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TENTATIVE AGREEMENT

ECRA/UTLA

January 20, 2016

ARTICLE IX - DISCIPLINE & PERSONNEL FILES

- 9.1 **Access and Response to Critical Material in Personnel Files:** When the School receives a letter or other written material which contains allegations critical of an employee's performance or character, or which charges commission of an unlawful or immoral act, the following conditions shall apply:
- a. If the document came from a member of the public, the matter shall first be investigated. Except in compelling circumstances, the employee shall be furnished a copy within thirty (30) days of ECRA's receipt of the document. The document shall not be either placed in the personnel file or retained by ECRA unless it is reasonably determined that the allegations have some substance or plausibility. In any event, if the document is either retained and/or placed in the employee's personnel file, the employee shall be given a reasonable opportunity to attach a reply.
 - b. If the document came from within ECRA personnel, the investigation required by paragraph a. may not be necessary or appropriate, but the remainder of the protections required by paragraph a, including the notice to the employee, shall be applicable.
- 9.1.1 Exempt from disclosure to the employee are documents which (1) are references obtained from outside ECRA or prior to employment, (2) were prepared by identifiable examination committee members as part of the examination procedure, or (3) were obtained in connection with a promotional examination.
- 9.2 **Pre-disciplinary Matters:** Pre-disciplinary actions such as warnings, conference memos and reprimands are not subject to the grievance procedures except when such documents are placed in the employee's official personnel file, or used as part of a formal disciplinary action (U-Notice or suspension), or overall Below-Standard Evaluation. In the event of a later formal disciplinary action, the document if challenged should not be deemed valid or established unless and until so proven under the normal "for cause" standard.
- 9.2.1 Employees shall be permitted to "live down" or "work off" a pre-disciplinary document by the passage of a period of four (4) years without recurrence of the same or similar conduct (unless a shorter period is agreed to by the parties). After achieving that passage of time, if the document is retained by the administrator (as may be required by law), it should be kept in a separate

“expired” file and not become a basis, in whole or part, for a subsequent formal disciplinary action.

9.3 **Notices of Unsatisfactory Service or Act, and Suspension:**

- a. Employees may be disciplined for cause. Such discipline may include Notices of Unsatisfactory Service or Act and/or suspension from duties without pay for up to fifteen working days. When any suspension without pay is imposed, the salary effects of that suspension shall not be implemented until the suspension has become final as provided in this section. Also, for a suspension of more than three days, the fourth and succeeding days of suspension shall not be implemented until the suspension has become final as provided in this section. If the discipline is based upon incompetence, the observation, records and assistance provisions of the Evaluation article of this Agreement will apply.
- b. The concept of “progressive discipline,” and the prohibition of disparate treatment by an administrator, are to be generally applicable, but with the understanding that circumstances may make progressive discipline unnecessary, and that reasonable diversity and local practices are to be expected.
- c. A Notice of Unsatisfactory Service or Act and/or suspension shall not be issued if it is based in whole or part on an event which occurred more than a reasonable period of time prior to the date that the Notice of Unsatisfactory Service or Act and/or suspension was issued.
- d. When imposing discipline or when giving reprimands, warnings or criticism, confidentiality and privacy appropriate to the professional relationship shall be maintained.
- e. When an administrator has a conference with an employee where it is evident at the time the meeting is convened that the employee is the focus of a possible disciplinary action, the employee shall be notified of the purpose of the meeting, before the meeting takes place, and that it is the employee’s right to be accompanied and represented by a UTLA representative or by any other person so long as that person is not a representative of another employee organization. Non-availability of the representative for more than a reasonable time shall not delay the conference. However, this right shall not extend to routine conferences or to any conferences conducted under the evaluation procedures of this Article except for a final conference involving an overall “Below Standard” rating.
- f. Prior to the imposition of a Notice of Unsatisfactory Service or Act and/or a suspension or termination, the administrator shall notify the employee (1) that such action is about to be taken; (2) that a meeting will be held to discuss the matter; and (3) that the employee may be accompanied by a UTLA representative or a person of the employee’s choice, as long as that person is not a representative of another employee organization. Non-availability of the employee or representative for more than a reasonable time shall not delay the disciplinary

action. At the close of or subsequent to the above meeting, the administrator shall announce the discipline to be imposed and immediately confirm the discipline to be imposed in writing on the appropriate ECRA form. The above meeting may, in emergency situations requiring immediate suspension, be held as soon as possible after the suspension has begun.

- g. The recipient of such notice of disciplinary action shall be permitted to file a written statement in response to the Notice, which shall be attached to all copies of the Notice retained by ECRA.
- h. Notices of Unsatisfactory Service or Act are grievable under the grievance article of this Agreement. However, if the discipline imposed includes a suspension without pay, and if the employee wishes to obtain review of the decision, a notice of appeal to the Executive Director of ECRA shall be delivered within three days of receipt of the form. Within three days after receipt of the employee's notice of appeal, the Executive Director shall hold an appeal meeting to discuss the matter, and shall by the end of the day following, announce a decision. The announcement shall be in person or by telephone, with an immediate confirming letter sent to the employee and representative, if any. Within two days after the above administrative appeal decision is announced, UTLA must, if it determines that the matter is to be appealed to arbitration, notify ECRA in writing of its intention. UTLA and ECRA shall select an arbitrator, and the dispute will then be calendared for arbitration. If at any of the above steps the employer or UTLA does not appeal as provided above, the discipline shall be considered final.
- i. After ECRA has taken formal disciplinary action against an employee, and upon request of the Union representing the employee, ECRA shall furnish the Union with a copy of any written statements taken of students relating to the matter. ECRA shall not be permitted to have a student witness testify at an arbitration hearing unless the Union has been provided a reasonable opportunity to interview the witness at a time reasonably prior to the date of the hearing. ECRA shall give UTLA written notice of its intention to call the witness, and assist in making arrangements for the interview so that the interview can take place in coordination with (not necessarily jointly with) ECRA interview. If the interview is not done jointly, the Union's interview shall be in the presence of a non-involved person acceptable to both the Union and ECRA, who would be authorized to control or terminate the interview in the event of improper conduct of the interviewer. The third person would not be expected to testify except as to issues relating to the improper conduct of the interviewer.
- j. Any of the disciplinary measures referred to in "a" above may be imposed independently of ECRA's evaluation procedures, and independently of statutory suspension/dismissal proceedings. Such discipline shall not be regarded as a precondition for a statutory suspension/dismissal proceeding. If a statutory suspension or dismissal proceeding is filed based in whole or part upon the service or conduct which gave rise to the disciplinary proceeding under this

Section, then any grievance arising under this Section not yet taken to arbitration, shall be deferred pending resolution of the statutory proceedings.

9.4 **Dismissal Procedures:**

Except for cases related to egregious misconduct, dismissal procedures shall follow those procedures outlined in the Education Code.

For cases related to egregious misconduct, ECRA may elect to utilize dismissal procedures subject to and based upon just cause and not subject to the Education Code or interpreting case law related to certificated dismissal. Such just cause dismissal commences with a statement of charges issued by the Board of ECRA and, if appealed in writing, is subject to binding arbitration as defined in the Grievance Article.

If the parties cannot agree whether the charges are properly before the Arbitrator, each party may submit a written argument to the Arbitrator in no more than ten (10) pages length and the Arbitrator shall issue a written ruling upon the contract language, whether the matter is arbitrable.

9.5 **Accountability for Individual Bargaining Unit Member Quality:**

a. In order to ensure that employees are focused on their central mission of performing satisfactory in the area of teaching methods, instruction and delivery of other services, employees who receive a Notice of Unsatisfactory Service or "below standard" evaluations shall be deemed ineligible for service or entitlement to the following:

1. Mentor Service
2. Out of Classroom personnel, department chair or instructional advisor positions
3. Committee (including Governing Board) membership
4. Summer session and/or intersession
5. Academic, activity, and athletic positions with corresponding differentials
6. Permissive leaves
7. Auxiliary periods and other auxiliary services involving extra-pay for extra work.

9.6 **Suspension or Reassignment Due to Mental Incompetence:** The School shall, in cases of employee incompetence caused by mental illness, follow the appropriate statutory procedures. Disputes concerning such matters are not subject to the grievance procedures of this Agreement.

9.7 **Arrest Procedures:** Whenever an employee is to be arrested at the school site, the site administrator shall request the police to conduct the arrest at a time and place least visible to the students and staff.

In accordance with Education Code Section 44950 and 44950.5, the School may utilize such provisions when any employee is charged with offenses as enumerated therein.

9.8 **Procedures Relating to Alleged Child Abuse:** When a charge of child abuse is made against an employee and results in the filing of an official Suspected Child Abuse Report, the following procedures are applicable:

- a. As soon as the employee is notified of the charge, the alleged victim of the abuse shall be removed from the accused employee's class and reassigned to the same type of class, if available, pending completion of the resulting investigation(s).
- b. Exceptions to the above may be made at the official request of the city, County, or state law enforcement agency responsible for the matter or with the approval of the Executive Director, the employee, and the parent/guardian.

9.9 **Paid Administrative Leave:** The parties recognize that ECRA retains the right to place an employee on paid administrative leave and that such placement is not considered disciplinary. The parties also recognize that such placement can be the cause of consternation and embarrassment to the employee. Accordingly, the parties agree to the following principles:

- a. As soon as practicable, and subject to the possible direction of law enforcement, ECRA will provide a written reason for the placement.
- b. Paid administrative leave is a temporary measure, and steps will be taken to expedite the process of bringing the placement to closure.
- c. An employee will not be on paid administrative leave for more than twenty (20) days without being provided a written status report stating the reasons for his/her placement and an estimated timeline for closure.

a.d. **In the case of an employee who is to be retained in ECRA employment and to the extent practicable, the employee is to be returned to his/her previous assignment.**

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SUBJECT TO FINAL RATIFICATION BY THE PARTIES:

UTLA Representative

Date: 1/20/16

ECRA Representative

Date: 1/20/16