

FRESNO UNIFIED SCHOOL DISTRICT COUNTER PROPOSAL TO FTA SEPTEMBER 22, 2016

ARTICLE 61 – TRANSFER AND ASSIGNMENT

**Modify Article 61 – Transfer and Assignment as follows:**

Intent Statement - This article provides for a change in work location, school, office or other district position by an employee without changing the employees classification of employment.

1. Definitions

1.1 Voluntary Transfers - Transfer initiated by **Bargaining** Unit Member(s).

1.1.1 Exchange - Transfers which shall occur when two or more **bargaining** unit members successfully consummate arrangements for an exchange of their respective positions of employment.

1.1.2 Professional Enrichment - Transfers for purposes of teachers experiencing assignments in different instructional programs and variety in school communities and are subject to the approval of the Division of Human Resources/Labor Relations.

~~1.1.3 Teacher Initiated Lateral Transfer~~

~~1.1.4 Transfer for personal reasons – when a change of site is in the best interest of the bargaining unit member~~

1.2 Administrative Transfers - Transfer initiated by either the **bargaining** unit member or administration for the purpose of addressing an individual emergency or special circumstance.

1.2.1 Special Circumstances Transfer - A transfer which would be in the best interest of the employee and the District.

1.2.2 Emergency Transfer - An unforeseeable, unanticipated circumstance requiring immediate action.

1.3 Involuntary Transfers - Transfers initiated by administration.

1.3.1 Ineffectiveness or Incompatibility - Transfers proposed by administration for reasons of the bargaining unit members' ineffectiveness or incompatibility in their assignments.

1.3.2 Program - Transfers necessary to staff schools ~~or tracks~~ within schools with persons appropriately skilled, credentialed and qualified for assignment changes arising out of program or schedule revisions of instructional curriculum or program reduction resulting from formal action of the Board of Education.

1.3.3 Ethnic Balance - Transfers to achieve ethnic balance of teaching staff in accordance with a court order or in accordance with corrective recommendations from State/Federal agencies having direct jurisdiction on the question.

1.3.4 Overage - Transfers carried out in order to bring about changes in sizes of staff because of enrollment changes.

1.4 Seniority

1.4.1 Seniority shall be defined as the first day of service in certificated/ credentialed position per Ed Code 44845.

2. Assignment and Transfer Policy

2.1 ~~Well-balanced school faculties are an important factor in developing an educational program; therefore, when staffing a school,~~ tThe following factors of ~~balance will shall~~ be considered ~~when staffing a school in accordance with this Article:~~ depth of preparation and experience; men and women; tenure and non-tenure; ethnicity; bilingual abilities; bilingual certification; years in a particular school; exceptional competence in a given teaching methodology; credential(s); past evaluations; recommendations; special interests and strengths; and other factors determined by the District which add or detract from the effectiveness of the total school program.

2.2 The principle criterion for consideration of a request for transfer is whether or not the request will result in the best educational program for the ~~students and the sites~~ District.

2.3 This subsection will not be considered an independent procedure for effecting involuntary transfers, but the criteria will be considered in conjunction with the procedures set forth for any transfer.

2.4 Nothing in this article shall be construed so as to prevent the District from moving specialized classes/programs to alternate school site facilities and transferring the specialized teachers of such classes/programs to the new facility. This paragraph shall not be utilized so as to arbitrarily and capriciously move such classes/programs in order to involuntarily transfer the teacher.

2.5 Nurses, ~~Speech and Hearing Teachers~~ Speech Language Pathologists and/or other personnel having permanent assignments in more than one school may have their schools' cluster configurations altered or changed to fit the program and/or enrollment needs of the District.

~~2.6 All nurses and DIS (Designated Instruction Services) staff will be notified of their school assignments in writing, by June 30<sup>th</sup> for the following school year.~~

2.6 Classroom teachers returning from leave, except as provided in other sections of this article, may insure their return to the position they were in before going on leave by taking all the following actions:

2.6.1 Taking a leave that is no more than one school year and returning to serve at the beginning of the next school year;

2.6.2 Notifying their principal and the Division of Human Resources/Labor Relations of their intent to return to that position prior to going on leave;

2.6.3 Notifying the principal and the Division of Human Resources/Labor Relations of their continuing intent to return to the specific position no later than February 1 of the year they are on leave. Such notification is the responsibility of the employee on leave and must be in writing.

2.6.4 When a classroom teacher takes a leave of absence and expresses his/her desire to return to his/her current position at the end of that year of leave, the

teaching vacancy thus created shall be filled by a temporary employee as provided in Education Code Section 44920.

### 3. Voluntary Transfers

#### 3.1 Procedures

- 3.1.1 A ~~bargaining~~ unit member who has attained permanent status and has ~~remained in a position for stayed~~ at least two years ~~one year after a voluntary transfer~~ may apply for any permanent vacancy which occurs.
- 3.1.2 All vacancies which occur after the end of the first three (3) student instructional weeks and the completion of the fall leveling process shall be filled by the hiring of a temporary teacher ~~to the extent permitted by law. FUSD The Division of Human Resources/Labor Relations~~ shall track and report all such positions to ~~FTA the Association~~ for inclusion in a Lateral Interview Process for those permanent teachers wishing a transfer. Said process will occur after projected enrollment is completed but prior to the spring staffing. Any person selected during the Lateral Interview Process shall assume the position at the beginning of the next school year. All permanent employees seeking to transfer shall indicate their interest to ~~FUSD Human Resources the Division of Human Resources/Labor Relations~~ prior to the beginning of the Winter Break.
- 3.1.3 Those positions which become vacant or have not been filled after the spring staffing process and prior to the completion of the first three (3) student instructional weeks shall be posted electronically for five (5) consecutive work days. School personnel will schedule an interview with all candidates who request an interview.
- 3.1.4 Permanent vacancies will be defined to be any position declared vacant by the District meeting the following conditions:
- 3.1.4.1 Position became vacant because employee holding the position leaves position due to resignation, death, retirement or assumes new position in District, because of enrollment growth, or because positions created by opening of a new school; or
- 3.1.4.2 Position became vacant after consideration of any need to place employee due to other collective bargaining provisions or other administration action.
- 3.1.4.3 ~~An applicant will be selected to fill a vacancy based on the factors set forth in sections 2.A. and B. above.~~
- 3.1.5 If more than one applicant is qualified in all respects for a position opening, the applicant who will meet the needs of the receiving school in terms of balance shall be selected.
- 3.1.6 The principal shall notify Division of Human Resources/Labor Relations of his/her recommendation for filling the vacancy immediately upon the conclusion of the interviewing process.
- ~~3.1.7 The only agreement necessary to fill a vacancy is between the bargaining unit member and the new site administrator.~~

- 3.1.8 The selection of a **bargaining** unit member for a position shall not be binding upon the **bargaining** unit member. The **bargaining** unit member must, however, **immediately** inform Division of Human Resources/Labor Relations or school principal of his/her acceptance or rejection of the appointment to the new position **within two working days twenty four hours**.
- 3.1.9 In the event that a **bargaining** unit member is notified of a transfer to a permanent vacancy, and subsequently the vacancy does not materialize because of enrollment shifts or similar factors not under the direct control of the Administration, the **bargaining** unit member may apply for a comparable vacancy or return to his/her original position, if available, or be reassigned. In this event, the expected two **one** years of service before applying for another transfer would be waived.
- 3.1.10 If no requests for interview are received, the position may be filled by appropriate administrative action.

### 3.2 Exchange Transfers

- 3.2.1 The Board of Education desires that **bargaining** unit members avail themselves of growth opportunities and career planning by teaching on several grade levels and/or in different socioeconomic areas.
- 3.2.2 **Bargaining-u**Unit members should contact Division of Human Resources/Labor Relations for the purpose of initiating exchange transfers. All exchange transfers are subject to approval by Division of Human Resources/Labor Relations.
- 3.2.3 Division of Human Resources/Labor Relations will keep a file of **bargaining** unit members interested in an exchange transfer and initiate an exchange as possible.

### 3.3 Professional Enrichment

- 3.3.1 **Bargaining-u**Unit members desiring transfer for purposes of professional enrichment shall inform the Division of Human Resources/Labor Relations in writing no later than April 1.
- 3.3.2 The Division of Human Resources/Labor Relations will inform the **bargaining** unit member of anticipated openings in that teacher's area of qualification and for which the District has staffing needs.
- 3.3.3 To be eligible for the program, the **bargaining** unit member must agree in writing to volunteer for transfer with final placement to be effected at the complete discretion of the Division of Human Resources/Labor Relations.
- 3.3.4 **Bargaining-u**Unit members must have completed two years experience in the District to be eligible for the professional enrichment transfer program.
- 3.3.5 After completion of one year in the new assignment, the **bargaining** unit member shall be awarded three (3) units of District Credits which may be used for advancement on the salary schedule with the limits identified in Article 50 - Salary, Advancement From One Class to Another, part (3)(G).
- 3.3.6 Teachers may reapply for subsequent professional enrichment transfers after completion of two years in their new assignment.

#### 4. Administrative Transfers

##### 4.1. Special Circumstances

4.1.1 A **bargaining** unit member or district representative, who believes there are special circumstances which would suggest a transfer would be in the best interest of the employee and the District, may petition the administration in Division of Human Resources/Labor Relations or FTA for special circumstances transfer consideration. If the other party concurs with the request, preferential consideration will be given to the placement of the employee.

4.1.2 Request for consideration for a transfer under this provision shall include evidence of compelling special circumstances, such as documented health conditions, or personal differences with other site personnel, or philosophical differences with the type of school program, and which could reasonably be alleviated by moving to another site. These examples shall not be construed as being all-inclusive of "compelling special circumstances."

##### 4.2 Emergency

4.2.1 Emergency transfer of a **bargaining** unit member(s) may be requested in writing by the **bargaining** unit member(s) or members of management in line authority over the teacher. Such requests shall specify actions/ circumstances/events that constitute the emergency, and copies of the request shall be transmitted immediately to all directly concerned parties.

4.2.2 **Emergency under section 4.2 shall mean an unforeseen circumstance(s) requiring the District's immediate attention.**

4.2.3 Upon receiving a written request for an involuntary emergency transfer, the **bargaining** unit member(s) shall immediately be afforded one day of release time to obtain representation and seek review by the Superintendent, or designee. Such review shall occur at a time established by the Superintendent, but prior to any District action to approve the emergency transfer request.

4.2.4 If, upon review, it is determined that the transfer violated this Agreement, the employee shall be returned to the position from which the employee was removed by this provision.

4.2.5 Any grievance challenging action under this provision shall begin with Level III.

#### 5. Involuntary Transfers

##### 5.1. Ineffectiveness or Incompatibility

5.1.1 ~~The process for determining ineffectiveness or incompatibility must be documented and communicated to the unit member at least 3 months prior to any adverse action being taken by administration. Along with interventions taken to ameliorate the ineffectiveness or incompatibility.~~ Bargaining unit members shall be immediately informed in writing of any administrative concerns regarding ineffectiveness or incompatibility at the time that known circumstances and/or events give rise to the concerns. Bargaining unit members shall also simultaneously be informed of any proposed procedures for resolving the stated concerns and provided opportunity for a future conference with the administrator communicating the concerns. The bargaining

unit member shall also have the right to Association representation during such conferences.

- 2) If an administrative transfer is proposed, copies of a written request for transfer shall be submitted to the teacher and the appropriate person in the District's Division of Human Resources/Labor Relations by April 1 for transfers proposed for the beginning of the following school year.
- 3) Such written requests shall clearly indicate specific actions/circumstances/events that are alleged to demonstrate ineffectiveness and/or incompatibility and contain an account of the procedures followed to ameliorate the circumstances giving rise to the proposed action to transfer.
- 4) The bargaining unit member shall have ~~three (3)~~ five (5) working days within which to request review. Upon the bargaining unit member's request, the Associate Superintendent, Division of Human Resources/Labor Relations, or his/her designee, shall schedule a conference wherein the merits of the proposed transfer may be thoroughly considered. The bargaining unit member shall have the right to Association representation during such conference, and such conference shall occur not earlier than seven (7) nor later than fifteen (15) calendar days after the bargaining unit member(s) request.
- 5) Within five (5) days after the conference, the Associate Superintendent, Division of Human Resources/Labor Relations, shall submit his/her written disposition of the transfer request to the bargaining unit member(s). The bargaining unit member(s) shall then have the right to submit the merits of the proposed transfer to the Grievance Procedure contained within this contract beginning at Level III.
- 6) In reviewing charges of incompatibility and/or ineffectiveness, those responsible for conducting such review shall objectively and responsibly determine fault wherein ineffectiveness and/or incompatibility is primarily a result of an interpersonal strain between bargaining unit member(s) and the administrator seeking the bargaining unit member(s)' transfer. In those situations where the administrator seeking the transfer has not responsibly exercised fair judgment in the treatment of the bargaining unit member(s), the bargaining unit member(s) shall not be transferred for simple expediency.

## 5.2 Program

- 5.2.1 The Association shall be informed ~~at least 30 days~~ in advance of any Board consideration of instructional program revision or reduction that has potential for program transfer.
- 5.2.2 Assignment rights of ~~bargaining~~ unit member(s) going on leave (other than sick leave, health leave, parental leave, leave for accident or illness, or bereavement leave) contained within this contract may be suspended by the District only to the extent necessary to finalize staffing in accordance with legal credential and qualification requirements and only for the number of teachers necessary to implement Board action to revise or reduce the instructional program.
- 5.2.3 Contemplated program transfers that would result in a ~~bargaining~~ unit member's crossover between elementary and secondary assignments shall not be effected until all other avenues enabled by this contract have been exhausted.
- 5.2.4 ~~Bargaining-u~~Unit member(s) transferred because of program revisions of instructional curriculum shall be given adequate release time to move personal

effects and familiarize themselves with their new assignment in the event such transfers are implemented during the school year.

- 5.2.5 Prior to transferring **bargaining** unit member(s) because of apparent qualification deficiencies for a Board-enacted revision of instructional curriculum, the District, when reasonably feasible, shall attempt to develop needed qualifications among existing staff. The teacher may elect to forego such qualification development and become transferred.

### 5.3 Ethnic Balance

- 5.3.1 Such transferring of **bargaining** unit member(s) shall occur only to the extent necessary to implement a court order or recommendation from State/Federal agencies and in accordance with the procedures specified in section 5(D) of this **aA**Article.

- 5.3.2 **Bargaining-uU**nit member(s) subject to such transfers shall be given adequate release time to move personal effects and familiarize themselves with their new assignment in the event such transfers occur during the school year.

### 5.4 Overage

- 5.4.1 Reductions in staff size (overage transfers) shall be accomplished by the transfer of personnel from departments in secondary schools and by classroom positions in elementary schools.

- 5.4.2 The principal will initially attempt to satisfy overage transfer requirements of the District by soliciting volunteers for such transfers.

- 5.4.3 Additional employees in the affected departments and/or elementary classroom position shall be transferred, as necessary, beginning with the least senior person in the department or elementary classroom position with the following exceptions:

- 5.4.3.1 If there should be sufficient overage transfers so that the balance of a total school staff would be significantly changed with respect to ethnicity, the construction of a list of teachers to be transferred would omit those teachers who are members of ethnic minorities needed to balance that staff.

Bargaining unit members with bilingual skills shall be omitted from consideration for overage transfers if:

- 5.4.3.1.1 English Language Learner (ELL) students at the school require instructional services to be delivered by such teachers; and

- 5.4.3.1.2 Such transfers would cause the school to have an insufficient number of such teachers to enable the provision of instruction to ELL students in legally compliant instructional programs;

A teacher with bilingual skills is defined to mean a teacher who is assigned to a classroom which requires the teacher to possess, or be in training for, credentials, certificates, or supplementary authorizations issued by the CTC which authorize instruction to ELL students



- 5.4.3.2 If within a particular subject-area department, implementation of the above criterion would result in the elimination of sections of an approved existing specialized course, because of no one else in the department being qualified to teach the particular course, then the construction of any list of bargaining unit member(s) to be transferred in reverse order of their employment in the District would omit those teachers needed to cover those sections.
- 5.4.3.3 Any bargaining unit member who has been transferred for reasons of overage shall complete two full school years, or its equivalent, before being subjected to another overage transfer unless such practice would result in violation of [a\) 5.4.3.1.1](#) and [b\) 5.4.3.1.2](#) of this subsection.
- 5.4.3.4 Bargaining unit member(s) in assignments requiring a special credential shall be omitted from consideration for overage transfers.
- 5.4.3.5 Bargaining unit member(s) with assignments in more than one school shall be omitted from consideration for overage transfers unless such omission results in the creation of additional split assignments.
- 5.4.3.6 Part-time bargaining unit members, unless staffing needs in receiving schools can accommodate the equivalency percentage of the part-time bargaining unit member.
- 5.4.3.7 In the event the sending school has more than one part-time bargaining unit member functioning together as one full-time equivalency in one department/grade level position, the seniority of that position shall be determined by using the District service of the most senior of the teachers involved.
- 5.4.3.8 ~~Bargaining u~~Unit members in grades 9 through 12 holding extra-pay contracts for the following activities shall be omitted from consideration for overage transfers:
- Boy/Girl Varsity Head Coaches
  - Drama/Head
  - Forensics/Head
  - Pep Group Sponsor
  - Student Activities/Director
  - Yearbook Director
  - [Band Director](#)
- 5.4.3.9 Teachers having split assignments between departments, specialized programs, or grade level groupings shall be, for purposes of seniority ranking, considered members of the department or grade level that comprises a majority of their assignment. Unit members not having such a majority assignment shall be designated as members of the department in which they have had the longest unbroken period of service.
- 5.4.3.10 ~~The District shall omit teachers~~ Unit members with majority assignments in the following programs shall be omitted from consideration for overage transfers from construction of a list of teachers to be transferred:
- 5.4.3.10.1 Gifted and Talented Education



5.4.3.10.2 Continuation (excluding DeWolf and Cambridge)

5.4.3.10.3 TALENT Programs such as that currently operating at Bullard TALENT K-8 School

~~5.4.3.10.4 Grades 7 and 8 Alternative Programs operating in conjunction with a traditional elementary school program~~

~~56.4.3.11 When an overage transfer involving two or more teachers will result in a part-time assignment at two or more schools for each teacher because of the department seniority rule, if one of these teachers is qualified to fill the position in each affected department and thereby have a full-time assignment at the overage school, that teacher will receive such assignment and the other(s) placed in the overage pool. If two or more of the teachers can fill the assignment in two or more departments, the teacher with the highest seniority will have first rights to such positions.~~

5.4.3.12 Bargaining unit members having a majority assignment in physical education in grades 9 through 12 shall be subject to the following provisions:

5.4.3.12.1 Such teachers may be designated overage without regard to seniority protection if they refuse to accept and to perform at least two extra-pay contracts annually, if requested;

5.4.3.12.2 Such personnel shall be afforded extra-pay contracts with due regard for the teachers level of experience and/or competency. The District shall exercise reasonable flexibility in assignments to such functions so as to accommodate the strengths, experience and/or competencies of bargaining unit members subject to this provision.

~~5.4.3.12.3 Such personnel shall be subject to the conditions specified immediately above until they have performed extra-pay contracts for a total of twelve (12) school years at that school or have attained the age of 50, whichever occurs first.~~

5.4.3.13 Bargaining unit members in grades 9 through 12 in departments other than P.E. who elect to teach at a certain school and are assigned to that school for the purpose of fulfilling an extra-pay contract assignment who refuse to accept or to perform such assignment, if requested for twelve (12) years or have attained age fifty (50) may be designated overage without regard to seniority protection.

5.4.4 ~~Bargaining u~~Unit members who volunteer to be overaged shall be afforded preferential placement rights in accordance with the following provisions:

5.4.4.1 ~~Bargaining u~~Unit members shall be afforded the ability to select from among known openings, for which they are credentialed and qualified, the week before such openings are advertised for other overage transferees.

- 5.4.4.2 In the event more than one such **bargaining** unit member(s) selects a given opening the District shall select the candidate for this position.
- 5.4.5 Persons who are notified that they will be subjected to involuntary transfers, for the purpose of reducing the size of a staff, shall concurrently be provided with notices of all known permanent vacancies, either existent or impending in the District. Notices shall be issued at least twenty (20) ~~thirty (30)~~ calendar days prior to the end of the school year for overage known in spring, and within twenty (20) ~~thirty (30)~~ calendar days after the beginning of the school year for overage discovered in the fall. Should the District be unable to provide notices of vacancies within the twenty (20) ~~thirty (30)~~ calendar day timeline, **FTA The Association** shall be notified no less than five (5) days prior to the 20 ~~thirty (30)~~ day timeline as to when the District will provide notices to overage personnel.
- 5.4.6 If there are multiple vacancies, notices of vacancies shall provide at least ten (10) working days, in which overage transfer **bargaining** unit member(s) may interview for the vacancies listed for the purpose of ascertaining the nature of the assignments particular to those vacancies. If the principal should be unavailable for an interview, the **bargaining** unit member may visit the school and **talk meet** with the principal's designee in order to fulfill the purpose of an interview.
- 5.4.6.1 In the event more than one such designee selects a given opening in accordance with paragraph (5) above, the District shall select the candidate for this position.

## 6. ~~Reclamation Rights~~

A. ~~Teachers serving in 7-8 Grade Alternative Program Assignments (as designated in the Article "Hours", paragraph "3.A.") after serving one year shall have reclamation rights to their previous assignment, or be afforded preferential placement in identified vacancies in accordance with the following provisions:~~

- 1) ~~The District will make every effort to place such teachers in the school(s) of their choice, including informing principals of such school(s) of the District's obligation under these provisions.~~
- 2) ~~Such placement shall be subject to credentialing requirements, affirmative action needs and/or the specific program area specialization needs inherent in a particular vacancy.~~

7. ~~Prior to making an administrative initiated assignment caused by declining enrollment, enrollment shifts, or budgetary considerations, admin shall seek qualified volunteers at the site including an attempt to notify those on a leave of absence. In the event Admin initiated reassignments must be made, they shall not be made arbitrarily or capriciously. The unit member who has the least seniority within the grade level or department or site from which a reassignment must take place shall be reassigned first.~~