

SUSPENSION AGREEMENT

This Suspension Agreement ("Agreement") is made and entered into effective July 21, 2016 ("Effective Date"), by and between the GOVERNING BOARD OF THE VISTA UNIFIED SCHOOL DISTRICT ("the District"), the VISTA TEACHERS ASSOCIATION ("VTA") and ("Employee") (hereafter collectively referred to as "the Parties").

RECITALS

WHEREAS, on or about May 5, 2016, the District served Employee with a draft Notice of Suspension and Statement of Charges, which recommended a suspension without pay for fifteen (15) days pursuant to Article 27 of the Collective Bargaining Agreement between the District and VTA, based on the allegations and information set forth therein;

WHEREAS, on or about May 5, 2016, the District provided Employee with notice that he would be involuntarily transferred to Vista Magnet School, effective at the start of the 2016-17 school year, pursuant to Article 21.3.2 (f) of the CBA;

WHEREAS, on or about May 18, 2016, Employee timely submitted a writing denying the allegations in the Notice of Suspension and Statement of Charges and appealing those allegations and the level of suspension under as prescribed by the CBA; and

WHEREAS, the Parties desire to avoid the time, expense and risk attendant upon further administrative proceedings and/or litigation.

NOW THEREFORE, in order to compromise their disagreement regarding discipline of Employee, and in consideration of their mutual promises, the Parties agree as follows:

1. Suspension. Subject to the no admission of fault / wrongdoing section below, Employee hereby agrees to a five-day unpaid suspension pursuant to Article 27 of the CBA. The suspension will be deemed imposed on the following dates in the 2016-17 school year: October 4, 2016, November 1, 2016, December 6, 2016, February 7, 2017, and April 4, 2017. Employee will not report to work on those days and his compensation for the corresponding pay periods will be deducted by the per diem rate on effect on each applicable suspension day, Employee voluntarily waives his right to appeal the suspension.
2. Notice of Suspension and Unprofessional Conduct. The District will summarize its concerns regarding Employee's behavior and conduct in a Notice of Suspension, which shall also serve as a Notice of Unprofessional Conduct pursuant to Education Code section 44938. The Parties acknowledge the Notice will not constitute an admission of wrongdoing by Employee, and that Employee may prepare a written rebuttal to the Notice and have it included as part of his personnel file. The District may cite to the Notice should formal disciplinary action be taken in the future.

3. Voluntary Transfer. Employee's transfer to Vista Magnet School shall be voluntary, effective at the start of the 2016-17 school year, subject to the foregoing suspension dates.
4. Teacher-Student Boundaries Training. At or around the beginning of the 2016-17 school year, Employee will attend a training as directed and funded by the District regarding appropriate teacher-student boundaries. The content and timing of the training will be determined by the District. Topics covered may include, among other things, teacher-student electronic communications, social media, meeting practices, and related subjects. The Employee will continue to take reasonable and appropriate steps to separately communicate with students on appropriate teacher-student communications. The manner and timing of any such steps taken with students will be within the District's discretion.
5. Release. Employee hereby releases, acquits, and discharges the Governing Board of the District, its agents, officers, employees, attorneys, successors, predecessors, and insurers from any and all expenses, debts, demands, costs, and other actions or liabilities of every nature, whether in law or in equity, related to or arising out of his employment with the District as may be available prior to executing this agreement, including, but not limited to, civil actions, administrative complaints, grievances, claims pursuant to Title VII of the Civil Rights Act, the California Fair Employment and Housing Act, the Fair Labor Standards Act, the Americans with Disabilities Act, and any and all claims for breach of any employment agreement (whether express or implied), for breach of any covenant of good faith and fair dealing, and for any form of negligence. Employee therefore agrees that he shall have no right whatsoever to file any lawsuit or institute any other action or legal proceeding of any type whatsoever based upon, connected with, or in any manner arising out of or related to his employment with the District through the date of full execution of this Agreement, except to the extent the right to pursue or participate in any such proceeding cannot, pursuant to state or federal law, be waived. This Agreement and release is made notwithstanding section 1542 of the California Civil Code which provides in part:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor.

Employee expressly acknowledges that this release is intended to include in its effect, without limitation, all claims and causes of action that he does not know or suspect to exist in his favor and that this release contemplates the extinguishment of all such claims and causes of action. This Agreement does not waive any claims, including specifically Age Discrimination in Employment Act of 1967 ("ADEA"), employment due process, or CalSTRS credit, that may arise after the full execution of this Agreement. Further, Employee has a limited time period in which he may withdraw a waiver of any existing ADEA claims.

6. Special Provisions for Age Discrimination. In addition to any other waiver and release set forth herein, and by execution of this document, Employee expressly waives any and all rights to claims arising under the ADEA, as amended, and:

- a. Employee acknowledges that his waiver of rights or claims arising under the ADEA is in writing, written in a manner calculated to be understood, and is understood by him;
- b. Employee expressly understands that this waiver refers to rights or claims arising under the ADEA;
- c. Employee expressly understands that by execution of this document, he does not waive any ADEA rights or claims that may arise after the date this Agreement is executed;
- d. Employee acknowledges that the waiver of his rights on claims arising under the ADEA is in exchange for the consideration outlined above, which is above and beyond that to which he is otherwise entitled to receive from the District; and
- e. Employee acknowledges that, by this document, the District expressly advised him to consult with an attorney of his choosing prior to executing this document and that he has, in fact, consulted an attorney or elected not to do so of his own volition.

Employee has been advised by the District that he is given a reasonable period of time within which to consider this document (up to 21 days, although he can execute it sooner) and may revoke this Agreement for a period of 7 days after execution by him, and this Agreement shall not become effective or enforceable until this period has expired.

7. STRS Benefits. The District makes no representations or assurances as to the effect of this Agreement on Employee's eligibility for and/or receipt of STRS credits or benefits.
8. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the Parties. There are no oral understandings, terms, or conditions, and neither party has relied upon any representation, express or implied, not contained herein. All prior understandings, terms, or conditions, written, oral, express, or implied, are superseded by this Agreement.
9. Confidentiality. Except as required by law, the Parties agree to keep the terms of this Agreement confidential, and to not disclose or publish the terms of this Agreement to any third party except as may be required by court order, lawful subpoena or law (i.e., Brown Act, California Public Records Act or Freedom of Information Act), or as may be necessary to secure a court order for the enforcement or interpretation of this Agreement. In the event the District determines it is required to release this Agreement, the Statement of Charges, Employee's Response to and Appeal of the Statement of Charges, the Notice of Suspension, or any information related to Employee's employment with the District, the District will provide Employee's legal counsel, Jon Vanderpool, with 30 calendar days' notice prior to disclosing any requested information to enable Employee and the District to confer about any response and/or object to the request.
10. Amendments. This Agreement cannot be changed or supplemented orally and may be modified or superseded only by written instrument executed by both Parties.
11. Binding Effect. This Agreement is for the benefit of and shall be binding on all Parties and their respective successors, heirs, and assigns.

12. No Precedent. The Parties agree that this Agreement is non-precedential, will not bind the Parties to any future action under similar conditions, and cannot be introduced in any grievance, arbitration, complaint, administrative, or legal proceeding as evidence of past practice or intent of the Parties or meaning or application of the collective bargaining agreement between the District and VTA.
13. No Admission of Liability. This Agreement is not, and shall not be construed as, an admission of liability, fault or wrongdoing of any kind by either party for any purpose.
14. Attorneys' Fees and Costs. Each party shall bear his/its own attorneys' fees and costs arising out of or related to the Termination Action and the development of, and any dispute regarding, this Agreement.
15. Execution by Facsimile or in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed agreement. A facsimile or email version of any party's signature shall be deemed an original signature. Each counterpart shall be deemed an original and the same document for all purposes.
16. Severability. If any provision of this Agreement is held to be void, voidable, or unenforceable, the remaining portions of the Agreement shall remain in full force and effect.
17. Interpretation. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party.
18. Board Approval. The Parties to this Agreement recognize that, to be enforceable, this Agreement must be approved or ratified by the Governing Board at a lawfully called meeting.
19. Voluntary Agreement. Employee represents that he has read this Agreement in full and understands and voluntarily agrees to all of its provisions and that the Agreement has been fully explained to him by his own counsel. Employee further declares that, prior to signing this Agreement, he apprised himself of relevant data, through sources of his own selection, including review by his own counsel, in deciding whether to execute this Agreement. Employee further represents that he has, as of the date of execution of this Agreement, the legal capacity to understand, agree to, and sign this Agreement, and that he has not assigned any rights or claims related hereto to any third party.


Agreed:

EMPLOYEE

Dated: 7/12/2016


DISTRICT

Dated: 7/21/2016


Elaine Alexandres
Assistant Superintendent, Human Relations

VTA

Dated: 7-21-2016


Tod Critchlow, VTA President

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

Approved as to form:

ATTORNEYS FOR EMPLOYEE AND VTA

Dated: 7/18/2016



Jon Y. Vanderpool
Smith, Steiner, Vanderpool & Wax

ATTORNEYS FOR THE DISTRICT

Dated: July 19, 2016



Jordan I. Bilbeisi
Fagen Friedman & Fulfrost

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