

Española Public School District

and

Española-NEA

Educational Support Personnel

Collective Bargaining Agreement

Effective May 6, 2009 through June 30, 2010

Amended November ____, 2009

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PREAMBLE

This Agreement is made and entered into this 6th day of May, 2009, by and between the Board of Education and the Española School District (hereinafter referred to as the “District” and “District administration”), and the employees of the Española School District as exclusively represented by the Española-NEA (hereinafter referred to as the “Española-NEA”).

ARTICLE 1. RECOGNITION/AGREEMENT

- A. The parties desire to maintain a professional relationship with their collective bargaining interaction so as to provide the best opportunity for the Española Public School District to succeed in its educational mission. This agreement is entered into by the Board of Education of the Española Public School District (the District) and the Española-NEA.
- B. Pursuant to the applicable statutes, resolutions and regulations, the District Administration recognizes the Española-NEA for the purposes of collective bargaining as the exclusive representative of a unit consisting of Educational Support Personnel employed by the Espanola Public School District. This includes the positions of Administrative Assistant I and II, ADS Coordinator, ADS Secretary, ADS Tech, Clerk, Cook, Head Cook (less than 400 students), Custodian, Head Custodian (less than 400 students), Data Specialist, Financial Specialist, Financial Specialist I, Indian Education Specialist, Library/Media, Maintenance, Medicaid Manager, Payroll Tech I, Procurement Specialist, Receptionist, Registrar, Secretary, Special Education Parent Liaison, Title I Liaison, and Title I Mentor, Bus Driver, Special Ed Coordinator, Insurance Specialist, Transportation Technician, and Transportation Coordinator.
- C. Unless otherwise indicated, as used in this Agreement, the term “employee” means an employee in the bargaining unit defined in Section B. above.

ARTICLE 2. DEFINITIONS

- A. “Board” shall mean the Española Public School District Board of Education.
- B. “Days” shall mean workdays according to the school calendar and shall not include holidays or recesses observed by the District, unless otherwise specifically noted in the contract.
- C. “District” shall mean the Española Public School District.
- D. “Educational Support Personnel” means those employees in the bargaining unit defined in Article 1 Section B of the Educational Support Personnel Collective Bargaining Agreement.
- E. “Emergency” shall mean any act of God or other unforeseeable or unplanned occurrence or condition that has a significant and adverse impact on the educational or work process, requiring an immediate action.
- F. “Española-NEA” is understood to mean the local Española Association, an affiliate organization of the National Education Association and an affiliate of New Mexico National Education Association, Española-NEA’s representative(s) or officers. Official communications to the Española-NEA shall be made to the President of the Española-

- NEA or his/her designated representative or representatives. Any reference to “The Union” shall be understood to mean Española-NEA.
- G. “Immediate Supervisor” shall mean the principal, supervisor or administrator in charge of the function, staff or activity.
 - H. “President” shall mean the President of the Española-NEA or designee.
 - I. “Superintendent” shall mean the Chief Executive Officer of the Española Public School District.
 - J. “Employee” means a regular non-probationary or probationary employee of the Española Public School District.
 - K. “Confidential employee” means a person who devotes a majority of his/her time to assisting and acting in a confidential capacity with respect to a person who formulates, determines, and effectuates management policies;
 - L. “Impasse” means a failure of the District and Española-NEA after good-faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement.
 - M. “Arbitration” is a proceeding to settle a dispute in which the settlement is determined by an impartial arbitrator selected through a process included in this agreement. The parties agree in advance that the Arbitrator’s decision, based on the merits of the case, will be final and binding. The services of the Federal Mediation and Conciliation Service shall be employed to obtain arbitrators.
 - N. “Management employee” means an employee who is engaged primarily in executive and management functions and is charged with the responsibility of developing, administering or effectuating management policies. An employee shall not be deemed a management employee solely because the employee participates in cooperative decision making programs on an occasional basis.
 - O. “Professional employee” means an employee whose work is predominately intellectual and varied in character and whose work involves the consistent exercise of discretion and judgment in its performance and requires knowledge of an advanced nature in a field of learning customarily requiring specialized study at an institution of higher education or its equivalent. The work of a professional is of such character that the output or result accomplished cannot be standardized in relation to a given period of time;
 - P. “Supervisor” means an employee who devotes a majority of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees and who has the authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively, but “supervisor” does not include an individual who performs merely routine, incidental or clerical duties or who occasionally assumes a supervisory or directory role or whose duties are substantially similar to those of subordinates and does not include a lead employee or an employee who participates in peer review or occasional employee evaluation programs.
 - Q. The term “worksites” shall mean any location where an employee is authorized to perform work by the District.

ARTICLE 3. GENERAL

The Española Public School District Labor Management Relations Resolution, the Española Public School District sanctioned rules and regulations, administrative directives, departmental rules and regulations, and workplace practices shall control unless there is a conflict with a

collective bargaining agreement. Where a conflict exists, this collective bargaining agreement shall control.

ARTICLE 4. AGREEMENT CONTROLS

- A. If any District policy, regulation, or directive that is in conflict with any provision of this Agreement, the Agreement provision will control.
- B. The parties, by mutual written agreement may modify this Agreement.
- C. The District will not implement any changes to the District Policies that would affect this bargaining unit that would be in conflict with this Agreement, unless mandated by state or federal requirements.
- D. If any provision of this Agreement or any application thereof is held to be contrary to law, then such provision or application will be deemed valid only to the extent permitted by law, but all other provisions or applications will continue in full force and effect. If either party desires to negotiate a replacement for the language found to be contrary to law, that party shall provide written notification to the other party within ten (10) days of any such holding. The parties will meet to negotiate the replacement language within ten (10) days of the written notice.

ARTICLE 5. MANAGEMENT RIGHTS

Unless limited by the provisions by this collective bargaining agreement or by statutory provisions, the District may:

- A. Direct the work of, hire, promote, assign, reassign, transfer, demote, suspend, discharge or terminate bargaining unit employees;
- B. Determine qualifications for employment and the nature and content of personnel examinations and work to be performed;
- C. Take actions as may be necessary to carry out the mission of the District in emergencies; and
- D. The District retains all rights not specifically limited by this Agreement or by the District's Local Labor Management Relations Resolution.

ARTICLE 6. ASSOCIATION RIGHTS AND RESPONSIBILITIES

- A. **EXCLUSIVITY:** The rights, responsibilities and/or privileges granted to the Española-NEA by this Collective Bargaining Agreement will not be granted to any other organization which purports to represent any employee covered by this Agreement.
- B. **NO REPRISALS:** There will be no reprisals of any kind taken against an employee by either party by reason of his/her membership or non-membership in the Española-NEA or participation or non-participation in any of its activities.
- C. **RELEASE TIME:**
 - 1. Normally Española-NEA business will not be conducted during duty-time, except in case of emergencies. In situations where District Management staff (Principal

or above) requests in writing, to deal with an emergency during duty time, the appropriate Association representative will be released from duty on pay status.

2. Association Conference & Workshop Leave.

The Association may request up to a total of five (5) days per regular school year to attend Association Conferences and workshops. The Association will assume the cost of substitutes. Such requests are subject to the approval of the superintendent and are not subject to review under the grievance process. Such leave requests shall not be made during the 1st two weeks or the last two weeks of school, or during parent teacher conferences days.

D. INFORMATION:

1. The Española-NEA will be provided with copies of minutes of official Board of Education meetings and all other non-confidential documents distributed to the Board of Education members at official meetings at the time of their distribution to the Board. A copy of the official agenda of the meeting, and any relevant attachments, will be given to the Española-NEA as distributed to the Board of Education members.
2. Material which is disruptive to good relations between the parties and not in the best interest of the students of the District shall not be distributed at work sites by either party.
3. One Association bulletin board of a size and quality agreed to by the parties will be placed in each school building at a location agreed to by the parties. The Association Bulletin Board will be used only for official Association business notices, circulars, and other such materials. This bulletin board may not be used for political campaign materials, except for internal NEA elections. Copies of all materials to be placed on the bulletin board will be provided to the Building principal in advance of the posting.
4. Española-NEA may place Association material in bargaining unit employees' mailboxes during non-duty time. The Association material shall not be distributed or transported by District employees on District paid time.
5. The Española-NEA may use school buildings in the same manner as any other organization. No charge will be made for use of the facilities; however, custodial charges may be assessed if necessary.
6. At the conclusion of a faculty/staff meeting a designated Association Representative may make short Association announcements.
7. Should the District provide a link to web pages not wholly owned and managed by the District, the Española-NEA will also be provided with a link to it's web page in the District web site.
8. District equipment and supplies shall only be used for District business.

E. EMPLOYEE INFORMATION:

1. It is the right and responsibility of the Association to inform bargaining unit employees of their rights and responsibilities under the collective bargaining agreement.
2. The Española-NEA may provide an information table during the New Employee Orientation sessions for the purpose of providing information to interested bargaining unit employees.

3. During one of the orientation days, the Española-NEA, at the end of the morning session, may extend an invitation to new employees to attend an Association sponsored meal.

F. MEMBERSHIP DUES DEDUCTION:

1. The District will deduct bargaining unit employee membership dues in the amounts identified by the Association President and will transmit the monies to the Española-NEA. The bargaining unit membership dues payroll deduction will be made by the District within thirty (30) days of submittal of a voluntary employee signed payroll deduction authorization form submitted by the Association to the District's payroll Supervisor. The Association and the employees shall hold the District harmless on any issue that may arise regarding the deduction of membership dues.
2. The District will stop payroll deductions when:
 - a. the Association submits a payroll deduction cancellation form to the District's Payroll Supervisor. Such cancellation form shall be submitted at least two weeks prior to the desired effective date;
 - b. a cancellation form is submitted by the employee to the Association Treasurer or President, and the Association then shall forward the cancellation form to the Payroll Supervisor during the month of October or January;
 - c. the bargaining unit member does not earn a sufficient amount to cover the dues deduction; or
 - d. the employee is no longer in the bargaining unit or employed by the District.

ARTICLE 7. AGREEMENT OVERSIGHT COMMITTEE

Three Union members appointed by the President of the Union and three supervisory/administrative staff appointed by the Superintendent will meet on an as needed basis to review and discuss current school problems, practices, the administration of this agreement and other mutually agreed upon topics. Either party may initiate the request for meeting. All such meetings shall be conducted during non-duty time at a mutually agreed upon time and place. It is the intent of the parties to deal with issues regarding the implementation, application, and administration of this Agreement as quickly as possible.

ARTICLE 8. BARGAINING PROCEDURE

A. SCHEDULE SETTING FOR NEGOTIATIONS:

Not later than December 1st of the school year in which this Agreement expires, either party may submit a written notice to the other party requesting the scheduling of negotiations for a successor agreement. A meeting of the parties to conduct such scheduling shall take place at a date and time and place mutually agreed to by both parties.

B. NEGOTIATIONS: Not earlier than January 1st and not later than March 1st of the calendar year in which this Agreement expires, the parties will enter into collective bargaining with

the Española-NEA over a successor agreement in accordance with the procedures set forth herein in a good-faith effort to reach agreement.

1. The parties have the right to negotiate any items which are legally permissible. Negotiations shall be closed sessions.
 2. Any agreement reached during the negotiating session will be reduced to writing and signed by the parties as tentative agreements. Complete agreement on negotiations is accomplished when the Española-NEA members and the School Board ratifies, and the parties sign the Agreement. Each party will ratify or reject ratification of all tentative agreements as a whole. The Union shall schedule and conduct the ratification of the agreement without interference from school board members, management employees or the District. The Union shall schedule and conduct the ratification within two (2) weeks of the signing of all tentative agreements. The District shall schedule and conduct the ratification of the agreement without interference from bargaining unit employees or the Union. The District shall schedule and conduct the ratification of the agreement within two (2) weeks of the ratification by the Union.
 3. Ground rules may be negotiated by the parties.
 4. During bargaining the District administration and the Española-NEA will present relevant data, exchange points of view and make proposals and counter proposals. The District administration will make available to the Española-NEA for inspection all pertinent records, data and information of the Española Public Schools. Either party may utilize the services of outside consultants and may call upon professional and lay representatives to assist in bargaining. Española-NEA shall have a representative on the budget committee.
 5. If bargaining between the parties is scheduled during a school day by the administration the members of the Española-NEA's bargaining team will be released of their regular duties.
- C. The District administration agrees not to bargain or otherwise deal with any employee organization other than the Española-NEA for this bargaining unit for the term of this Agreement.
- D. Grants which may alter any portion of this agreement are subject to negotiation. Grants that offer voluntary opportunities for participation outside of the instructional day are not subject to negotiation.
- E. Once a party presents its last best offer, the other party shall present its last best offer within three (3) working days. Should an impasse occur the parties will comply with the procedures established in applicable laws, regulations and resolutions. This process may be clarified in the ground rules set by the parties.
- F. The ratified collective bargaining agreement reached through this process shall be posted on the District web site. A printed copy shall also be presented by the administration to all new bargaining unit employees at the time they also receive the employee handbooks and other official orientation materials from the District. A printed copy shall also be made available at the front desk of every work site to any bargaining unit employee for review and/or copying. Each party will be presented a Master Copy of the Agreement. It is the responsibility of management to distribute and explain the Agreement to the management staff. It is the responsibility of the Española-NEA to distribute and explain the Agreement to each member of the bargaining unit.

ARTICLE 9. EMPLOYMENT PROCEDURES

- A. The District is an Equal Opportunity Employer.
- B. EMPLOYMENT:
 - 1. Upon initial employment with the district, the employee will be placed on the appropriate salary schedule.
 - 2. Part-time employees shall be compensated at the appropriate step at a pro-rated amount.
- C. RESIGNATION:
 - 1. Educational Support Personnel employees who intend to resign employment from the District shall provide a minimum of ten (10) working days advance written notice from the effective date of resignation.
 - 2. By mutual agreement the employee and the District may agree in writing to less than a ten (10) working day notice of resignation.

ARTICLE 10. AFFIRMATIVE ACTION

- A. The parties agree that the District's Affirmative Action Plan shall continue in full force and effect and shall apply to all bargaining unit employees for the term of this agreement.
- B. If there is a conflict between any of the provisions of this agreement and the District's Affirmative Action Plan, the latter will prevail.

ARTICLE 11. DISCRIMINATION

- A. The District and the Española-NEA agree that the parties will not develop, interpret, or apply, this agreement in such a way as to discriminate against bargaining unit employees based on race, creed, color, religion, national origin, sexual orientation, gender, or age.
- B. The parties shall not discriminate against any bargaining unit employee based on union or non-union membership.

ARTICLE 12. EDUCATIONAL SUPPORT PERSONNEL ASSIGNMENTS

- A. The Superintendent will give notice of assignments to new employees within five days of hire or as soon as practicable.
- B.
 - 1. All Other Educational Support Personnel employees will be given written notice of their assignments (inclusive of site), for the forthcoming year no later than 30 days before the first day of class.
 - 2. It is recognized that assignments may be changed due to student enrollment and availability of space. Administrators will directly contact affected employees as soon as practicable.
- C. Educational Support Personnel will be assigned in their classification except in emergencies.

D. **MULTIPLE SITE ASSIGNMENTS**

1. Schedules of employees who are assigned to more than one school building will be arranged so that such employee travel will be minimal. Employees will be given ample time when such travel is required.
2. Employees who are required to use their own automobiles in the performance of their duties and employees who are assigned to more than one (1) school per day will be reimbursed for such travel at the current state guideline rate for all driving done between arrival at the first location at the beginning of their workday and departure from the last location at the end of their workday, when the two work locations are least 10 miles apart.

ARTICLE 13. VACANCIES, TRANSFERS AND REASSIGNMENTS

A. **VACANCY NOTICES:** All bargaining unit vacancies in preexisting and newly-created positions will be publicized by the Superintendent in accordance with the following procedure:

1. When a vacancy occurs the district shall post the notice at all worksites. Posting will be in a prominent place frequented by employees. A copy of said notice will be published on the district administration's web site.
2. Vacancy postings will contain specific identification of the vacant position, the worksite where the vacancy exists, the position's major duties, qualifications/license needed for the position, the name of the person to whom the application should be sent, and the deadline for applications, which will not be less than fifteen (15) working days from the initial posting.
3. A "vacancy" will be deemed to exist when
 - (i) an employee leaves a position and the District administration indicates its intention to refill said position, or
 - (ii) when a new bargaining unit position is created.

B. **FILLING VACANCIES:**

1. Prior to any involuntary transfer, the appropriate administrator will meet with employee(s) to thoroughly explain why the transfer is necessary to meet the needs of the students. The meeting shall be conducted as soon as practical. The employee being involuntarily transferred or reassigned will be placed only in an equivalent position -- i.e., one which, among other things, involves no reduction in regular compensation, during the current or future years.
2. No vacancy will be filled until all properly submitted applications have been considered.
3. Employees who wish to be considered for vacancies and/or openings may submit a letter of interest to Human Resources Department within the time limit identified in the posting. This letter of interest shall serve as an application.
4. When filling a vacancy and all things are equal between an in-district and out-of-district applicant the in-district employee will be given preference.

ARTICLE 14. VOLUNTARY TRANSFERS

- A. Employee transfers are allowed at the end of each semester for posted positions. Exceptions to the semester requirement may be granted upon approval by the supervisors involved.
- B. An employee desiring a transfer shall complete all information required on the "Request for Transfer" form, sign the request, obtain the signature of his/her supervisor if possible, or provide a copy to the supervisor, and submit the form to the Human Resources Department.
- C. The Human Resources Department will forward all transfer requests to supervisors for posted positions at their work sites. A qualified employee requesting a transfer shall be granted an interview for the posted position. District employees will be considered before outside applicants are considered.
- D. District "Request for Transfer" forms will be available at all work site locations, on the District web-site, and from the Human Resources Department. Employees must complete a separate "Request for Transfer" form for each posted position in which they are interested.
- E. The employee may submit written withdrawal of the "Request for Transfer" by submitting a written request to the Human Resources Department.
- F. Employees interviewed will be notified in writing by Human Resources indicating the position has been filled.

ARTICLE 15. SUMMER SCHOOL, EVENING SCHOOL, FEDERAL AND OTHER SPECIAL PROGRAMS

- A. All openings for summer school and evening school positions under Federal and other special programs will be filled pursuant to the procedure prescribed in Article 12 (Vacancies, Transfers, & Reassignments) of this Agreement. Under normal circumstances, summer school openings will be publicized not later than one month before commencement each year, and employees will be notified of the action taken not later than two weeks prior to commencement. Said notice will include work schedules, class and/or subject assignments and building assignments for their assignment. Summer school schedules may be modified or cancelled due to student enrollment.
- B. Highly qualified permanent employees will be given first preference in hiring for instructional positions. Qualified permanent employees will be given first preference in hiring for non-instructional positions.
- C. All current practices affecting working conditions which may be required or requested by Federal or other special programs, including evaluation and reporting procedures, may not be altered except by agreement of the parties.

ARTICLE 16. REDUCTION IN FORCE

- A. The District is vested with the responsibility to determine the educational program of the District in compliance with state and federal educational standards and statutory requirements. The District in its discretion may increase or decrease the number of employees as provided below.

- B. The District shall develop a Reduction In Force plan and present it to the Board of Education for approval.
- C. The plan shall:
 1. Identify reason(s) for Reduction In Force. The following conditions may justify a Reduction In Force:
 - a. Decline in Student enrollment;
 - b. Revenue decrease caused by student enrollment, loss or reduction of tax revenue, loss of state, local or federal funds or inflation that reduces the value of revenue;
 - c. The revision of educational programs;
 - d. District involvement in consolidating or re-districting;
 - e. Court orders;
 - f. Legislative mandates.
 2. Demonstrate all options that have been considered for resolving the District's revenue short-fall prior to initiating a Reduction In Force;
 3. Demonstrate all options that have been considered to preserve academic programs;
 4. Include the expected date of Reduction In Force;
 5. Incorporate attrition and transfers;
 6. Provide for only hiring essential personnel during the term of the Reduction In Force;
 7. Request volunteers for separation of employment
 8. Identify the positions or areas to be affected by the Reduction In Force.
- D. Once the plan is approved by the Board of Education the plan shall be posted on the District's website. Reasonable efforts shall be made to distribute and discuss the plan with staff.
- E. The steps below will be applied in the implementation of a Reduction In Force:

PROCEDURE:

Step 1: Seniority:

Seniority is defined for the purpose of this article as cumulative service within the bargaining unit with the District. Employees will be considered for lay off with the junior employee within the identified classification being laid off first.

- a. Partial-year employment shall be pro-rated.
- b. Part-time employment shall be pro-rated.

Step 2: (Highest Level of Licensure within the classification area is senior if applicable);

Step 3: Number of different Classifications worked within the District. (Greatest number of classifications is senior); and

Step 4: Degree, (Highest Degree is senior):

PROCESS:

1. If two or more employees are equally ranked in step one then step two will be applied to those employees.
2. If two or more employees are still equally ranked in step two, step three will be applied to those employees.
3. If two or more employees are still equally ranked in step three, step four will be applied to those employees.
4. An individual identified for lay off will be offered a position for which he is qualified that is currently occupied by an employee without due process rights, including long-term substitutes. If the position is accepted, the employee without due process rights is terminated. If the employee refuses the position offered, she/he will be laid off.
5. A Reduction In Force shall never be used to retaliate against an employee.
6. Employees laid off under a Reduction In Force Plan shall have a written notice placed in the personnel file and a notice shall clearly state the layoff resulted from a Reduction In Force.

NOTIFICATION:

Notification will be provided to employee, as soon as possible, in written form either through return receipt request US Mail or hand delivery with return signature requested. The notice shall include the effective date of the layoff action.

RECALL:

For a period of twelve (12) months after the effective date of the lay off of any employee under this REDUCTION IN FORCE policy, the District will offer any position(s) which become available and for which a laid off employee is licensed and/or qualified provided that the laid off employee has complied with the rules below:

- a. Laid off personnel will automatically be placed on the recall list unless the person notifies the District in writing that s/he does not wish to be recalled;
- b. It is the responsibility of the laid off person to notify the District of any change of status or address;
- c. Selection of persons to be recalled will be by seniority within the classification from which they were laid off. (The most senior laid off employees will be recalled first).
- d. If none of the persons laid off under this Article within the classifications accepts the district's offer of recall, then the district will extend the offer to other laid off persons who are qualified for the position(s).

NOTIFICATION OF RECALL:

Any person selected for recall will receive written notification by certified mail, return receipt requested, or by personal delivery at the address s/he provided to the Superintendent's office. Written acceptance of the position must be received in the Superintendent's office within ten (10) calendar days after receipt of recall notification.

If a recalled person does not accept the offer within the specified time:

1. S/he forfeits all recall rights under this provision.
2. The next qualified person will be notified.

Seniority Accrual: A laid off employee who is recalled within the twelve (12) month period will retain seniority and sick leave benefits accrued before the lay off.

Loss of Rights: After twelve (12) months, the recall period has expired and any person laid off under this Reduction In Force no longer has the right to recall. Such persons who wish to be re-employed thereafter must reapply as a new applicant for employment.

ARTICLE 17. SEPARATION OF EMPLOYMENT

Upon separation of employment the employee will be compensated for any time actually worked through the effective day of termination or dismissal.

ARTICLE 18. SITE-BASED DECISIONS

- A. The parties recognize and encourage the continuation of arrangements pursuant to which bargaining unit employees at individual schools are given increased responsibilities for making professional decisions with regard to their day to day duties and responsibilities at the school site. This can foster the collegial exchange of ideas and information which can contribute to the efficiency and effectiveness necessary in a professional practice. Current practices shall continue except for any changes identified in this article.
- B. Site Administrators shall provide an open process for Bargaining Unit employees to apply for such committees.
- C. It is also recognized that such arrangements can not be contrary or in violation of PEBA, the District LMR Resolution or the terms and conditions of this Collective Bargaining Agreement between the parties.

ARTICLE 19. SUBSTITUTE EMPLOYEES

No employees shall be required to find, arrange for, or pay for his or her own substitute.

ARTICLE 20. PROMOTIONS

- A. Bargaining unit promotional positions are defined as follows: Bargaining unit positions paying an increased hourly wage.
- B. All bargaining unit vacancies in preexisting and newly-created promotional positions that the District decides to fill will be publicized by the Superintendent in accordance with the following procedure:
 1. When a vacancy occurs and the District decides to fill the vacancy, the District shall post a notice in each school.
 2. Qualified bargaining unit employees who desire to apply for a promotional position will submit their names to the Human Resources Department, together with the position or positions they desire to apply for.
 3. Application must be received by Human Resources prior to the deadline for application as identified on the posting.

- C. The qualifications for a particular promotional position will not be established or changed without advance notice to the Española-NEA.
- D. All qualified applicants will be considered. The District administration may fill a vacancy in a promotional position on a temporary basis (i.e., for up to sixty (60) days) when it is necessary to do so in the best interest of the educational process. Temporary filling of positions shall not be used for the purpose of pre-selection.
- E. Except as otherwise provided in Article 15 (Reduction in Force) and Article 9 (Affirmative Action) of this Agreement, no vacancy in a promotional position will be filled except after compliance with the above procedure.
- F. If there is any conflict between this Article and the District administration's Affirmative Action Plan (which is attached hereto as Appendix D of this Agreement) the latter will prevail.

ARTICLE 21. STUDENTS ASSIGNED TO EDUCATIONAL SUPPORT PERSONNEL MEMBERS

- A. Any students assigned to an Educational Support Personnel bargaining unit member shall be on the appropriate roster of certified licensed employees.
- B. The number of students so assigned shall not interfere with the performance of the employee's core job responsibilities. This shall not normally exceed two students per class period per employee.
- C. Should an employee believe a student or students are inappropriately assigned, the employee will attempt to resolve the issue with the assigning counselor. If the issue is not resolved at this level the employee may request a meeting with a union representative and a supervisor to discuss the matter.

ARTICLE 22. GRADE CHANGES

- A. A grade change request can be initiated by one or more of the interested parties, the student, a parent or guardian of the student, the teacher of record or principal. Any of the parties must fill out a change of grade form stating why the change is requested and attaching copies of all documentation supporting the reason for the request.
- B. The student, parent or guardian, or the principal must first speak with the teacher. Evidence of good faith effort must be provided in notifying a teacher if they are no longer employed in the District. If the teacher of record decides they believe a change of grade is appropriate, they must go to the principal with the completed form and attached data. If the teacher believes the original grade is justified, and the party still feels a grade change is appropriate, they shall submit completed form and any attached data form to the principal.
- C. If the principal believes there may be appropriate justification for a grade change he will discuss it with the teacher.
- D. If the teacher believes the original grade is justified, but the principal is not convinced by the teacher's argument the Principal may appoint a grade change appeals committee to consider the matter. The grade change appeals committee shall be identified by the building principal and will consist of the following: department chair, head teacher, or

senior school site teacher, two neutral teachers, and the student's counselor. They will meet with the teacher, examine the evidence presented by both sides and make a recommendation to the principal.

- E. The principal shall consider the recommendation and make a decision. The principal's decision will be final. The written decision of the principal will include articulated reasons that are stated such as extenuating circumstances, additional graded work submitted by the student, additional or make up testing, or any other meaningful criteria that can be verified.
- F. No student's grade shall be changed without a record of the change, an initial of the person making the change, and the date thereof, on the grade document itself.

ARTICLE 23. EMPLOYEE FACILITIES, INSTRUCTIONAL MATERIALS AND SUPPLIES

Prior to the March budget committee meetings the Agreement Oversight Committee will study and prioritize the needs identified below. The committee shall submit them to the budget committee for consideration.

- A. STAFF LOUNGE/WORK AREA:
 - 1. An employee work area containing adequate equipment and supplies to aid in the preparation of instructional materials for each school building.
 - 2. An appropriately furnished room, including a telephone to be reserved for the exclusive use of the employees, as a faculty lounge.
- B. EACH CLASSROOM:
 - 1. Adequate space in each classroom in which employees can safely store instructional materials and supplies.
 - 2. A serviceable book case, desk, chair, computer, and a filing cabinet of adequate size for employee use in each classroom.
 - 3. A communication system so that employees can communicate with the main building office from their classrooms, including during emergencies.
 - 4. The purchase and/or replacement of textbooks, library books, instructional materials, supplies and equipment.
 - 5. A supply fund to be used to purchase materials and supplies which are not immediately available through general supply.
- C. EMPLOYEE REST ROOMS: A well-lighted and clean employee rest room separate for each gender and separate from student rest rooms.
- D. It is understood that all of these issues are subject to the availability of funds.

ARTICLE 24. STUDENT DISCIPLINE

- A. The parties recognize that student deportment and respect for others are essential for a successful and productive educational program, the academic success of students, and the safety of employees and students.

- B. The principal shall have the primary responsibility for administering the school's student discipline policy. In accordance with the school's discipline policy, the employee shall be responsible maintaining a social environment which is conducive to teaching and learning among those students under the employees supervision.
- C. An employee shall be the initial source of discipline of all students under the supervision of the employee. An employee shall take whatever action is appropriate, necessary, required, and permitted under policy and law to properly discipline a disruptive student prior to referring the student and the problem to the administration. An employee may refer to the administrator a student whose behavior continues to prevent the employee from performing instruction and/or threatens the safety of employee(s) or student(s). Once the administrator accepts the referral for discipline from the bargaining unit employee the administrator will determine and implement the appropriate student discipline. Student discipline shall be applied in accordance with school policy, district policy, Public Education Department regulations, state law, and federal law. Student disciplinary referrals will be maintained, logged, and tracked at each worksite.
- D. The administrator will confidentially inform an employee of any complaint made by a parent or guardian concerning disciplinary action taken by the employee with a student if the administrator determines the complaint is serious.
- E. Employees shall use appropriate techniques which may include as a last resort reasonable restraint as permitted by law in order to maintain a safe environment for students and staff.

ARTICLE 25. PROTECTION OF EMPLOYEES, STUDENTS, PROPERTY, HEALTH AND SAFETY

- A. The District will provide healthful and safe working condition for all employees.
- B. The District will comply with applicable state and federal health and safety laws.
- C. All hazardous or potentially hazardous conditions at the work site shall be reported in writing immediately by the employee to the employee's supervisor.
- D. The Union may make written recommendations to the District on healthful and safe working condition for all employees.

ARTICLE 26. ALCOHOL AND DRUG ABUSE

- A. The district will only drug and alcohol test for pre-employment and upon reasonable suspicion. However, the district may randomly test only safety sensitive positions as identified by law.
- B. The parties' primary concern is the education, safety, health and well being of students and employees.
- C. The employee may only seek a referral for diagnosis or treatment prior to reasonable suspicion, or prior to identification to random drug testing. Such request shall not jeopardize his/her job rights or job security and all requests will be handled in a confidential manner.

- D. If the district takes any action regarding drug and alcohol abuse, the employee will be afforded the right to have appropriate Española-NEA representative(s) present throughout the process.

ARTICLE 27. HOURS OF WORK & OVERTIME

- A. The current policy for the determination of who is eligible for benefits is incorporated into this Agreement. As per the New Mexico Public Schools Insurance Authority (NMPSIA), New Mexico Public School employees are eligible to participate in the Benefit Program if the employee is actively at work and works the minimum qualifying number of twenty (20) hours or more per week. The employee may participate only in the line of NMPSIA employee benefits coverage offered by the employer.
- B.
 - 1. Educational Support Personnel employees will be paid overtime in accordance with the provisions of the Fair Labor Standards Act.
 - 2. Paid leave is not considered time worked and will not be computed as time worked, for the purposes of computing overtime compensation.
 - 3. As required by the Fair Labor Standards Act, call back time is considered time worked and will be calculated as such for determining overtime compensation. Reasonable/normal travel time from home to the job-site and back home on a call back is considered time worked.
- C. The normal work week for employees shall consist of four or five work days. Employees required to work through their scheduled lunch will be compensated for such time at their regular hourly rate of pay and will eat their lunch and/or dinner during this time.
- D. The calendar for the 2008/2009 school year covered by this Agreement is set forth in Appendix A which is attached hereto and made a part thereof of the Agreement.
- E. Exceptions to the provisions of Sections A, B, C, D, and E of this article may be made only in cases of emergency. The Espanola-NEA and affected employees will be notified in each such instance.
- F. Employee participation in extra duty activities (duties outside their job classification) will be strictly voluntary. Employees will be compensated for all such participation in accordance with this Agreement.
- G. Employees will be paid for any time worked on a holiday at their regular rate of pay and such time is considered time worked for the purposes of computing overtime.
- H. The specific work schedules of employees will be set by management to meet the needs of the District in the delivery of services to the students.
- I. Overtime must be assigned and pre-approved by the immediate supervisor. Overtime assignments within the employees job classification is a condition of employment and will be worked as assigned and compensated in accordance with the Fair Labor Standards Act.

ARTICLE 28. TIME CLOCK FOR EDUCATIONAL SUPPORT PERSONNEL

- A. Educational Support Personnel shall utilize the time clock for recording time worked.
- B. Employees will pay \$25.00 for the first replacement of a lost identification card. Employees will pay \$50.00 for the subsequent replacement of lost identification card.

ARTICLE 29. LEAVE PROVISIONS

A. PROFESSIONAL LEAVE.

Professional leave is defined as leave that the District decides will benefit the School District and the employee. Such leave is for the purpose of attendance at a conference, workshop, professional meeting, in-service training, or school event. Professional leave is with pay and is subject to the recommendation of the supervisor and approval of the assistant superintendent for instruction. Any denial of the professional leave request should be communicated to the employee at least 48 hours prior to the event, by email except in extenuating circumstances. The employee may be required to share the information obtained at conference or workshops with District employees who did not attend. This information would be provided in the form of a workshop at the District.

B. RELIGIOUS LEAVE

Employees may be granted accrued personal leave or leave without-pay for the observance of religious holidays.

C. ASSAULT AND/OR BATTERY LEAVE

1. An employee injured by an assault and/or battery while acting in the scope of the employee's duties will be placed on administrative leave with pay while an investigation is conducted. If the investigation concludes prior to the employee being able to return to work and the employee chooses to use his/her accrued paid leave, such leave may be reimbursed if the employee qualifies for the reimbursement under the Worker Compensation Act of New Mexico. An employee is not eligible for paid leave while receiving workers compensation benefits.

2. An employee battered shall report the incident to his/her supervisor immediately. The employee shall complete all necessary reports and/or forms.

3. Employees injured by a physical assault and/or battery while acting in the scope of the employee's duties shall apply for Workers' Compensation.

D. COURT LEAVE

1. Leave with pay may be granted to an employee for jury duty or subpoena regarding a job related issue to testify on behalf of the District.

2. The employee will cooperate in ensuring the Court turns over the jury duty fees to the District.

3. Leave may be requested by an employee to appear in court or an administrative procedure to assert or protect his or her own interests. If granted, the employee shall use personal leave or leave without-pay for such purposes.

E. MILITARY LEAVE

Military leave shall be administered in accordance with Federal and State Law. (include appropriate federal/state law)

F. LEAVE TO VOTE

Leave to vote will be handled in accordance with State Law.

G. INCIDENTAL LEAVE

Employees may request incidental leave for one (1) hours or less when such request would not necessitate the hiring of a substitute to include but not limited to: picking up sick children, brief doctor visits, vehicle or family emergencies, etc. Such requests should be reasonable and necessary and should be for unique situations and rare occurrences. This leave is subject to the approval of the supervisor.

ARTICLE 30. LEAVE WITH PAY

- A. SICK LEAVE/PERSONAL LEAVE-ACCRUAL
 1. Sick Leave will be accrued at the rate of one (1.25) day for every twenty (20) days worked. In addition bargaining unit employees shall accrue two days of personal leave at the beginning of the school year. No explanation shall be required for personal leave requests.
 2. Sick leave can only be taken as accrued.
 3. Accrued sick leave shall be forfeited at time of separation of employment with the district, except in case of retirement where District Policy G-2550 will apply, (Included as Appendix C).
- B. SICK LEAVE INCENTIVE: At the close of each fiscal year each employee's accumulation of unused sick leave shall be calculated. An employee who has used three (3) days or less of sick leave during the fiscal year and who accumulated sick leave days equal to at least forty (40) days but less than eighty (80)days shall be paid two hundred fifty dollars (\$250.00) and an employee whose accumulated days equal at least eighty (80) days shall be paid five hundred dollars (\$500.00) This payment is subject to the availability of funds as budgeted by the School Board provided no additional budget cuts are required by the State during the fiscal year.
- C. PERSONAL LEAVE: Personal leave will not be approved during the first two weeks or the last two weeks of school and the day before and the day after a holiday or scheduled school break except in extenuating circumstances as determined and approved by the Superintendent. Staffing needs and what is in the best interest of students will be evaluated in considering approval of personal leave. Each staff member will be granted personal leave not to exceed two (2) days per year. No more than ten percent (10%) of the staff per school site may be granted personal leave at any one (1) time. Requests for personal leave must be received at least four (4) working days prior to the first day of leave, and are subject to the approval of the principal. In the case of a documented emergency, principals are authorized to grant personal leave to employees subject to provisions above. Where the employee has exhausted other leave the principal has discretion to approve such emergency leave which shall be deducted from the accrued sick leave.
- D. Substitutes required for the purpose of paid leave shall be arranged for by the District.
- E. SICK LEAVE BANK: Will be administered in accordance with District, G-3100 (Included as Appendix B).
- F. BEREAVEMENT LEAVE: An employee may be granted leave, upon request to the Superintendent, up to five days of leave per year to be used in the event of death in the employee's family, (Parents, Spouse, Children, Siblings, Grandparents, and Grandchildren, like relations created by marriage). Additional leave may be requested and charged to personal, sick, or leave-without pay, subject to the approval of the Superintendent.

ARTICLE 31. LEAVE WITHOUT PAY

1. All leave without pay requests are subject to the recommendations of the supervisor and the approval of the Superintendent. Such requests shall be considered based on what is in the best interest of the students. Employees accrue no pay or leave while on leave without pay.
2. An employee returning from leave-without-pay status will be returned to the same position/job title or an equivalent position provided that the employee gives notice as required by the District and the employee is cleared to return to work. Placement of employees upon return shall be determined by the best interests of the students and will not be capricious, arbitrary, and retaliatory.
3. Upon return from leave-without-pay status, during the same school year, the employee will be placed at the same salary that he/she held before the leave. Employees working the majority of the contract year will advance on the salary schedule as if they had not been absent.
4. Upon return from any authorized leave without pay, an employee will be credited with the same accrued leave that the employee had at the time the leave commenced, provided the employee did not use any of the accrued leave.
5. Leave-without-pay shall be granted as required by the Family Medical Leave Act (FMLA), (<http://www.dol.gov/esa/whd/fmla/>) provided that the District may require an employee to exhaust his/her accrued paid leave before commencing leave-without-pay. An employee shall not accrue paid leave while on leave without pay.
6. A leave of absence-without-pay for up to one year may be granted to any employee who accepts a Fulbright Scholarship or who is pursuing planned professional growth opportunities relating to the employee's job.
7. Leave without pay shall not be granted to accept other employment.
8. Employees shall notify the District of their intent to return or resign from an approved leave of absence no later than the date set forth in the leave approval documents. The normal date of notification for an employee returning at the beginning of the school year will be March 15, unless there is a mutual agreement for a later notification date, at the time such leave is approved. With regard to approved leaves where the employee's return date cannot be predetermined by March 15th or later notification has not been agreed to, the employee shall provide a least thirty (30) days prior request to return to work.
9. While on approved leave of absence without pay, an employee will have the option to continue participation in any district administered programs which require an employee or employer's contribution. In exercising this option the employee assumes one hundred percent (100%) of the contribution. This provision is subject to the requirements of the benefit providers.

ARTICLE 32. TRAINING

- A. The District administration and the Española-NEA acknowledge the need for bargaining unit employees to continue to participate in job related training.

- B. District-wide training will be collaboratively developed with the input by leadership and goal terms at each school site; consistent with, the direction provided by the administration and school board. The training program must meet the goals as identified by the District EPSS plan.
- C. Employees may be required to attend other activities after the normal duty day. If attendance is required notice of ten (10) working days will be provided.
- D. Employees will be provided an equitable opportunity to request and participate in related training including tuition, courses, workshops, seminars, conferences, in-service trainings or other such programs based on the needs of the District and availability of funds.

ARTICLE 33. EMPLOYEE OBSERVATIONS AND EVALUATION AND RE-EMPLOYMENT

A. GENERAL

EVALUATIONS

1. Performance Evaluations shall be performed in accordance with State of New Mexico requirements. Criteria and processes for performance evaluation shall be reviewed annually by the Agreement Oversight Committee and recommendations made to the Superintendent. All standards and procedures utilized shall be in compliance with state and federal laws and regulations.
2. OPEN OBSERVATIONS: All monitoring or observation of the work performance of an employee will be conducted openly and with full knowledge of the employee.
3. OBSERVATION CONFERENCES: If a written report is prepared of any visit or observation, a copy will be provided to the employee. Employees at their option, will be entitled to a conference to discuss said report. No observation report will be submitted to the central office, placed in the employee's file or otherwise acted upon without prior conference and the employee given an opportunity to sign the report.
4. NOTICE OF PROCEDURES: Employees will be provided copies of all forms and information concerning observation and evaluation procedures at the beginning of each year.
5. Employees will be provided all forms concerning Observations and/or Evaluations either hard or electronic copy.
6. No employee will be required to sign a blank or incomplete form.
7. All observations and evaluations addressed in this article on which employee signatures are required will include the following language immediately adjacent to the location of the employee signature: "Signature indicates receipt by the employee of this document. It does not indicate agreement or disagreement with the document."

ARTICLE 34. EMPLOYEE DISCIPLINE

A. GENERAL:

1. Disciplinary actions will be based on just cause. When an employee is to be discharged or terminated, such discharge or termination will be handled in accordance with applicable New Mexico law.

2. An administrator may place an employee on immediate administrative leave with pay to ensure the physical and emotional safety of students and co-workers and/or employee pending and during an investigation.
3. Prior to implementing any disciplinary action, an employee will be provided written notice of a predetermination meeting that shall include the charges against the employee. The purpose of the predetermination meeting is to provide the employee an opportunity to respond to the charges and is not an evidentiary hearing.
4. Any suspension, of an employee pending final District action, shall be Administrative Leave with Pay and shall be documented on a form that will identify the employee's right to have Española-NEA representation.

B. REPRESENTATION:

1. Whenever an employee is required to appear before an administrator or supervisor (predetermination hearing) to respond to charges which may result in discipline, employees are entitled, at their request, to have a representative of the Española-NEA present and represent him or her.
2. During any meeting initiated for a purpose other than discipline, during which an employee is asked to respond to charges which may lead to discipline, the employee has the right to postpone the meeting until such reasonable time as they are able to have a representative of the Española-NEA present and represent him/her during such discussion. The employee shall select an Association Representative from his/her building if available or next closest building if one is not available.
3. Normally meetings described in 1 and 2 above shall be scheduled during non-instructional time. In the event the District schedules a meeting during instructional time and an Española-NEA representative's presence is requested by the employee, the representative shall be released from duty.

- C. CONFIDENTIALITY OF CRITICISM:** Any criticism by an administrator or supervisor of an employee and/or the employee's performance or any criticism of an administrator or supervisor by an employee will be made in private and not in the presence of students, parents, co-workers or members of the public. Each party shall have the right to have a witness present. This language does not include grievances.

ARTICLE 35. GRIEVANCE PROCEDURE

A. DEFINITIONS:

1. A "grievance" is a claim by Española NEA or by one or more employee's that there has been a violation, misinterpretation, or misapplication of any provision of this agreement, or District policy, regulation or practice.
2. An "aggrieved employee" is a bargaining unit employee or employees making the claim.
3. A "party in interest" is:
 - a. The employee or employees making the claim
 - b. Any district personnel who might be required to take action or against whom action might be taken in order to resolve the claim.

- c. Any district personnel directly impacted by the resolution of a particular grievance.
4. For the purposes of the time limits within the Grievance Procedure, “days” shall mean days in which the district administrative offices are open. “Days” shall not include school closures due to emergencies.

B. PURPOSE:

1. The intent of the parties regarding this procedure is to secure, at the lowest possible administrative level, equitable solutions to the disputes/grievances which may from time to time arise involving the matters dealt with in this agreement, or District policy, regulation or practice. Both parties agree that these proceedings will be kept as informal and confidential as may be appropriate at any level of the procedure.
2. Documents, communications and records dealing with the processing of a grievance will be filed in a separate grievance file and will not be kept in the personnel file of any of the participants. This provision shall not apply to documents related to a grievance over a disciplinary action unless such documents are removed from an employee’s personnel file as a relief given in the disposition of a grievance.

C. PROCEDURE:

The time limits specified at each level should be considered as a maximum and efforts should be made to expedite the process. An untimely grievance shall be null and void. The time limits specified may, however, be extended by mutual written agreement.

In the event a grievance is filed at such a time that it cannot be processed through all the steps in this grievance procedure by the end of the school year, the time limits set forth herein may be reduced by mutual written agreement of the parties so that the procedure may be exhausted prior to the end of the school year or as soon thereafter as practicable.

1. LEVEL ONE. IMMEDIATE SUPERVISOR:

Within fifteen (15) days that the employee knew or should have known of the occurrence of the event upon which the grievance is based, the employee will discuss the grievance with his/her immediate supervisor with the objective of resolving the matter. If the grievance is not resolved within twenty (20) days of the occurrence of the event that gave rise to the grievance and the employee desires to pursue the issue, the employee shall file a written grievance with the Superintendent.

2. LEVEL TWO. APPEAL TO THE SUPERINTENDENT:

The written grievance shall be filed with the Superintendent within twenty-five (25) days of the occurrence of the event that generated the grievance. Upon the filing of the grievance the parties will schedule a mutually agreed upon meeting to attempt to resolve the issue. If the District believes that the initial grievance is not timely the grievant shall be notified within the time period identified for Level Two. If the employee is not represented by the Española-NEA the District will notify the Española-NEA that a bargaining unit grievance has been filed and the date and location set for attempting to resolve the issue shall be identified. If the grievance is

not resolved, for whatever reason, within ten (10) days of filing at this level the employee may submit the grievance to Arbitration for resolution.

3. LEVEL THREE. ARBITRATION:

The grievance is submitted to arbitration by providing the Superintendent with a written notice of submittal to arbitration within fifteen (15) days of the filing at Level Two with the Superintendent.

- a. Within ten (10) days of filing for Arbitration the grievant shall submit a written request to the Federal Mediation and Conciliation Service (FMCS) for an unrestricted list of seven (7) arbitrators. This cost shall be shared equally by the parties.
- b. Within ten (10) days of receipt of the list of arbitrators the parties will meet to select an arbitrator. The parties will alternate striking names until only one name remains. The grieving party shall strike the first name.
- c. The remaining individual shall serve as the arbitrator.
- d. The arbitrator so selected will hear the grievance and issue a decision as soon as possible. The arbitrator's decision shall be in writing and set forth the findings of fact, the reasoning for the findings, and a conclusion on the grievance heard. The arbitrator will be without power or authority to make any decision which requires the commission of an act prohibited by law or which is in violation of the District Labor Management Relations Resolution. The arbitrator's award is subject to judicial review pursuant to the standards set forth in the Uniform Arbitration Act. The decision of the arbitrator shall be submitted to the Superintendent and the Española-NEA and will be final and binding on the parties.
- e. The cost for the services of the arbitrator, his/her travel, lodging, and cost of the hearing room, will be borne equally by the parties. All other costs will be borne by the party incurring the cost.
- f. The arbitrator's decision constitutes a final and binding determination pursuant to the Uniform Arbitration Act [44-7A-1 to 44- 7A-32 NMSA 1978]. Such award is subject to judicial review pursuant to the standards set forth in the Uniform Arbitration Act.

D. PARTICIPANTS IN THE PROCESS

1. No reprisals of any kind will be taken by the parties against any party participating in this process by reason of such participation.
2. The grievant and the individual against whom the grievance is filed may be represented. The grievant may be represented by the Española-NEA or the grievant may choose to represent himself/herself. The individual against whom the grievance is filed may also be represented.
3. If the employee elects not to be represented by Española-NEA the Union may be present at the different levels and may state its views on the issue.

E. GENERAL PROVISIONS

1. If, in the judgment of the Union, a grievance affects a group or class of employees, the Union may initiate and submit such grievance in writing with the Superintendent directly. Such grievance shall be filed within twenty (20) days after the occurrence of the event upon which the grievance is based.

2. If a grievance arises from the action or inaction on the part of a member of the administration at a level above the principal or immediate supervisor, the grievant shall, within twenty (20) days after the occurrence of the event upon which the grievance is based, submit such grievance in writing directly to the Superintendent.
3. The grievance document shall include:
 - a. The name, address, and phone number of the grievant and representative;
 - b. The name and worksite of the employee against whose actions the grievance is directed;
 - c. The Article, section, and specific language alleged to have been violated, if applicable;
 - d. A description of the relief requested, for example “to be made whole” is not a sufficient description;
 - e. The date of delivery of the grievance; and
 - f. The signature and signing date of the grievant(s) and the representative.
4. It is understood that the grievant’s and the Española-NEA’s processing of grievances shall be conducted during non-duty time.
5. This is the only grievance procedure available to bargaining unit employees.

ARTICLE 36. PERSONNEL FILE

- A. The District shall maintain an official personnel file for each employee. The file will be maintained in the District's Central Office. If applicable to the position employees are required to provide the District Central Office with current and complete official transcripts of earned college credits.
- B. An employee shall be permitted to review material contained in his/her official Personnel file. This shall not include pre-employment records. An employee wishing to access his/her official personnel file shall do so by appointment. Such review shall occur during non-duty time at a time that the District’s Central Office is open for business. A designated District employee from the Central Office shall be present during the file review. The employee reviewing his personnel file shall sign and date the review log maintained in the personnel file.
- C. The District will honor requests for a copy of accessible documents in the employee’s official Personnel file, up to a maximum of ten (10) pages. Additional copies will be provided based on the district fee.
- D. Except for routine file maintenance material, the District shall provide an employee with a copy of any document prior to the placement of the document in the official file. The employee shall sign the document and the employee’s signature shall signify that the employee has received and read the document. The employee may submit a written response to any document that is placed in the employee's official personnel file. Such response must be submitted within ten (10) working days of the receipt of the document that generated the response.
- E. An employee may be accompanied by an Española-NEA representative while reviewing the official file. The employee may also assign the sole responsibility for reviewing the file to an Española-NEA representative provided the employee gives written authorization.

ARTICLE 37. COMPENSATION

- A. The employees' regular rate of pay is set forth in Appendix D.
- B.
 - 1. Educational Support Personnel, bargaining unit employees, who accept extra duty assignments beyond their regular assignments, shall submit their extra duty time sheets to their immediate supervisor within the pay period that the extra duty assignment was worked. Such employees shall receive their extra duty assignment compensation on the second pay period of the next month.
 - 2. Lump sum checks for less than twelve month employees will be paid after receipt of final State Equalization Guarantee.
- C. Employees engaged in extra duties beyond their regular assignment that are compensated in the form of stipends shall be paid in accordance with the stipend schedules provided in this Agreement.
- D. It is recognized by the parties that wages, hours and working conditions are mandatory subjects of bargaining as per the Public Employee Bargaining Act.
- E. Pay. Bargaining unit employees will advance one step within the pay plan. Such advancement in step will produce a one dollar (\$1.00) increase in the employees' annual pay for the 2009-2010 fiscal year.

ARTICLE 38. STIPENDS AND INCREMENTS

- A. The parties agree that only stipends and increments provided herein shall be provided by the District to bargaining unit employees.
- B. Rates for stipends and increments included herein shall become effective upon ratification and signature by the parties of this collective bargaining agreement. These rates are not to be applied retroactively.
- C. Stipends are separate duties from the individual's contract and must be performed outside the normal work day in addition to the regular workday duties, which must be a full load.
- D. All coaching increments (including longevity) will continue at their current rates and practice as included on the next page.
- E. All yearly stipends will be paid bi-annually, the first payment in December, and the second payment in June.
- F. Hourly stipends will be paid in the second pay period of the month, upon receipt of proper documentation.
- G. Assignments and conditions of compensation are subject to the approval of the immediate supervisor, finance department, and the superintendent.
- H. COMPETITION INCENTIVES All extra and intra curricular incentives for helping students attain participation in state (and national) level competitions shall be applied equally to all positions receiving an increment. Specifically:
 - 1. Five percent (5%) (of the stipend) additional shall be provided to sponsors when students participate in statewide or national competitions for one week beyond the normal schedule.
 - 2. Seven percent (7%) (of the stipend) additional shall be provided to sponsors when students participate in statewide or national competitions for two or more weeks beyond the normal schedule.

- I. In accordance with the current salary schedule, head teachers shall receive a \$10,000 stipend and work a 205-day work year.

ESPAÑOLA PUBLIC SCHOOLS
INTERSCHOLASTIC ACTIVITIES INCREMENT SCHEDULE
2008-2009

NOTE: All contracts for extra curricular activities are contingent upon sufficient participants to justify team(s) (excludes student non-players); Current coaching licenses required for grades 7-12. All extracurricular sponsors (athletic and non-athletic) must meet all requirements for being school activity vehicle drivers. Qualifications must be maintained throughout the school year.

SENIOR HIGH

	(1.0)(0-3)	(1.2)(4-7)	(1.5)(8-11)	(1.8)(12+)
*9 12 BASKETBALL, FOOTBALL, VOLLEYBALL, WRESTLING:				
HEAD COACH	\$ 4,000	\$ 4,800	\$ 6,000	\$ 6,400
ASSISTANT COACH	\$ 3,000	\$ 3,000	\$ 3,000	
JKU (JV 2, C2) VEST (JV, C) Wrestling 2 Football 4 Cheer 1				
*9 12 BASEBALL, CROSS COUNTRY, GOLF, SOCCER, SOFTBALL, TRACK, TENNIS:				
HEAD COACH	\$ 2,800	\$ 3,200	\$ 3,800	\$ 4,100
ASSISTANT COACH	\$ 1,800	\$ 1,950	\$ 2,340	
CC - 2(Coach) Soccer - 2 (JV) Baseball - 1 (JV) Softball - 1 (JV) Track & Field - 2 (JV) Tennis (JV) Golf - 1 (Coach)				

INCENTIVES: Summer program \$500 to \$1,500 Based on Athlete participation and time commitment of coaches per school per season. Contract must be preapproved

State Level Competition: One GAME WEEK Two FACILITY USE

Special Assignments:

Athletic Director	Fall \$2,400	Winter \$2,900	Spring \$1,700
Event Manager	Fall \$1,400	Winter \$1,200	

MIDDLE SCHOOL

	HEAD COACH	#	ASSISTANT COACH	#
FOOTBALL	\$ 1,800.00	1	\$ 300.00	2
VOLLEYBALL 7TH & 8TH	\$ 1,200.00	2		
CROSS COUNTRY 7TH & 8TH	\$ 1,200.00	2		
BASKETBALL 7TH & 8TH BOYS/GIRLS	\$ 1,800.00	4		
WRESTLING	\$ 1,200.00	1	\$ 300.00	1
TRACK 5 FIELD 7TH & 8TH BOYS/GIRLS	\$ 1,200.00	4		
CHEER	\$ 1,000.00	2 SEASONS	\$ (10) 00	1 SEASON

Experience Incentive (5 years or more in assignment) \$100 HEAD; \$75 ASSISTANT

Additional MANAGERIAL ASSIGNMENT; ATHLETIC COORDINATOR/SCHEDULER \$3,200

Any current coach who's 08 increment is greater than this schedule allows will be held "have-in-line" (no reduction)

ELEMENTARY BASKETBALL

PER SCHOOL PER SEASON

CHEERLEADER/DRILL TEAM SPONSOR	\$ 800
ELEMENTARY BASKETBALL COORDINATOR	\$ 800

REVISED 10-01-2008

APPROVED
Keith Lee

2008-2009

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STIPENDS/INCREMENTS	EVHS	CVMS	Elementary	All sites
Mariachi	2000	1000		
Student Council	1000	600		
Mock Trial Coach	1500			
TV 101	1500			
Yearbook	1500	800		
MESA HEAD	2300	1500		
MESA asst.	2000			
Nat'l Honor Society	1000			
Future Farmer's	1500			
Chess Coordinator	1000	600		
EVHS Dept Heads	1500			
EVHS AP Coordinator	1500			
EVHS Bilingual Coordinator	1500			
MAP Coordinator	1000			
*SAT Committee Chair		MOU by parties		
Future Educators Sponsor	250			
Juntos Sponsor	250			
DISTRICTWIDE				
New Teacher Mentor				\$20 hour not to exceed \$1,000 per teacher mentored
Noon Duty				\$10 hour
Health Service Monitor/Coordinator				4000
Counselor/Coordinator				4000
English Spelling Bee Coordinator				1000
Spanish Spelling Bee Coordinator				1000
BILINGUAL Certified (providing bilingual instruction)				1200
TESOL Certifications (subject to State funding)				500
Elementary teachers providing bilingual instruction beyond 1 class (Title 1 Teachers are excluded)			300	Per class
**TIF Leadership Committee (subject to the availability of grant funds)				1700
CERTIFIED				
Clerical / non-instructional				15
Teacher/Tutoring				25
Prof Dev (Product Oriented)				20
Prof Dev (Mandatory Meeting)				15
CLASSIFIED				
Clerical Extra Duty				hourly rate (1.5 if in excess of 40 hours)
Teaching Tutoring				16
Prof Dev (Product Oriented)				13
Prof Dev (Mandatory Meeting)				13

* The parties agree to develop an MOU by May 30, 2009, dealing with compensation for employees compiling SATs.** The TIF stipend will be paid to all committee members and is subject to the availability of grant funds. The amount identified includes the employer ERA, Retirement, FICA, and Medicare contributions.

ARTICLE 39. INSURANCE

- A. The District administration will provide the following insurance for bargaining unit employees through the New Mexico Public Schools Insurance Authority.
- B. Benefits: The District will continue to provide eligible full-time employees with group medical, dental, and vision insurance through the New Mexico Public Schools Insurance Authority (NMPSIA). Approved insurance plans will be available to bargaining unit employees as per the offerings of NMPSIA. Domestic Partners and their dependents are provided the same insurance coverage as spouses and their dependents subject to the requirements of NMPSIA.
 - 1. The District will continue its current contribution to the health care premium.
 - 2. The District will continue to provide eligible full-time employees access to long term disability and life insurance benefits available through NMPSIA, including the \$50,000 non-contributory life insurance coverage.
 - 3. Participants in these insurance programs will have their premiums deducted through payroll deductions and will be provided a copy of the plan information as provided by NMPSIA.
 - 4. The District will continue to offer eligible full-time employees open enrollment periods as offered by NMPSIA. Employees will be notified of any such open enrollment periods.
 - 5. If an employee experiences any change in employment or marital status which creates a need for the employee to enroll or change enrollment in any of the approved plans, the employee may do so only if permitted by law, NMPSIA regulations, or provisions of the contract between NMPSIA and the respective insurance carrier.
 - 6. The District will continue to provide professional liability and Worker's Compensation coverage for employees in accordance with state law.
 - 7. Subject to applicable laws and regulations, the district will continue to provide access to the Internal Revenue Code Section 125 "Cafeteria Plan" benefits as offered at the inception of this Agreement. Any changes to said offerings shall be reviewed by the parties, which in turn, will make recommendations to the Superintendent and the Board for approval.
 - 8. Employee shall be entitled to invest in tax-sheltered annuities and deferred compensation programs available through the business office by payroll deduction. Tax-sheltered annuities, deferred compensation programs, and supplemental insurance programs offered through the Union are eligible for payroll deduction. Deductions shall be made and forwarded to the investment company.
 - 9. Upon separation, termination, or leave-without-pay, employees may continue their insurance benefits through COBRA.
 - 10. The Española-NEA President may request a meeting to discuss issues related to insurance benefits. Such meeting shall be scheduled at a mutually acceptable time and place during non-duty time.
 - 11. Upon employment with the district, each employee will be provided an explanation of the insurance benefits and options, including those available through the Union for members.

12. These adjustments will be implemented effective the first full pay period of the employee's school year. (This was implemented effective August 8, 2008.)

ARTICLE 40. OFFICIAL NOTIFICATION

Any official notice shall be in writing and be delivered directly to Española-NEA President or to the Superintendent. Such notices must be signed for by the individual or designee.

ARTICLE 41. CUSTODIAL REQUIREMENT

- A. Applicants who meet all hiring requirements except the educational requirement, can be hired on a provisional basis pending the completion of the necessary educational requirement. Provisional employees who meet the physical and educational requirements and have satisfactorily completed their job performance in a two year or less time period will be given preference on any regular vacant custodial or cook position that exists at that time.
- B. Costs for garnering the GED shall be borne by the District. If an employee garnering a degree and the fees are paid by the District, should sever employment within two years from the completion of the program, the employee shall reimburse the District 100% of all GED costs incurred by the District. This does not apply to the Reduction In Force.
- C. A person hired into a regular fulltime position on a provisional basis will have the same compensation as a regular fulltime employee.
- D. The District will conduct a study to determine the appropriate qualifications for cooks and custodians and will share any changes with Espanola-NEA.

ARTICLE 42. COMPLETE AGREEMENT

- A. This Agreement incorporates the entire understanding of the parties on all matters which were the subject of bargaining. During the term of this Agreement neither party will be required to bargain with respect to any such matter whether or not covered by this Agreement. This agreement supersedes any and all previous agreements by parties.
- B. This Agreement may be modified in part by the parties only as an instrument in writing duly executed by both parties.

ARTICLE 43. SEVERABILITY

If any provision of this Agreement or any application thereof is determined by a final order of an administrative agency or court of competent jurisdiction to be contrary to law, the affected provision shall be rendered null and void. All other provisions not affected by the illegal provision shall remain in full force and effect. The provision determined to be contrary to law shall be renegotiated by the parties provided either party submits a written request to reopen negotiations no later than ten (10) calendar days after the parties knew or reasonably should have known that the provision was contrary to law.

ARTICLE 44. AGREEMENT DURATION

This Agreement is effective on the first full pay period following ratification by the bargaining unit employees, approval of the School Board, and signature by the parties and will

Page 31 of 37 Collective Bargaining Agreement Between Espanola Public School District and Educational Support Personnel

APPENDIX A. 2009-2010 SCHOOL YEAR CALENDAR

- A. The nine month calendar shall include 186 work days, and 181 student instruction days.
- B. Spring Break is from March 8 through March 12, the entire week.
- C. Spring Recess is April 2, 2009.
- D. Veteran's Day shall be a holiday
- E. The District shall determine the rest of the schedule.
- F. The twelve month calendar will be adjusted to correspond with the nine month calendar.

Española Public Schools 2009-10 School Calendar 12 Month Employee Calendar

July-09					January-10				
M	T	W	R	F	M	T	W	R	F
22		1							
	6	7	8	9	4	5	6	7	8
	13	14	15	16	11	12	13	14	15
	20	21	22	23	18	19	20	21	22
	27	28	29	30	25	26	27	28	29
August-09					February-10				
M	T	W	R	F	M	T	W	R	F
21	3	4	5	6	1	2	3	4	5
	10	11		13	8	9	10	11	12
	17	18	19	20		16	17	18	19
	24	25	26	27	22	23	24	25	26
	31								
September-09					March-10				
M	T	W	R	F	M	T	W	R	F
22		1	2	3	1	2	3	4	5
		8	9	10	8	9	10	11	
	14	15	16	17	15	16	17	18	19
	21	22	23	24	22	23	24	25	26
	28	29	30		29	30	31		
October-09					April-10				
M	T	W	R	F	M	T	W	R	F
22			1	2				1	
	5	6	7	8	5	6	7	8	9
		13	14	15	12	13	14	15	16
	19	20	21	22	19	20	21	22	23
	26	27	28	29	26	27	28	29	30
November-09					May-10				
M	T	W	R	F	M	T	W	R	F
21	2	3	4	5	22	3	4	5	6
	9	10		12	22	10	11	12	13
	16	17	18	19	23	17	18	19	20
	23	24			23	24	25	26	27
	30								
December-09					June-10				
M	T	W	R	F	M	T	W	R	F
23		1	2	3	24		1	2	3
	7	8	9	10	24	7	8	9	10
	14	15	16	17	25	14	15	16	17
	21	22			25	21	22	23	
	28	29	30		26	28	29	30	

2009

Jul. 2-3 Fourth of July
 Aug. 12 Santa Clara Day
 Sept. 7 Labor Day
 Oct. 12 Columbus Day
 Nov. 11 Veteran's Day
 Nov. 25-27 Thanksgiving
 Dec. 23-28, 31 Christmas Break

2010

Jan. 1 New Year's Day
 Feb. 15 President's Day
 Mar. 12 Spring Break
 Apr. 2 Spring Recess
 May 31 Memorial Day
 Jun. 24 San Juan Day

Staff Work Days

260

Oct. 9 40th Day
 Dec. 14 80th Day
 Feb. 23 120th Day

APPENDIX B. PROFESSIONAL / SUPPORT STAFF VOLUNTARY TRANSFER OF ACCRUED SICK LEAVE: SICK LEAVE BANK

PURPOSE:

The purpose of the Sick Leave Bank (SLB) is to provide participating employees paid leave in the event of a catastrophic illness or accident that requires hospitalization and/or home confinement beyond accumulated sick, personal and/or vacation leave. The purpose of the Sick Leave Bank (SLB) is to provide participating employees paid leave in the event of a catastrophic illness or accident that requires hospitalization and/or home confinement beyond accumulated sick, personal and/or vacation leave.

DEFINITIONS:

- A. Sick Leave Bank - a pool of sick leave days contributed voluntarily by employees who wish to participate in the SLB. Participating employees may apply to the SLB for paid leave days in accordance with the policy guidelines.
- B. Catastrophic Illness - major surgeries, life-threatening illness/disease (i.e., cancer, heart attack, stroke)
- C. Serious Accident - an accident requiring extensive hospitalization and/or home confinement.

ELIGIBILITY:

- A. All employees of the Española Public Schools are eligible.
- B. A participating employee who has applied for SLB days will have experienced a catastrophic illness or accident and be hospitalized and/or confined at home.
- C. All accrued sick, personal, and vacation leave must be used before a participating employee is eligible to receive days from the SLB.
- D. The participating employee cannot receive SLB days while receiving Workmen's Compensation and/or employer-matched disability.
- E. Participating employees will donate one (1) day of accrued sick leave upon enrollment into the SLB. The first thirty (30) days of a new school year is designated as an open enrollment period. If a newly hired employee wishes to join the SLB they must enroll within the first thirty (30) days of employment and the first day of accumulated sick leave must be donated.
- F. In the event that the SLB falls below fifty (50) days, all participating employees of the SLB will donate one (1) day to the SLB to maintain eligibility.
- G. If, when the SLB committee calls for another donation due to bank days less than fifty (50), and a participating employee has no sick day to contribute, then, the next accrued sick day will be donated.
- H. Part time employees are eligible for SLB compensation on a pro-rated status based on their FTE's.
- I. Any employee hired as a substitute employee is not eligible for participation in the SLB.
- J. Ongoing participation in the SLB will remain unless a participating employee states, in writing, that they wish to withdraw from the SLB.
- K. Should a participating employee elect to withdraw from the SLB, all donated days will remain as part of the SLB.
- L. Upon separation of service from the Española Public Schools, all donated days will remain as part of the SLB.

M. A list of employees participating in the SLB is available upon request.

EXCLUSIONS:

- A. Routine pregnancy with no prenatal or postnatal complications.
- B. Chronic or congenital conditions which lead to an employee's inability to fulfill their contractual obligations on a continuous basis.
- C. Leave of absence.

ADMINISTRATION:

- A. The Sick Leave Bank Committee shall administer the SLB. This committee will consist of five (5) members. The Board of Education will appoint two (2) support staff employees and two (2) teachers for a term of two (2) years. One (1) teacher will be from an elementary school and the other teacher will be from a secondary school (Mid-High or High School). The head nurse is a permanent member. Members of the SLB Committee will be selected from the list of participating employees.
- B. Upon receiving a complete application packet from a participating employee, the SLB Committee will have ten (10) working days in which to review and respond in writing to the request.
- C. A minimum of three (3) members of the SLB Committee will review each claim and vote on a recommendation (approval/denial). The majority rules.
- D. Recommendations are sent to the Superintendent of Schools for approval/denial.
- E. All decisions are final; there is no appeal process.
- F. All members of the SLB Committee must sign a statement of confidentiality. Breaches of confidentiality will result in immediate dismissal from the SLB Committee and further administrative action may result.
- G. The SLB Committee shall base its recommendation on the following information:
 - 1. All eligible leave must be used prior to the application for SLB days.
 - 2. The application letter must be submitted to the chairperson of the SLB Committee.
 - 3. A physician's statement verifying severe or life threatening medical condition must accompany the application.
 - 4. No other criteria will be considered in the SLB Committee's decision-making process. Should the SLB be dissolved, the days remaining in the bank shall be distributed equally among those currently participating in the SLB.

APPLICATION:

- A. An employee must submit an official Initial Sick Leave Bank Request and an official Sick leave Bank Physician's Statement. All costs for medical services related to the employee's request for SLB days shall be assumed by the employee. Incomplete applications will not be considered for review. The initial SLB days shall not exceed ten (10) days. Upon completion of the initial days, a participating employee may request an additional increment of ten (10) days. This request is submitted on the official Additional Sick Leave Bank Request. An updated Sick Leave Bank Physician's Statement must accompany the Additional Sick Leave Bank Request. All medical costs related to the employee's request for additional SLB days shall be assumed by the employee. The official forms can be obtained from the District's Human Resource Office. A participating employee will be limited to a maximum of twenty (20) SLB days per school year.

Extension of SLB days will be considered in very special cases. SLB days granted to a participating employee and not utilized by the last day of the contract year will be returned to the SLB. Committee members will report to the Superintendent any person who attempts to intervene on behalf of any applicant. Intervention on behalf of an applicant could result in the elimination of the applicant from the review process. The SLB Committee will review all applications for SLB days and render its decision in writing within ten (10) working days.

- B. The Superintendent's decision is final. There is no appeal process. All decisions are confidential. Leave that accumulates into sick leave shall only be taken for the purposes of illness, physical disability, or health maintenance of the employee and/or immediate family. Immediate family shall be defined as spouse, children, parents, grandparents, brothers, sisters, grandchildren, in-laws, aunts and uncles of the employee. A doctor's certificate is required after the third (3rd) consecutive day of absence.

APPENDIX C. G-2550 PROFESSIONAL/SUPPORT STAFF SICK LEAVE

Sick Leave Payment for Retiring Employees

Employees who notify the Superintendent the year prior to the contract year in which they intend to take New Mexico Retirement may receive payment during the retirement year for accumulated sick leave in an amount and on a schedule as determined by the Board.

Subject to the above conditions, retiring Española Public Schools (EPS) employees may receive monetary payment for unused sick leave on the following scales not to exceed one hundred (100) days:

<u>Category</u>	<u>Rate of Compensation</u>	<u>Maximum</u>
Certificated	\$50.00/ per day	\$5,000.00
Support Staff	\$40.00/ per day	\$4,000.00

This payment will be separate from the employee's final payment with the School District.

Any employee who can be shown to have willfully violated or misused the District's sick leave policy or misrepresented any statement or condition will be subject to discipline, which may include reprimand, suspension, and/or dismissal.