing FMLA is contained in the January 6, 1995, Federal Register. For more information, please contact the nearest office of the **Wage and Hour Division**, listed in most telephone directories under U.S. Government, Department of Labor.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE, TTY: 1-877-889-5627

Contact Us

APPENDIX C

EMPLOYEE PERFORMANCE EVALUATION

DATE: _____ **NAME:** _____

JOB TITLE: _____ **JOB LOCATION:** _____

PERIOD UNDER REVIEW: _____

DATE OF LAST EVALUATION: _____

Please complete this form carefully and thoroughly. The purpose of this assessment tool is to:

Provide an instrument that can be used to initiate a discussion with the employee about her/his job performance.

Provide objective criteria for personnel performance evaluations on a standard basis.

PROCEDURE:

Pages 2 and 3 describe traits identified with job success or failure. Decide for each, the level at which the employee performed for this rating period.

Refer back to page 2 and 3 to comment on the employee's principal strengths and weaknesses. Your comments should be consistent with your rating of individual traits.

If improvement is needed, note suggestions for improvement where appropriate.

EVALUATION SCALE:

S = Satisfactory
U = Unsatisfactory
IN = Improvement Needed
NA = Not applicable

<u>AREAS OF EVALUATION</u>	<u>S</u>	<u>U</u>	<u>IN</u>	<u>NA</u>	<u>Comments</u>
1. Demonstrate appropriate job knowledge.	_____	_____	_____	_____	_____
2. Knows and implements instructional programs under teacher supervision.	_____	_____	_____	_____	_____
3. Effectively assists teacher with instructional strategies.	_____	_____	_____	_____	_____
4. Under teacher direction, works effectively with individual students and with small groups.	_____	_____	_____	_____	_____
5. Effectively assists teacher with student supervision.	_____	_____	_____	_____	_____
6. Maintains safe and orderly physical classroom or office environment	_____	_____	_____	_____	_____
7. Establishes effective rapport with students.	_____	_____	_____	_____	_____
8. Establishes effective rapport with parents.	_____	_____	_____	_____	_____
9. Consistently treats students fairly	_____	_____	_____	_____	_____
10. Effective oral communication to students, staff and parents.	_____	_____	_____	_____	_____
11. Effective written communication to students, staff and parents.	_____	_____	_____	_____	_____
12. Maintains confidentiality of student records and information.	_____	_____	_____	_____	_____
13. Is knowledgeable about office equipment and procedures, district software and technology.	_____	_____	_____	_____	_____
14. Effectively manages office in principal's absence per principal's guidelines.	_____	_____	_____	_____	_____

AREAS OF EVALUATION	S	U	IN	NA	Comments
15. Typing/word processor skills.	_____	_____	_____	_____	_____
16. Effective telephone manners.	_____	_____	_____	_____	_____
17. Demonstrates problem solving skills.	_____	_____	_____	_____	_____
18. Establishes effective working rapport with district staff.	_____	_____	_____	_____	_____
19. Follows directions with accuracy.	_____	_____	_____	_____	_____
20. Demonstrates punctuality, reliability in attendance.	_____	_____	_____	_____	_____
21. Tactfulness and courteousness.	_____	_____	_____	_____	_____
22. Demonstrates initiative.	_____	_____	_____	_____	_____
23. Maintains attire appropriate for educational/office environment.	_____	_____	_____	_____	_____
24. Follows board and building policies and procedures.	_____	_____	_____	_____	_____
25. Demonstrates effective time management skills.	_____	_____	_____	_____	_____
26. Other assigned duties, if applicable.	_____	_____	_____	_____	_____

Evaluation Comments Page – (attach addendum if desired)

Employees' strengths/weaknesses:

Considering all factors, the employee's work performance is:

Satisfactory Improvement Needed Unsatisfactory

*Suggestions for improvement:

Has this evaluation been discussed with the employee? _____ Yes _____ No

Date of Evaluation Conference _____

Signature of Evaluator _____ Date _____

Signature of Employee _____ Date _____

Note: Employee signature here indicates receipt of this document and not agreement with its contents.

**Must be completed if employee rated Unsatisfactory or Improvement Needed, unless dismissal recommended.*

APPENDIX D

GENERAL DESCRIPTION OF CLASSIFICATIONS

Office/Secretarial/Clerical: An assignment to perform the activities of preparing, transferring, transcribing, systematizing, or preserving communication, records, and transactions, including the operation of machines to accomplish such activities. The Secretary to the Superintendent is specifically excluded.

Teacher Assistants: An assignment to assist a teacher with routine activities associated with teaching, those activities requiring minor decisions regarding students, such as monitoring, conducting rote exercises, operating equipment and clerking.

Media Center Assistants: An assignment to assist a librarian with the routine activities associated with selecting, acquiring, preparing, cataloging, and circulating books, printed materials, audio visual aids, and audio visual equipment.

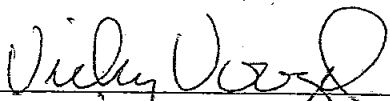
Building Assistants: An assignment to perform clerical tasks; media center tasks; and/or teacher assistant tasks as assigned by supervisor. Assignment may also include clearing snow from entryways and main sidewalks (e.g. areas not attended to by grounds/maintenance crew); set-up/take-down breakfast and lunch tables and clean-up gym floor; conducting non-routine cleanup (e.g. cleanups which must be performed immediately); and working with children in a variety of settings, including before school and noon-hour supervision and/or after-school bus dismissal supervision.

LETTER OF AGREEMENT #1

The parties agree that upon the issuance of final regulations by the United States Department of Education concerning section 1119 of the No Child Left Behind Act, the parties shall meet to negotiate the impact of such regulations on bargaining unit employees.

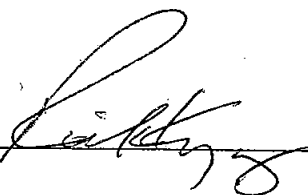
**FREMONT EDUCATIONAL SUPPORT
PERSONNEL ASSOCIATION**

Date: 3-20-06


By:
Its: President

**BOARD OF EDUCATION OF THE
FREMONT PUBLIC SCHOOLS**

Date: 3-27-06


By:
Its: President

LETTER OF AGREEMENT #2

The parties agree that this letter expires effective June 30, 2006.

The Board and FESPA agree:

1. The terms and conditions of Diane Ross' employment shall continue in the following respects, provided she remains in the current position of Secretary to the High School Principal:
 - a. Her hours of work shall continue to be scheduled in accordance with the June 21, 1994 posting;
 - b. The District will continue to pay the contractual premium for her health insurance coverage though she is not scheduled to work 260 days;
 - c. Vacation and sick leave days will continue to be prorated on an 11/12th basis.
2. With the sole exception of the foregoing employee, the Board shall prorate its contribution toward contractual insurance coverage for any other employee whose work assignment is the school year, plus more than five additional weeks, but who is not assigned to work 260 days. The pro -ration shall be based on a full-time work schedule of 260 days (8 hours per day, 52 weeks per year). Based on a calendar year July 1 through June 30, the employee shall pay the pro rata share of the premium available by payroll deduction and through the District's 125 plan.
3. In such cases, the vacation and sick leave days shall also be prorated according to the same formula. Vacation and paid leave used by the employee shall count as days worked during the work year.

In all other respects, Ms. Ross' employment shall be governed by the collective bargaining agreement as written.

Date: 3-20-06

By Vicky Vozd
Its President

FESPA

Date: 3-21-06

By [Signature]
Its PRESIDENT, BOARD OF EDUCATION

BOARD OF EDUCATION

Note: The parties agree that Diane Ross will have the choice of either paying 1/12 of her health insurance cost or working a full time schedule in the summer and paying nothing additional for health insurance.

Letter of Agreement
Between
Fremont Public Schools Board of Education
and the
Fremont Educational Support Personnel Association, (FESPA)

Subject: Contract Extension

The undersigned parties hereby agree to an extension of the 2004-2006 Master Agreement through June 30, 2007. With the exception of the updating of necessary date references and the modification of the two provisions referenced herein, all language, terms, and conditions of the 2004-06 Master Agreement, including the present insurance benefits within the agreement shall be continued through June 30, 2007.

Exceptions to the continuation of the 2004-06 Master Agreement:

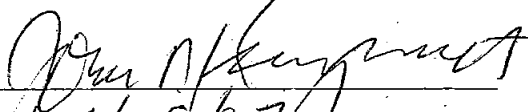
1. The 2006-07 pay rate shall be frozen at the July 1, 2006 level which does include the 1% increase granted at the end of the 2004-06 contract (granted effective July 1, 2006). All steps and earned longevity shall be paid as provided in the Master Agreement. The wage schedule shall be increased by 1% on June 30, 2007 with no retroactivity paid to the bargaining unit members. Any wage adjustments that have not been made shall be made retroactive to the July 1, 2006 upon signing of this document. The modifications for Article 20 – "Wage Schedule" follows:

ARTICLE 20
WAGE SCHEDULE

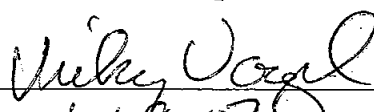
20.1 The salary and wage schedule for **2006-07** which is effective July 1, 2006, is attached as Appendix "A". Where applicable wages for **2006-07** shall be paid retroactive to July 1, 2006 for all bargaining unit employees. It should be noted that Employees will receive a 0% wage increase during the **2006-07** contract year but the salary schedule will be increased by 1% effective July 1, **2007**. This does not reflect the wage schedule for **2007-08** which has yet to be negotiated.

2. The 2006-07 Agreement shall include a job description for a new position(s) within the bargaining unit titled: "Program Clerk". The detailed job description as agreed between the parties shall include duties that surround the scheduling of events and facilities for district programs as well as some receptionists type duties. The pay grade for this position shall be Class I.

This Letter of Agreement shall constitute the full agreement of the parties.



Date 11-19-07
For the District



Date 1-19-07
For FESPA