

COLLECTIVE BARGAINING IN CALIFORNIA CHARTER SCHOOLS:  
COOPERATION OR CONFLICT?

by

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## Dedication

This study is dedicated to my children, Lauren, Hannah, James and Benjamin (born during the first year of my doctoral program), who are smart, curious and diligent learners at home and at school; their most important teacher, my wife Lindsay, who patiently put up with far too many detours, false starts and stops, and absent Saturdays while completing my Ed.D. program on top of a busy litigation practice; and my parents, James and LaVelle Moss, wonderful examples as teachers in the home, university professors, and dedicated workers for Utah's public schools.

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## Table of Contents

|  |     |
|--|-----|
| Dedication   | ii  |
| Acknowledgments  | iii |
| Abstract   | vii |
| Chapter I: Introduction  | 1   |
| Background: Criticism of Collective Bargaining Agreements                                | 2   |
| Interest-Based or “Reform” Bargaining  | 3   |
| The Rise and Development and of Charter Schools  | 4   |
| Charter Schools and Collective Bargaining  | 5   |
| Statement of the Problem   | 6   |
| Research Questions   | 7   |
| Sample, Methods and Analysis   | 8   |
| Significance of the Study  | 9   |
| Limitations, Delimitations, and Assumptions  | 10  |
| Definitions  | 11  |
| Chapter II - Literature Review   | 15  |
| Introduction   | 15  |
| History of Collective Bargaining   | 16  |
| Development of the National Teachers’ Unions   | 16  |
| California’s Collective Bargaining Law: The Equal Employment Relations Act (“Rodda Act”) | 19  |
| Property Rights in Public Employment   | 24  |
| Collective Bargaining -- Criticism and Reform Proposals                                  | 25  |
| Background: The Debate over Teacher Quality and Placement                                | 25  |
| Criticism of Collective Bargaining Agreements  | 28  |
| Studies Regarding Restrictiveness of Bargaining Agreements                               | 31  |
| Studies on the Effects of Collective Bargaining Agreements                               | 36  |
| Los Angeles Unified School District’s Collective Bargaining Agreement                    | 40  |
| The Promise of “Reform Bargaining”   | 41  |
| Compensation in Collective Bargaining Agreements   | 46  |
| Teacher Attitudes Regarding Performance Pay  | 49  |
| Successful Models  | 51  |
| Charter Schools in California  | 53  |
| General Background of Charter Schools  | 53  |
| California’s Charter School Law  | 54  |
| Studies of California’s Charter Schools  | 57  |
| Charter School Performance   | 58  |
| Performance Pay in Charter Schools   | 59  |

|  |     |
|--|-----|
| Charter Schools and Collective Bargaining  | 60  |
| Historical Background  | 60  |
| The EERA and Charter Schools   | 63  |
| The Teachers Unions' Vision for Charter Schools  | 67  |
| Charters and Unions: A Grand Bargain, or<br>Fundamentally Incompatible?                    | 68  |
| Chapter III – Methodology  | 75  |
| Introduction   | 75  |
| Population   | 78  |
| Table: California Charter Schools with Collective Bargaining Agreements<br>in This Study   | 81  |
| Collective Bargaining Agreement Analysis   | 81  |
| Data Gathering and Analysis  | 85  |
| Semi-Structured Interviews   | 89  |
| Chapter IV - Results and Analysis  | 95  |
| Summary of Most Significant Findings   | 96  |
| Review of California Law and Comparison of Bargaining Agreements                           | 101 |
| Research Question No. 1: Assignment and Transfer   | 101 |
| California Law Governing Teacher Assignment and Transfer                                   | 101 |
| Collective Bargaining Regarding Assignment and<br>Transfer Decisions                       | 102 |
| Findings Related to Bargaining Agreement Provisions on<br>Assignment and Transfer          | 103 |
| Research Question No. 2: Evaluation of Teachers  | 111 |
| California Law Governing Teacher Evaluation  | 111 |
| Application of State Teacher Evaluation Law to Charter Schools                             | 111 |
| Evaluation in Collective Bargaining  | 116 |
| Findings Related to Bargaining Agreement Provisions on Teacher<br>Evaluation               | 117 |
| Research Question No. 3: Teacher Discipline and Dismissal                                  | 128 |
| California Law Governing Teacher Discipline  | 128 |
| Collective Bargaining Regarding Teacher Discipline   | 130 |
| California Law Governing Non-reelection or Dismissal of<br>Probationary Teachers           | 131 |
| California Law Governing Dismissal of Permanent Teachers                                   | 134 |
| Collective Bargaining Regarding Teacher Dismissal in California                            | 140 |
| Findings Related to Bargaining Agreement Provisions on<br>Teacher Discipline and Dismissal | 140 |
| Research Question 4: Teacher Compensation  | 147 |
| California Law Governing Teacher Compensation  | 148 |
| Collective Bargaining Regarding Teacher Compensation                                       | 148 |

|  |     |
|--|-----|
| Findings Related to Bargaining Agreement Provisions on<br>Teacher Compensation | 148 |
| Plans for Consideration or Adoption of “Merit Pay”                             | 150 |
| School Administrator Interviews  | 151 |
| Green Dot Interview  | 152 |
| LA Leadership Interview  | 159 |
| Choice 2000 Online School Interview  | 165 |
| Darnall Charter School Interview   | 169 |
| Live Oak Charter School Interview  | 176 |
| Summary of Findings Regarding Administrator-Union Relations                    | 183 |
| Chapter V – Conclusions and Recommendations                                    | 192 |
| Recommendations Regarding Advantages or Disadvantages<br>of Unionization       | 193 |
| Recommendations for Establishing Productive Union Relations                    | 198 |
| Recommendations for Schools Negotiating Their First Union Contract             | 199 |
| Recommendations Regarding Specific Bargaining Agreement Provisions             | 199 |
| Assignment and Transfer  | 200 |
| Teacher Evaluation   | 204 |
| Classification   | 209 |
| Discipline   | 209 |
| Dismissal  | 211 |
| Alternative Compensation / “Merit Pay”   | 215 |
| Recommendations for Further Research   | 217 |
| Conclusion   | 218 |
| Bibliography   | 219 |
| Appendix: Charter and District Bargaining Agreement Provisions                 | 226 |

## Abstract

Teachers at a small but growing number of California's charter schools are represented by teachers' unions, and the administrators and teachers at these schools have negotiated collective bargaining agreements that govern administrators' personnel decisions regarding teachers. This study begins to explore those agreements, focusing on provisions in four key policy areas in which public school district agreements are often criticized as being unduly restrictive: (1) teacher assignment and transfer, (2) teacher evaluation, (3) teacher classification (including permanence or "tenure," discipline and dismissal, and (4) teacher compensation, including "merit pay."

The literature review includes a discussion of criticism directed at public school collective bargaining agreements, and suggestions for "reform" bargaining; a history of charter schools with a focus on operational flexibility; and a review of the research on the interaction between unions and charter schools in California, very little of which has focused on actual bargaining agreements or their effect on administrators.

The study took a qualitative and exploratory approach, comparing the bargaining agreements of nine unionized charter schools with the school districts by which they are chartered, and conducting interviews with five unionized charter school administrators, focusing on specific bargaining agreement provisions and the relationship between administrators, teachers and union officials. On the four general research topics listed above, the study found that unionized charters have achieved some of the flexibility



sought by charter proponents, while appearing more similar to conventional public school districts in other policy areas: (1) charter schools have generally departed from the seniority-based assignment and transfer provision in school districts, with notable exceptions; (2) they have negotiated more flexible, customized and thorough evaluation procedures, which often place more responsibility on teachers; (3) they have often negotiated some form of “tenure,” or a “good cause” or “just cause” standard for teacher dismissal; and (4) they have rarely negotiated any form of “merit pay,” although charter schools increasingly appear to be evaluating the possibility of doing so.

With respect to charter-union relationships, the study found that charter schools are susceptible to union organizing efforts by a small number of dissatisfied teachers; that they have little experience in negotiating initial bargaining agreements; that charter schools generally appear to have cooperative relationships with their unions; but that charter schools have had little success in modifying restrictive bargaining agreements to increase operational flexibility. The study also found that a number of comparatively restrictive provisions have yet to be enforced or tested, suggesting that the effect of such provisions is not yet fully understood.

The study recommends that charter schools involve teachers heavily in school governance if they prefer to avoid unionization; that schools at which a union is recognized consider several options for personnel policy provisions, using the schools in this study and others either as positive or negative models; that policy-makers avoid changes in California law that could diminish the involvement of teachers in charter school governance; and that future research examine personnel policies at all unionized

California charter schools in comparison with non-unionized charter schools and unionized conventional public schools.

## Chapter I - Introduction

The purpose of this study is to examine the intersection of two major forces in public education --- charter schools and teachers' unions --- by analyzing collective bargaining agreements in unionized California charter schools, and the effect of those agreements on the decisions of charter school administrators. The study will focus on the level of restraint or flexibility established by the bargaining agreements of nine California charter schools, in four areas: (1) teacher assignment and transfer, (2) evaluation (3) classification (including versions of "tenure"), discipline and dismissal, and (4) differential or "merit pay," which form the basis for the study's main research questions. Taking a qualitative approach, the study will analyze the charter schools' provisions in these four areas, and compare the extent to which each charter school's bargaining agreement departs from the agreement of the school district by which the school is chartered. For a smaller group of unionized charter schools, the study will also examine through interviews the school's history of unionization, the development of the school's bargaining agreement, and the relationship between the school's administrators and the union representing the school's teachers.

The study will draw upon prior research on collective bargaining agreements in conventional (non-charter) public schools, the development of charter schools as a means of increased administrative flexibility, and the interaction between charter school advocates and teachers' unions in the legislative and academic arenas.

However, there is very little research on the specific provisions of collective bargaining agreements in charter schools, or the experience of school administrators whose personnel decisions are governed by those agreements.

Unionized charter schools are still fairly rare, and the union-charter relationship usually arises in an ad hoc manner, shaped largely by the unique circumstances and history of particular schools --- which, in California, range from small “mom-and-pop” charters to multi-school Charter Management Organizations (“CMOs”) and Educational Managements Organizations (“EMOs,” which are essentially for-profit CMOs). Accordingly, generalized findings are difficult to make at this stage of the union-charter story. This study seeks to sketch the historical and legal landscape on which these two forces are engaging (including the application to charters of suggestions for reform or “interest-based” bargaining in public schools), to begin to examine the initial results of union-charter engagement from a ground-level perspective, to use the results of that examination to explore questions about the compatibility of charters and unions, and to provide recommendations to charter schools evaluating the possibility of unionization or negotiating their first bargaining agreement.

*Background: Criticism of Collective Bargaining Agreements*

In California, collective bargaining agreements are an established fixture of the public education system. However, teachers’ union analysts such as Terry Moe

have argued that bargaining agreements often include provisions that unduly restrain administrators:

- Rules making it difficult to dismiss teachers for poor performance
- Rules limiting discretion of principals in assigning teachers to classes, and requiring them to base such decisions on seniority;
- Rules allowing teachers to make voluntary transfers to other schools, and resist being transferred away from schools, based on seniority. (Moe, 2001).

Critics contend that these rules have negative consequences for students, as they prevent administrators from putting teachers to their most productive use, raise costs, and entangle schools in bureaucracy. They have also been criticized for limiting administrators' ability to accurately evaluate lower-performing teachers, which, as explained in this study, is related to the school's ability to dismiss teachers under California law. (Hess, 2006). Chapter 2 of this Study discusses in more detail the criticism leveled at teachers' unions, and critics' recommendations for the modification of legal and contractual restraints governing public schools.

### *Interest-Based or "Reform" Bargaining*

Following a trend in the corporate world, some union leaders and education policy researchers have recently advocated the use of "interest-based" bargaining in public schools. This model of bargaining focuses on collaboration and the search for common purposes or interest. Proponents of reform bargaining seek a return to the "guild" concept, in which unions consider themselves the guardians of their profession's standards of excellence, even to the extent of policing poor performance, and

pay special attention to the training of new members. (Kerchner, Koppich & Weeres, 1997). More recently, proponents have focused on the bargaining process itself, arguing that the scope of bargaining should be expanded from protecting the terms and conditions of teachers' employment to contractually requiring the performance of schools and the success of students.

### *The Rise and Development and of Charter Schools*

One of the primary arguments for the rise and spread of charter schools is that they release administrators from the restraints that apply to traditional public schools, including collective bargaining agreements. Without these restraints, supporters have argued that charters are able to operate as laboratories, developing best practices available for replication by other charters while allowing policymakers to determine whether conventional public schools might benefit from a similar loosening of administrative constraints. The four policy areas noted above --- assignment and transfer, evaluation, discipline and dismissal, and differential compensation or “merit pay” --- feature prominently in this justification for charters. Consistent with this “laboratory” function, charters in California, including the schools in this study, have developed a wide array of contractual rules and personnel policies.

## *Charter Schools and Collective Bargaining*

In California, charter schools can generally be classified either as “conversions” from existing schools or “start-ups.” Conversion charters’ teachers typically retain membership in the union that represents the teachers in the district from which the school obtains its charter. “Start-ups” may or may not be unionized when they commence operation, but may become unionized through organizing activity. Under California law, charters between schools and authorizing agencies determine whether teachers remain members of the public district’s union; if not, the school will potentially be open to new organizing and bargaining efforts, as demonstrated by some of the schools in this Study.

Within California there are just over thirty unionized charter schools or Charter Management Organizations. The nature of the bargaining agreements at these schools depends partly on the relationship between the school and the teachers’ union, ranging from agreements retained during a “conversion” from a conventional public school to a charter school, to agreements reached in planned cooperation with a union, to agreements reached after a union gains representational rights against the wishes of the school’s administrators. The recent takeover of Locke High School in Los Angeles by Green Dot, a California-based Charter Management Organization, has highlighted Green Dot’s unique approach to collective bargaining: it voluntarily allowed the creation of a new union at its inception, negotiated a dramatically streamlined bargaining agreement, and seeks to follow a cooperative approach to union relations. The agreements also vary

dramatically in length, and in the degree to which they depart from the contract of the district in which they are located. Finally, they vary in the extent to which they have been modified and developed following initial execution.

### *Statement of the Problem*

Little has been written about how specific charter schools' bargaining agreements differ from conventional school districts' agreements, or from each other; how the bargaining agreements or policies have changed since the charter schools began operation; or how these agreements affect the daily practice of school administrators. There is little or no research summarizing, analyzing or comparing the bargaining agreements in unionized charter schools within California, or comparing these agreements with the agreements of conventional school districts. Likewise, there is little research analyzing the modification or development of these agreements since their original execution, including analysis of whether any modification of the agreements has increased or decreased operational flexibility.

There has also been little research regarding the relationships between the unions and charter school administrators as they seek to implement bargaining agreements, or the effect of the agreements on the daily practice of school administrators. This study will attempt to fill in some of these gaps in the research, at a time when the intersection of the charter school movement and the teachers' unions has the potential to have a significant impact on broader education policy debates.



## *Research Questions*

The study asks four primary research questions, related to the specific areas of personnel policy outlined above.

**Research Question No. 1:** To what extent, and in what ways, do the collective bargaining agreements in unionized California charter schools differ from the agreements of the school districts by which they are chartered, and from each other, with respect to provisions governing assignment (or reassignment) and transfer decisions?

**Research Question No. 2:** To what extent, and in what ways, do the collective bargaining agreements in unionized California charter schools differ from the agreements of the school districts by which they are chartered, and from each other, with respect to provisions governing teacher evaluation?

**Research Question No. 3:** To what extent, and in what ways, do the collective bargaining agreements in unionized California charter schools differ from the agreements of the school districts by which they are chartered, and from each other, with respect to provisions governing teacher classification (including whether or not the school provides “permanence” or “tenure”), discipline and dismissal?

**Research Question No. 4:** To what extent, and in what ways, do the collective bargaining agreements in unionized California charter schools differ from the agreements of the school districts by which they are chartered, and from each other, with respect to provisions governing differential compensation or “merit pay”?

### *Sample, Methods and Analysis*

This study will first examine California law governing the policy areas addressed by this study: assignment and transfer, evaluation, discipline and dismissal (including the provision of “tenure”), and differential pay including “merit pay.” The study will next analyze the provisions of collective bargaining agreements of nine unionized charter schools in California on those topics, and the collective bargaining agreements of the districts by which each charter school is chartered. The study focuses particularly on the level of restraint such provisions place on administrators. The question of whether such restraints are beneficial or harmful is beyond the scope of this study.

A quantitative portion of the study was originally designed to gather and analyze data regarding administrators’ decisions in the policy areas outlined above from the same sample of unionized charter schools and conventional school districts. As explained in detail in Chapter 3, I had intended to use statistical tests to determine the effect certain independent variables (the terms of agreements or policy documents, and the level of union activity, including grievances) on independent variables (the personnel practices of administrators, including consideration of seniority in assignment and transfer decisions, the use of negative evaluations for underperforming teachers, the use of differential pay, especially pay for performance, and the number of dismissals for poor performance), while controlling for the effect of extraneous factors using control variables. However, due to the small initial sample size and smaller response rate, the

quantitative portion of the study was eliminated. Instead, the study examined in greater detail the specific provisions of nine charter schools' agreements on the topics outlined above, and added a detailed, point-by-point comparison with the comparable provisions in the conventional school district by which the charter school is chartered.

The study then focuses on five charter schools --- a limited but, to some extent, representative group --- for a more in-depth analysis through in-depth interviews with administrators. The interviews were designed to obtain information about the schools' approach to collective bargaining, including the use of "interest-based" or "reform" bargaining; and the reasons for any modifications to the bargaining agreement among unionized charters. The interviews were also designed to obtain information about the effect of the bargaining agreement on administrators' daily practice in the selected topic areas described above. The interviews were also intended to explore the interplay between the bargaining agreement and other factors influencing operational flexibility, including state law, the mission of the school, and the personal relationships between union leaders, teachers and administrators.

### *Significance of the Study*

Researchers, policy makers, administrators, teachers, unions and interested citizens (including parents) could benefit from the availability of more information and analysis regarding the variety of approaches to the negotiation of collective bargaining agreements. Such information could be used by researchers and policymakers to evaluate

charter schools' success in increasing flexibility in policy areas in which the conventional district agreements have been considered too restrictive. The study could also help schools and unions choose their own approach to bargaining, or to re-evaluate their existing approach.

### *Limitations, Delimitations, and Assumptions*

As explained in Chapter 3, a limited number of collective bargaining agreements (nine charter schools and the school districts by which they were chartered) were examined, and a smaller number of administrators (five) were interviewed, which is a significant limitation of the study. Another limitation is that because the sample size is very small, it was not possible to determine whether there were statistically significant differences between unionized charter schools and conventional school districts in each of the policy areas addressed by the study. In response to this limitation, the study was modified from its original design, which was to compare unionized charter schools to non-unionized charters, to focus instead on a more in-depth comparison between the charter schools, and between the charters and conventional school districts. The study was also modified to eliminate the quantitative component, and to rely more extensively on qualitative analysis, including in-depth interviews with administrators.

Delimitations include the focus on unionized charter schools within California, to the exclusion of other states. However, given California's significance in terms of the complexity of its Education Code, the prevalence of public teachers' unions,

and the large number of charter schools, California's experience must figure prominently in any analysis of the intersection of teachers' unions and charter schools in the United States. Finally, and perhaps most significantly, the study examined union-charter relations primarily from the perspective of charter school administrators. Neither teachers nor union officials were interviewed regarding their views on collective bargaining, union-charter relations or administrative decision-making. Moreover, the background for the study focuses on criticism of collective bargaining in public schools, and suggestions for "reform" bargaining, with less extensive discussion of the position of union supporters. Thus, the study is necessarily one-sided, and further research should include the perspective of teachers and union officials. However, this study is exploratory in nature, and was designed to examine the extent to which administrators at unionized charter schools possess the flexibility that charter supporters have advocated. Examining bargaining agreements and interviewing administrators were determined to be the best methods of addressing that question, while interviews with teachers and union officials would shed a great deal of light on the reasons that teachers seek to restrain administrative discretion through union representation in charter schools.

### *Definitions*

**Assignment:** The process by which a public school teacher is initially assigned to a school and a class.

Collective Bargaining Agreement: A contract negotiated by the exclusive, recognized representative of a group of employees forming a bargaining unit (for purposes of this study, public school teachers, including public charter school teachers) and the employer, which governs the terms and conditions of the employment of all employees in the bargaining unit.

Discipline: For purposes of this study, any action taken against a teacher, short of dismissal, examples of which can include verbal warnings, written warnings, letter of reprimand, or suspension with or without pay.

Discharge / Dismissal: For purposes of this study, the process of terminating involuntarily the employment of a public school teacher for cause during the agreed-upon term of employment. This does not include a decision not to renew an employment contract upon the expiration of the term. The ability of employers to make such decisions varies widely between conventional public schools, which provide tenure to certain teachers, and charter schools, which do not provide tenure but may provide restraints on the ability to discharge teachers through collective bargaining agreements or school policies.

Due process: For purposes of this study, a legal requirement imposed on employers of public school teachers, based on the protection of teachers' employment as a property right recognized by the United States Constitution, preventing employers from limiting or removing that property right without following certain required procedures, including notice and an opportunity to be heard.

Evaluation: The process by which teachers are evaluated for purposes of pay, dismissal, promotion or other employment decisions.

Grievance: "A complaint filed by an employee or by the union alleging that the employer has violated a term of a collective bargaining agreement." A complaint filed by an employee alleging that the employer has violated a term of a collective bargaining agreement.

Organizing: The process, protected by law, in which a group of employees seeks recognition of a union as their exclusive representative for purposes of negotiating the terms and conditions of their employment to the extent allowed by law.

Peer Review: A form of evaluation in which a teacher's peers, other teachers, are asked to evaluate the teacher. This form of evaluation has been implemented through collective bargaining in several districts, and is provided by school policy as several non-union charter schools.

Permanency (often referred to as 'tenure'): A status of employment, granted by state law, in which a teacher cannot be dismissed at the sole discretion of the employer, but can only be dismissed for cause or laid off in accordance with the provisions of statute.

Permanency does not apply to public charter schools, but such schools are free to provide similar protection through school policies or collective bargaining agreements negotiated with a recognized union.

Reassignment: The process by which a school changes the assignment of a teacher within the same school.

Transfer: The process by which a public school teacher moves from one school to another. A transfer may be either voluntary or involuntary, depending on state law, school policy and, potentially, the terms of a collective bargaining agreement. For purposes of this study, transfer within single-site charter schools will consist of transfer between classes; transfer within multi-site charter operators will refer to inter-school or intra-school transfers.



## CHAPTER II - Literature Review

### *Introduction*

This chapter will review the historical background of the issues addressed by this study, and survey some of the current developments and policy arguments regarding those issues. The history of collective bargaining agreements in charter schools is fairly sparse, as relatively few charter schools are unionized. Accordingly, little research has been done regarding the variety of bargaining agreements in such schools, and the effects of those agreements on the personnel practices of charter school administrators. This study is intended to help fill that gap. In order to understand the interaction between these two significant forces in education policy --- unions and charters --- this chapter will review their histories separately, and then discuss the recent literature on collective bargaining in charter schools themselves.

The first section will outline the history of collective bargaining in the United States, and will then outline the development of the law governing collective bargaining in California's public schools. The second section will introduce the statutory framework governing personnel decisions in California schools, which will be explained in more detail in relation to each research question in Chapter 4. The third section will review the literature related to criticism of collective bargaining and other union activity, with a particular focus on critics' concerns regarding restraints imposed on school administrators' ability to make personnel decisions in the areas of assignment and

transfer, differential pay, and evaluation and dismissal. This section will also review the literature related to “reform bargaining” or “interest-based bargaining,” in which Unions are viewed as partners with school districts in seeking to improve schools --- including improvements in the areas of personnel policy that are examined in this study. This section will also include a review of literature regarding differential compensation, and the involvement of teachers’ unions in opposing or enabling innovations in teacher compensation. The fourth section will review the history of charter schools, focusing again on the areas of school personnel policy covered by this study. Finally, the fifth section will review the available literature regarding collective bargaining and other union activity in charter schools. This will examine union leaders’ early advocacy for charter schools, subsequent opposition by unions, and recent discussions regarding the potential for cooperation by unions and charter schools.

### *History of Collective Bargaining*

#### *Development of the national teachers’ unions*

The National Education Association (“NEA”) was founded in 1857, as a professional organization for both teachers and administrators. As an advocate of reform, it was influential in shaping curriculum in the United States toward providing all high school students with a liberal arts education. (Kahlenberg, 2006). The American Federation of Teachers (“AFT”) was founded in 1916, when a group of teachers in Chicago organized and were granted a charter by the American Federation of Labor. Its

first membership card was issued to John Dewey, who favored membership in unions as a way of helping teachers relate to their working-class students. (Kahlenberg, 2006).

During the first half of the twentieth century, collective bargaining by teachers (and other public employees) was seen as inappropriate, even by union advocates, because it had the potential to paralyze an important sector of the government. (Kahlenberg, 2006). Teachers themselves were reluctant to view themselves as union members, because unions were seen as blue-collar organizations while teachers viewed themselves as white-collar professionals. (Kahlenberg, 2006). By midcentury, several factors created increased interest in collective bargaining for teachers: teachers' pay was poor, even compared to that of unionized factory workers; teachers felt they were subjected to unfair working conditions, including extra duties like cafeteria monitoring, clock-punching, and long staff meetings; and teachers felt that they were at the whim of administrators, including playing favorites with class assignments and publicly berating teachers. (Kahlenberg, 2006). A few isolated collective bargaining agreements were executed between the 1930s and 1950s. In 1960, Albert Shanker and David Selden, young AFT organizers in New York City, engineered the consolidation of elementary and secondary teachers into the United Federation of Teachers. Although New York law required the dismissal of striking teachers the UFT conducted a one-day strike the day before the 1960 Presidential election. A city committee subsequently recommended a collective bargaining election, which was won by the UFT. In 1962 the UFT engaged in a much larger strike, after which it negotiated the first major teacher collective bargaining agreement, which included a pay increase and a duty-free lunch. (Kahlenberg, 2006).

The UFT then moved quickly to use collective bargaining to influence school operations, including reducing class size and establishing a special program for poor schools. Opponents objected to the Union's insertion into school policy, while defenders argued that expanding the scope of bargaining to include operations would take advantage of teachers' expertise, and that because teachers are blamed when schools perform poorly, they had the right to take part in improving them. In 1967 the UFT struck, mostly over non-wage issues including class size and a stronger school discipline policy, adopting the slogan, "Teachers Want What Children Need." The Board eventually reached an agreement on wages, but determined that it would not "delegate the making of policy . . . to the union and exclude participation of parents and the public." (Kahlenberg, 2006).

Following the UFT's success in New York, AFT membership surged, threatening to surpass the NEA's. This prompted the NEA to transform itself from a professional group into a union and to compete with the AFT for recognition. Meanwhile, state legislatures began to pass laws authorizing public employees to engage in collective bargaining. Both unions' membership skyrocketed, increasing to approximately 70% of teachers nationwide by the late 1970s. With increasing membership, the unions were able to increase their involvement in political affairs and lobbying. (Kahlenberg, 2006). Union advocates consider unions to be indispensable to a professional and stable teacher corps. They argue that unions increase pay for teachers, improve professionalism through mentoring and professional development, and protect teachers from arbitrary decisions by administrators. (Goldhaber, 2006; Casey, 2006).

*California's collective bargaining law: the Equal Employment Relations Act ("Rodda Act")*

Today, almost all of the school districts in California are unionized. The vast majority of certificated teachers are represented by the California Teachers' Association ("CTA"), an affiliate of the NEA, or the California Federation of Teachers ("CFT"), which is affiliated with the AFT. The CTA was organized in 1863, and the CFT in 1919. However, until 1961, school districts had sole discretion to establish teachers' working conditions. In 1961, the Brown Act gave teachers the right to join unions, and gave the unions the right to meet with school districts to discuss working conditions. Yet the districts were not required to negotiate, and there was no dispute-resolution mechanism. The Winton Act of 1965 distinguished school employees from other public employees, and provided mechanisms for dispute resolution such as mediation.

The Educational Employment Relations Act (the "Rodda Act"), passed in 1975, paved the way for the unionization of most California public school teachers. (Cal. Educ. Code §§ 3540-3549). Modeled on the National Labor Relations Act, which governs unionization and collective bargaining in the private sector, the Rodda Act gives employees full bargaining rights, which include: (1) the right to organize collectively if they choose, (2) the right to be represented by a single agent, (3) determination of wages, hours and other working conditions through bilateral negotiations with management, (4) the right to a binding contract between the employer and the union if terms can be agreed

upon, (5) the right to strike, and (6) the right to negotiate binding arbitration of “grievance disputes,” disagreements concerning the application of the contract, and “interest disputes,” disagreements arising from the negotiation of the contract itself. (Kemerer et al., 2005)

Under the EERA, if a Union demonstrates --- through signatures gathered from employees --- that at least 30% of the employees are in favor of organizing, an election is held under the supervision of the California "Public Employment Relations Board" ("PERB"). If more than 50% of the teachers vote to be represented by the Union, the PERB determines an appropriate bargaining unit, and the Union becomes the exclusive representative of the employees in the unit. The bargaining unit is defined by a “community of interest,” meaning essentially that the employees perform similar work. In conventional public schools, a bargaining unit typically includes most certificated teachers in the school district except substitutes. The Rodda Act also protects employees from discrimination on the basis of their participation in organizing activity. The Act specifically provides that it does not authorize any departure from the Education Code’s provisions relating to tenure or a merit or civil service system, which will be discussed later in this section.

Once a unit is recognized, the Union assumes the duty to “fairly represent each and every employee in the appropriate unit.” *See* Cal Govt. Code § 3544.9. A 2000 amendment to the EERA requires that once a Union has been elected as the exclusive bargaining representative, all teachers in the bargaining unit are required to pay either the

full amount of dues charged by the union, or a “fair share” agency fee if they decline to be full dues-paying members. At the Union’s request, the district or other employer is required to deduct this amount from the teacher’s paycheck and turn it over to the Union, even if the teacher disagrees (Cal. Educ. Code § 45061). Agency fees include the costs of bargaining contact administration and other activities related to the bargaining process (presently, approximately \$1,100 per year for a full-time teacher). The California Supreme Court has ruled that unions can use money collected as agency fees to support lobbying related to collective bargaining issues, but not for lobbying on unrelated political issues (*Cumero v. Public Employment Relations Bd.*, 49 Cal.3d 575, 581, 262 Cal.Rptr. 46, 48, 778 P.2d 174, 176 (1989)).

After a Union has been recognized, the employer takes on the obligation to negotiate with the Union’s representatives in good faith. The EERA defines areas of potential bargaining as mandatory, consultative, or nonnegotiable. If a topic is the subject of mandatory bargaining, both parties must negotiate in good faith until an agreement is reached, or they have reached an impasse in negotiations (the point at which either party or both parties reject the possibility of further compromise), which can result in the failure to establish a contract. If the parties reach impasse, the PERB can appoint a mediator to try to bring the parties to agreement, or the parties can develop their own mediation process. If mediation is not successful, either party may request that the dispute can be submitted to a three-person fact-finding panel, which investigates and provides non-binding findings and settlement recommendations. If the parties still cannot

agree, the district may implement its “last, best and final” offer, while the union may strike. (Kemerer et al., 2005).

Mandatory subjects of bargaining include wages, hours, and other “terms and conditions of employment,” which include health and welfare benefits; leave, transfer and reassignment policies; safety conditions; class size; evaluation procedures; grievance procedures; and layoff of probationary employees (Cal. Govt. Code § 3543.2(a)). Bargaining is also mandatory, if requested by either party, regarding causes and procedures for disciplinary action (other than dismissal); payment of additional compensation based on criteria other than years of training and experience; and payment of a salary schedule based on criteria other than uniform allowance for years of training and experience (Cal. Govt. Code § 3543.2(a)). In the absence of mutual agreement on these subjects, the provisions of the Education Code govern (Cal. Govt. Code § 3543.2(b)).

Even when a topic is not specifically enumerated in the EERA as a subject of mandatory bargaining, it may fall within the scope of mandatory bargaining if it meets a three-part test developed by the PERB and endorsed by the California Supreme Court in 1983:

1. The subject is logically and reasonably related to hours, wages, or an enumerated term and condition of bargaining;
2. The subject is of such concern to both management and employees that conflict is likely to occur and the mediatory influence of collective bargaining is the appropriate means of resolving the conflict;



3. The employer's obligation to negotiate would not significantly abridge its freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the district's mission.

*(San Mateo City School District v. Public Employment Relations Board, 33 Cal. 3d 850, 857, 191 Cal. Rptr. 800, 811 (1983)).*

On other topics, the district is required to consult with the union (defined as "consultation"), but is not necessarily required to bargain to impasse (the point at which bargaining ceases). Such topics include educational objectives, course content and curriculum, and text selection. All other subjects are reserved to the discretion of the district (Cal. Govt. Code § 3543.2(b)). The EERA specifically excludes issues pertaining to dismissal from the scope of collective bargaining (Cal. Govt. Code § 3543.2(b)). However, school districts and unions are authorized to bargain over the causes and procedures for disciplinary action other than dismissal, including suspension for up to fifteen days.

Once a bargaining agreement is negotiated in a public school, a grievance and arbitration clause usually provides a mechanism for the union to present formal complaints on behalf of teachers for the employer's violation of the agreement. Such agreements typically include initial steps such as bringing the matter to the teacher's immediate supervisor; and appealing to a higher-level official. The EERA allows the parties to include a provision for binding arbitration to settle disputes that are not resolved through the grievance process (Cal. Govt. Code § 3548.5). Employees have the right to file a grievance with or without the involvement of the Union (Cal. Govt. Code §

3543). The school district cannot agree to resolve the grievance until the union has received a copy of the grievance and the proposed resolution, and has had an opportunity to respond. *Id.*

The PERB also receives and adjudicates Unfair Labor Practice charges (“ULPs”), which can be brought by either party to accuse the other of failing to follow the law. ULPs most often accuse the other party of failing to meet its obligation to bargain in good faith. The PERB also provides fact-finding when mediation has failed. If no agreement is reached via the factfinding process, the factfinding panel issues an advisory report, which the parties are obligated to consider in good faith in an effort to reach agreement. As referenced above, if the parties are not able to do so, upon reaching a second impasse, the district may unilaterally implement its last, best and final offer, and the union may call a strike.

### *Property Rights in Public Employment*

The United States Supreme Court established in 1972 that school teachers have a protected property right in employment if the state gives them a “legitimate claim of entitlement” to it. This entitlement can be created through state law or a collective bargaining agreement. The Fourteenth Amendment prevents states from depriving a teacher of this property right without “due process.” *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701 (1972); *Perry v. Sinderman*, 408 U.S. 593, 92 S.Ct. 2694 (1972).

Teachers' rights under state law are determined in large part by their membership in one of four categories: substitute, temporary, probationary or permanent. For districts with 250 or more teachers, any teacher who has worked for two consecutive school years and is reelected for the next school year must be classified as a "permanent" employee (Cal. Educ. Code § 44929.21). As explained in Chapter 4, permanent employees are provided significant protection by California law, and probationary teachers are also protected to a lesser extent.

### *Collective Bargaining -- Criticism and Reform Proposals*

#### *Background: the debate over teacher quality and placement*

During the same period that the legal framework surrounding teachers' employment status and rights has developed and evolved through state law and collective bargaining, the debate over the ability of teachers to improve performance of schools and individual students has also intensified. Since the publication of the Coleman report in 1966, which argued that students' background characteristics such as race, income and parental education levels largely determined student performance, critics, including economist Eric Hanushek, have criticized the methodology and conclusions of the report. Some recent research has suggested that, background characteristics being equal, qualified and effective teachers can have a significant impact on student achievement. (Hanushek, 2005). Hanushek has argued that "[i]ncreasing teacher quality easily trumps reducing class size as an educational investment." (Hanushek, 1992). One study has

estimated that the achievement gap could be closed by ensuring that disadvantaged students had a good teacher for five years in a row. (Hanushek et al., 2005).

However, some research has also suggested that some of the most frequently-used indicators of teacher quality, including certification and advanced degrees, and years of experience (after the first few years) do not necessarily predict teachers' success. Rather, successful teachers often possess attributes which cannot necessarily be measured on a purely objective basis. (Hanushek, 2005; Kane et al., 2006).

This question has significant implications for resource allocation decisions and for debates over personnel policy. In the battle for federal, state and local funding, school leaders and policymakers have argued about whether money is best spent on teacher salaries or on attempting to improve the socioeconomic circumstances of children. This debate has recently created a dramatic split among education policy experts and advocates, producing dueling “manifestos” for education reform. One group, referred to as the “Broader, Bolder” coalition, essentially advocates turning schools in poorer neighborhoods into full-service community centers, providing nutrition, daycare, after-school programs, and community services to all residents. Supporters of this approach contend that combating poverty in the communities surrounding schools is the best way to help students come to school ready to learn. (A broader, bolder approach to education, 2008).

The other group, which includes the Education Equality Project headed by New York Chancellor of Schools Joel Klein and Reverend Al Sharpton, argues that

improving the quality of teachers is a key leverage point for improving academic performance, and that money and policy should be focused on empowering schools to attract the most qualified teachers and place them where they can do the most good. The EEP’s “Manifesto,” released in 2008, included several recommendations directly related to the areas of personnel policy addressed by this study:

- “Ensure that there is an effective teacher in every classroom, and an effective principal in every school, by paying educators as the professionals they are, by giving them the tools and training they need to succeed, and by making tough decisions about those who do not;”
- “Create accountability for educational success at every level— at the system and school level, for teachers and principals, and for central office administrators;”
- “Commit to making every decision about whom we employ, how money is spent, and where resources are deployed with a single-minded focus: what will best serve our students, regardless of how it affects other interests. . . .” (Education Equality Project, 2008).

These recommendations have both monetary and non-monetary implications. Critics of collective bargaining agreements have argued that such agreements prevent schools from making decisions about teachers and money that are in the best interests of students. Defenders of unions, including advocates of “reform unionism,” argue that unions are a necessary participant in any effort to achieve the goal of having an effective teacher in every classroom, and that, to the extent that current bargaining agreements are an impediment to that goal, such agreements can be and are being modified in collaboration with school districts. The arguments and literature on both sides of this debate will be examined in the next section.

### *Criticism of collective bargaining agreements*

As labor agreements have become the norm in states that allow collective bargaining, critics have argued that these agreements have eroded the ability of school administrators to act as educational leaders. Political scientist and union critic Terry Moe has argued that unions are able to shape education policy in two important ways. First, depending on state law, unions are usually authorized to collect at least a minimum level of dues or agency fees from all teachers. As noted above, California law gives unions this authority. Using union dues paid by member teachers, they are able to wield considerable power at the state and national levels, by lobbying government officials and conducting grass-roots campaigns. In fact, for the period 2000 through 2009, the California Teachers' Association was the largest lobbyist in the state of California in terms of campaign contributions and lobbying efforts. (Sacramento Bee, 2010). Second, by negotiating collective bargaining agreements with school districts, they are able to establish many if not most of the rules that govern the daily life of the schools covered by the agreements. (Moe, 2001). Others have argued that the sheer length and complexity of labor agreements has a chilling effect on the willingness of teachers to make difficult decisions that might be in the school's best interest. The average length of a teacher collective bargaining agreement on file with the Bureau of Labor Statistics as of 2005 was 105 pages. (Hess and West, 2006). Moe and other critics contend that these rules have negative consequences for students, as they prevent administrators from allocating teachers to their most productive use, raise costs, and entangle schools in bureaucracy. (Moe, 2001; Lieberman, 2000; Hess, 2006). As expressed by Moe and John Chubb,

“The alleged leader of the school, the principal, is purposely prevented from staffing the organization and arranging incentives according to his best judgment. The principal may value expertise, enthusiasm, collegiality, communication skills, creativity, facility in dealing with parents, special sensitivity to student problems, or any number of qualifications related to the school’s goals --- but he is prevented from taking effective action to obtain teachers who possess these qualifications and to eliminate those who do not. For the most part, the principal is stuck with the teachers the system gives him. They are stuck with him. And the teachers are stuck with each other.” (Chubb and Moe, 1990).

According to Moe, bargaining agreements can include several provisions that unduly restrain administrators:

- Rules making it impossible to dismiss teachers for poor performance;
- Rules limiting discretion of principals in assigning teachers to classes, requiring them to base such decisions on seniority;
- Rules allowing teachers to make voluntary transfers to other schools, and resist being transferred away, based on seniority. (Moe, 2001).

Likewise, Frederick Hess argues that the unions restrict efforts to use compensation as a tool to recruit, reward and retain effective teachers; impede attempts to assign or remove teachers on the basis of performance or alignment with the school’s mission; and over-regulate school life through the use of work rules that stifle creative problem solving. (Hess, 2006). Some have argued that the Los Angeles Unified School District’s (“LAUSD”) bargaining agreement (one of the longest and most complex in the country, comprising more than 300 pages), and other public school district agreements, do not allow administrators to use some of the tools potentially available to school leaders to attract and effectively utilize high-performing teachers, including the ability to

assign them where they are deemed to be most needed, transfer them to better suit the schools' needs, pay them for performance, and dismiss them to make room for new teachers. Some have criticized LAUSD for the limited number of teachers the District has successfully taken through the dismissal process: only one teacher between 1990 and 1999. (Dawson, 2000). As one example cited by Hess, in 2000 the Los Angeles Unified School District Board tried to remove 400 of 35,000 teachers. Challenged by the teachers' union through grievance procedures, they were able to remove only three, and two were overturned on appeal. (Hess, 2004).

Hess and others have recommended loosening contractual and legal restrictions, arguing that such changes would empower school administrators to make better personnel decisions: Hess' suggestions include: (1) teacher pay should reflect the scarcity and value of teachers' skills, the difficulty of their assignments, the extent of their responsibilities, and the caliber of their work; (2) tenure should be eliminated from K-12 schooling or, at a minimum, contracts and state laws should be modified to enable management to more readily remove ineffective educators; (3) personnel should be assigned to schools on the basis of educational need rather than seniority; and (4) work rules should be weeded out of contracts, and contracts should explicitly define managerial prerogatives. (Hess, 2004; Hess, 2006).



### *Studies regarding restrictiveness of bargaining agreements*

Several recent studies have examined the content of collective bargaining agreements in conventional public schools, in an effort to analyze the degree of restraint imposed on administrators. Most have focused on contracts in a single state, including Michigan, Washington, Massachusetts, and Rhode Island. (Hess and Kelly, 2006). A California study by the Pacific Research Institute in 2002 studied contract strength in 460 districts, rating each from 1 to 20 for restrictiveness in five content areas, including grievance procedure, teacher evaluation, transfer and assignment. The study found that the ten largest districts had the most restrictive contracts, and argued that 75 percent of the districts “contained numerous restrictions on the ability of school boards and district staff to manage.” (Riley et al., 2002).

The Makinac Center for Public Policy conducted a study of 583 collective bargaining agreements in Michigan in 1998. This study found that many districts had negotiated “just cause” standards for all teachers, even though state law only imposed such a standard on permanent employees. (Munk, 1998). The study also found that most contracts included only seniority-based pay schedules, although state law allowed districts to negotiate for performance-based schedules. Finally, the study found that most districts had weak teacher evaluation clauses, requiring districts to rate a teacher as either “satisfactory” or “unsatisfactory,” which impeded the school’s ability to document performance deficiencies in a way that might ultimately be used to support a decision to dismiss a teacher whose performance declines over time. The study recommended that

school districts work to renegotiate these clauses in order to provide greater administrative discretion. (Munk, 1998).

In 2005, the Education Partnership conducted a study in Rhode Island, examining seven contract clauses, including teacher evaluation, salary, and seniority, and concluded that the bargaining agreements severely restricted management freedom. (Education Partnership, 2005). The Evergreen Foundation examined approximately 260 contracts in Washington State regarding exclusive representation, agency shop, and reduction in force provisions, and offered policy recommendations, most of which did not relate directly to personnel policy. (Helland and White, 2000).

Dale Ballou conducted a study of 40 Massachusetts contracts in 2000, examining compensation, teacher evaluation, transfers, layoffs, and length of day provisions. Ballou found that districts' teacher evaluation and transfer policies varied considerably. Ballou concluded that "on virtually every issue of personnel policy there are contracts that grant administrators managerial prerogatives they are commonly thought to lack. Yet, administrators do not take advantage of the flexibility available to them." (Ballou, 2000).

Following up on these earlier studies, Frederick Hess and Andrew Kelly examined a random sample of 20 school districts across the country. They coded the contracts on a 0 to 2 scale, with 0 representing a clause that was nonexistent or very vague, 1 that the issue is addressed but in a flexible or ambiguous way, and a 2 that the clause is clearly restrictive. They examined the 20 contracts for provisions on the length

of the school day, class size, transfer policy, and teacher input into curriculum. Hess found the same variety as Ballou had reported. With respect to teacher transfers, some were based strictly on seniority, some made seniority one factor for consideration, and some left decisions to the discretion of the administrator. For example, the agreement in Little Rock, Arkansas provided that the senior employee was to be given preference in transfer decisions. The St. Louis contract requires administrators to give “consideration” to grade level and subject matter areas, qualification and experience, available vacancies, staff balance, and locality preference; but it also provides that if two employees are equally qualified, “transfers or promotion of the employee shall be made on the basis of system-wide seniority.” The contract does not tell administrators how to decide whether two transfer applicants are “equally qualified.” The Oklahoma City contract was similarly confusing, requiring transfer decisions to be based on “the needs of the students of [the] school,” while also providing that the senior applicant must prevail “when individual qualifications are equal.” Likewise, the contract in Kansas City, Missouri mandates consideration of the specialized academic needs of the district and length of service, but also requires that where length of service is equal or within 60 days of being equal, the applicant with greater professional preparation, as measured by the district’s code, must prevail. (Hess and Kelly, 2006).

Hess and Kelly concluded that, although bargaining agreements are often faulted for being unduly restrictive, they are often more ambiguous than administrators’ concerns would imply. Hess quoted a prominent urban district superintendent, who said that “[d]istricts tend to be far less aggressive in asserting management prerogatives than

the language of their contracts arguably permits.” (Hess and Kelly, 2006). Hess questioned why administrators did not take advantage of any ambiguity in the contracts to make personnel decisions they deem necessary for the improvement of their schools. He presented three hypotheses. First, management and labor share a common history. Many trustees, school board members and superintendents were previously union members, and may be reluctant to “rock the boat.” Indeed, Moe has argued that school board members may be union sympathizers, or may fear reprisal by unions in school board elections. (Moe, 2006). Second, administrators understand that pressing an aggressive interpretation of contract language will lead to grievance and arbitration, which can be costly and time-consuming. Hess argued that arbitration proceedings, and their effect on administrators’ decision-making process, is a poorly understood subject that warrants additional research.

Third, some agreements have “past practice” clauses, which require that personnel and other provisions must be interpreted to be consistent with the district’s previous practices. According to Myron Lieberman, such clauses act as an invisible restraint, making contract provisions more prescriptive than they appear. (Lieberman, 2000). On the other hand, Union defenders such as Leo Casey contend that such clauses do not allow unions to evade clear contractual language supporting administrators’ decisions when those decisions are challenged in arbitration. Hess asserted that the impact of “past practices” clauses is poorly understood, and urged that further research be done in this area. (Hess and Kelly, 2006).

Susan Moore Johnson and Morgan L. Donaldson reviewed research regarding staffing policies across the country; like Hess, they found a wide variety in the levels of restraint imposed on administrators. (Johnson, 2006). Johnson and Donaldson's findings on transfer rules and on evaluation and dismissal rules are most relevant to this study.

Transfers. In Harrisburg, Pennsylvania, the bargaining agreement gives full discretion to the Board, and exempts the decision from the contract's grievance procedure. In Rochester, New York, seniority plays no role in determining whether to grant a voluntary transfer, but may be the decisive factor in an involuntary transfer decision. In Montgomery County, Maryland, seniority plays little effect. The contract stipulates that it is "in the best interest of the school system and the union" to let teachers "seek positions that are the best matches with skills and abilities," and to give administrators and staff the "most simplified, timely, and open access to the pool of internal and external candidates."

Evaluation and Dismissal. Although dismissal itself is often exempted from the union grievance process (as in California), unions can limit the potential for dismissal in several ways: (1) district officials can find the procedures for reviewing teachers burdensome, (2) contracts may have a rating system distinguishing only competent from incompetent, (3) union officials can aggressively defend all members receiving negative evaluations, which can prevent the district from using negative evaluations to support an eventual dismissal. (Johnson, 2006). Johnson also found

variety among unions in their approach to negotiating evaluation instruments. Unions with an “industrial” philosophy generally prefer a two-tier evaluation, either “satisfactory” or “unsatisfactory,” in order to limit the subjective input of the evaluator. Examples include Philadelphia. Those with a “reform” approach are more likely to allow for the use of a more extensive form or “rubric.” Such districts include Minneapolis, Minnesota, which includes a detailed form to be completed during classroom visits while reserving to the evaluator the right to make formative and summative judgments about the teacher’s performance. Seattle’s contract allows evaluators to consider student achievement data in teachers’ evaluations. (Johnson, 2006).

*Studies on the effects of collective bargaining agreements*

In addition to studies analyzing the restrictiveness of bargaining agreements, some studies have examined the effects of agreements on staffing practices, teacher pay, and student performance. Many of the studies, like this Study, have relied on anecdotal evidence and subjective reports, but they have focused on conventional public schools rather than charter schools.

Teacher pay. Several studies have concluded that collective bargaining agreements increase pay for teachers. A study by Caroline Hoxby, considered among the most rigorous, reviewed changes in district salaries between 1982 and 1992, and concluded that unions provided a 5% wage premium. (Hoxby, 1996). Earlier studies had estimated the premium to be as high as 15%, but most of these studies failed to control for other effects on rising salaries. (Johnson, 2006).

Staffing rules: transfer, evaluation and dismissal. In 2006-2007, The New Teacher Project (“TNTP”) analyzed the teacher staffing rules and processes in Chicago Public Schools (CPS). (New Teacher Project, 2007). TNTP concluded that CPS faces many challenges common to urban school districts, but also progressive school staffing policies and procedures. First, the majority of teachers and principals were satisfied with CPS’s teacher transfer and reassignment processes, in which all teacher placements must receive the mutual consent of both the teacher and principal. Second, top-performing teachers were vulnerable to being displaced because of a reassignment policy based on seniority rather than teacher quality or school fit. Half of the principals reported losing a teacher whom they preferred to keep at their schools, due to reassignment or layoff. Third, the CPS teacher performance evaluation system did not distinguish strong performers, and was ineffective at identifying poor performers and dismissing them from Chicago schools. Only 0.3% of teachers were rated “Unsatisfactory.” Eighty-eight percent of CPS schools had not issued a single “Unsatisfactory” rating in the previous four years. In failing schools, where student test scores were below the district average and had been declining in recent years, the vast majority of teachers were still rated “Superior” or “Excellent.” Principals reported that they did not have confidence in the evaluation tool, and teachers report that they believe the evaluation process was not meaningful. (New Teacher Project, 2007).

In a study of transfer rules in the collective bargaining agreements of 158 California public school districts, Terry Moe found that in districts without transfer rules, disadvantaged schools had approximately 22% more low quality teachers than

advantaged schools. Where transfer rules were strong (meaning they require seniority to be the overriding factor in transfer decisions), disadvantaged schools had 58% more low quality teachers than advantaged schools. (Moe, 2006a). Moe concluded that the strength of transfer rules significantly affected the distribution of low-quality teachers within districts.

A study by William Koski for California's "Getting Down to Facts" project reached a different conclusion. Again studying California schools, he determined that, contrary to some prior research, there was no persuasive evidence that seniority preference rules in bargaining agreements independently affected the distribution of teachers among schools, or exacerbated the relationship between higher minority schools and teacher quality. (Koski, 2005). Koski also found that administrators often negotiate discretionary language in transfer and assignment rules, and collaborate with union leaders to suspend or work around restrictive rules.

A survey of collective bargaining agreements in the 50 largest districts in the country by the National Council on Teacher Quality found that only 42% of districts require observation of tenured teachers once a year, and 20 % require observation only once every 3 or more years. For untenured teachers, only about a quarter require observation two or three times a year, and more than 20% have no requirement. (Hannaway & Rotherham, 2008). Education Week examined state laws on the same subject. Their study found that 43 states require formal evaluations, but only 12 states require evaluation annually, and only 12 states connect evaluations to student



achievement. (Olson, 2008). A survey of districts in the Midwest found that over 60% of districts studied did not identify specific criteria to be evaluated, and less than 10% identified what type of training the evaluator were required to receive. (Brandt, 2007).

Dale Ballou conducted a review of the contract between the City School District of New York and the United Federation of Teachers in 1999, which at that time was 204 pages long. (Ballou, 1999). He also interviewed principals in eleven schools, all of whom were involved in education reform efforts. Ballou found that the contract could force administrators to accept veteran teachers, despite their preferences, in three ways: by being transferred in through a system allowing the UFT to select half of the transfer applicants; by being “excessed” in when jobs are eliminated in other schools in the system; and by being transferred in during downsizing, when teachers were being laid off. Ballou reported that some principals intentionally tried to “scare off” unwanted teachers. Successful principals were often penalized by attracting teachers looking for a successful school, but not necessarily willing to follow the program that had brought the principal success. With respect to teacher evaluations, Ballou found that the procedure for resolving a grievance related to a negative evaluation took an average of 285 days. Ballou reported that the contract’s assignment provisions prevented principals from reassigning teachers to grades that needed help, based partly on threats that the Union would grieve the assignment. Finally, Ballou found that the presence of the union, combined with a lengthy removal process, made many principals reluctant even to attempt to remove unsuccessful teachers. One principal reported that the removal process “sets you up for ridicule by the union.” He complained that the school board “doesn’t

show principals how to prepare the necessary documentation,” forcing them to “walk through a legal minefield with no help.” (Ballou, 1999).

Researchers including Paul T. Hill have pointed out that there is still a dearth of studies evaluating the effect of bargaining agreements on personnel practices. Among other suggestions, Hill saw a need for research comparing personnel practices for teachers hired with and without collective bargaining agreements. (Hill, 2006).

*Los Angeles Unified School District’s collective bargaining agreement*

In 2007, the Fordham Foundation published a study of collective bargaining agreements in America’s fifty largest school districts, which included Los Angeles Unified School District (“LAUSD”). The authors ranked LAUSD 34<sup>th</sup> out of 50 in flexibility, assigning it an overall rating of “Somewhat Restrictive.” The authors examined the Agreement in two policy areas that are germane to this study: personnel policies generally, and compensation. With respect to personnel policies, the authors assigned a “D+” rating. The Agreement allows administrators to factor student performance into teacher evaluations, but is silent on whether they may consider test scores; layoffs must go to teachers with less seniority; internal job applicants get preference over new hires for vacant positions; and tenure is governed by the Education Code. LAUSD’s Compensation provisions were given a “B+.” According to the authors, the Agreement is silent on raising salaries for college-teaching experience and on rewarding for performance. The Agreement allows schools to provide a monetary reward

to teachers in high-needs schools, but it limits the amount of the reward. The authors recommended that LAUSD should negotiate several new provisions, some of which are relevant to this study: (1) raise starting salaries of teachers with any form of prior experience; (2) incorporate “pay for performance”; (3) consider student test scores in teacher evaluations; and (4) base transfer decisions on individual merit and performance rather than seniority. (Hess & Loup, 2007).

### *The promise of “reform bargaining”*

Partly in response to these critics, some union leaders and researchers have advocated the use of “interest-based” bargaining. This model of bargaining focuses on collaboration and the search for common purposes or interest. In the context of school-based bargaining, proponents of reform bargaining seek a return to the “guild” concept, in which unions considered themselves the guardians of their profession’s standards of excellence, and paid special attention to the training of new members. (Kerchner, Koppich & Weeres, 1997). More recently, they have focused on the subjects of the bargaining process itself, arguing that the scope of bargaining should be expanded from protecting the terms and conditions of teachers’ employment to the performance of schools and the success of students.

Two of the leading scholars advocating reform bargaining in schools are Julia Koppich and Charles Kerchner. Koppich has examined the tension between unions which advocate for teachers in the terms and conditions of their employment, and

management and union critics, who argue that unions prevent management from allocating resources in ways that improve student learning. (Koppich, 2007). Koppich argues that freedom from all constraints on management prerogatives is not a viable or attractive option. Rather, the choice is between a union-management contract shaped through agreement by both parties, or one determined by an outside authority which all parties must simply accept. Koppich favors the use of collective bargaining agreements, but argues that “reform agreements,” characterized by greater flexibility and cooperation between unions and management, will empower teachers to improve learning to a greater extent than “traditional,” industrial-style bargaining.

According to Koppich, in traditional bargaining teachers merely act as workers who follow orders, and if they are unhappy, they must file a grievance through their union. Management’s job is to decide what teachers will do and supervise them to ensure that they do it. In reform bargaining, management and the union form a personnel partnership, which works toward mutual goals and seeks to resolve differences through cooperation. Both traditional and reform contracts provide mechanisms for reaching agreement. In traditional contracts, the process is often formal, and involves arms-length proposals and counter-proposals, while reform agreements often commit both parties to placing a joint commitment to student learning at the center of the contract. (Koppich, 2007). Koppich accuses conservative critics of seeking to maintain the status quo, relegating teachers to an industrial-era role of simply following orders, while reform bargaining promises to unleash teachers’ ability to improve schools at the policy level. Koppich points out that newer teachers are more likely to favor “reform” concepts such

as differentiated pay, and want their union to not only protect their rights but also to help them become better teachers. (Koppich, 2007).

However, Kerchner and Koppich have criticized teachers' unions for seeking a broader scope for bargaining, while refusing to accept a corresponding expansion of their own responsibility. Spurred by leaders such as American Federation of Teachers President Albert Shanker, and Rochester, New York union leader Adam Urbanski, interest in reform bargaining has spread over the last twenty years, at the same time that the scope of union-management discussion has widened. (Kerchner & Koppich, 2007). Reform advocates have identified several initiatives advocated or enthusiastically accepted by unions that are designed to improve educational opportunities. In Denver, a merit-pay program was implemented, and a similar program was introduced in Minneapolis. In Boston and in Pinellas County, Florida, the union agreed to alteration of provisions giving placement preference to veterans, and in Maryland, Rochester, and Minneapolis, they worked to expand the scope of professional development to focus on effectiveness rather than merely limiting the amount that could be required. In New York, teachers in the lowest-performing schools are chosen by a joint management-labor-parent committee, rather than seniority. Peer review has been adopted through union-management cooperation in dozens of districts, creating a teacher-supported mechanism for coaching and potential removal. (Taylor & Rosario, 2007). In the last five years, according to Kerchner and Koppich, the drive toward reform bargaining appears to have waned. However, they see charter schools as a new and potentially fertile field for exploration of the benefits of reform bargaining. (Kerchner & Koppich, 2007).

Koppich conducted a study of collective bargaining agreements from 15 school districts in 2007 for California’s School Finance Redesign Project. The districts were selected purposely rather than randomly, in order to obtain a range of districts including both “traditional” and “reform” contracts. Among the fifteen districts studied by Koppich, only three were engaged in traditional bargaining. Koppich reviewed the districts to determine whether reform bargaining had substantial monetary implications on selected bargaining topics. She found that differences between traditional and reform bargaining were more common on the topics of salaries, transfer and assignment, professional development, evaluation, career development, and improving student achievement. Differences were relatively rare on the issues of benefits, workday and work year, leaves of absence, non-teaching duties, class size, dispute resolution, and tenure, layoffs and dismissal. While Koppich found that there were rarely differences in dispute resolution clauses, she found that reform districts reported handling procedural issues in a less combative, more cooperative manner, which decreases the costs of administering the grievance process.

Compensation. Of the districts classified as “reform,” six out of seven had differentiated pay schedules, while only one of three of the “traditional” districts used them.

Transfer Rules. With respect to transfer rules, in the “reform” districts the agreements more often provide that a school-based team of teachers and administrators

would select the candidate for the job, based on the school's needs and the candidate's abilities, rather than using seniority as the determinative factor.

Evaluation and Dismissal. While traditional contracts generally require evaluations by administrators every two years, the "reform" districts employed a variety of methods, including intervention programs focusing on student achievement, and standards-based processes of peer assistance and review ("PAR"). Most of these methods are school-based, and are focused on the teachers' current interests and student achievement standards.

Traditional contracts typically do not address student achievement. Reform contracts are more likely to include an explicit commitment to improving learning shared by teachers and management. However, they do not typically provide specific mechanisms or strategies for achieving these goals. In "traditional" contracts, the union is given at most an advisory role in budget, curriculum and other areas that are placed within management's prerogative by the contract. In "reform" contracts, joint committees are often established for discussion and even decision-making on topics such as instructional leadership, school climate, teacher recruitment, professional development, and class size. Where these committees are given decision-making authority, they can have a direct impact on the allocation of resources. Finally, while none of the "traditional" contracts in the study allowed for departure during the term of the contract, three out of the either "reform" districts allowed the parties to execute

“waivers” allowing the other party to deviate from the contract in order to implement a school-specific program.

### *Compensation in collective bargaining agreements*

One of the most interesting reforms creating tension among union critics and defenders is differential performance, especially “performance pay.” This section will review recent developments in this area, including the three types of differential pay that will be examined in this study: pay for individual performance, pay for school-wide performance, and pay for hard-to-staff subjects or in hard-to-staff schools.

Merit pay can be provided either to individual teachers, groups or grade levels, or an entire school. (Podgursky & Springer, 2006). Where it is awarded on an individual basis, the administrator must determine the value the teacher has added by comparison to the value added by other teachers with similar credentials and experience. (Podgursky & Springer, 2006). Interest in performance-related pay programs has grown recently, as a number of programs have been implemented at district-level, state-level and national-level. (Podgursky & Springer, 2006). A prior generation of reformers attempted to introduce performance pay incentives, but they were rejected. (Hannaway & Rotherham, 2008). In recent years, however, changes in technology and data-tracking procedures have improved the ability to assess teachers’ effects on student performance. The recent emphasis on school accountability, including the data-reporting requirements of NCLB, has put a wealth of information into the hands of the public and school



administrators. (Hannaway & Rotherham, 2008). However, most states are yet to take advantage of this new capability, with only 12 matching student data with performance data from their students. (Hannaway & Rotherham, 2008).

Teachers' unions have traditionally been among the staunchest foes of performance pay, at least on the individual level, because it creates distinctions among teachers, while the unions are philosophically and legally committed to representing all teachers collectively. (Hannaway & Rotherham, 2008). When the New York City Department of Education launched a pilot study to assess the value added by individual teachers to student test performance, Randi Weingarten, the President of the UFT, vowed to fight the program, writing that the UFT would "fight this on all grounds – educational, legal and moral." (UFT, 2008) Likewise, when the Democratic leadership of the House of Representatives announced that they would consider including performance pay in the reauthorized No Child Left Behind Act, Reg Weaver, President of the NEA, responded that "NEA will oppose any legislative proposal that mandates implementation of a pay for performance plan." (Hannaway & Rotherham, 2008).

The NEA's policy statement explained that the NEA opposed pay for "hard-to-recruit positions," and "merit pay or any other system of compensation based on an evaluation of an education employee's performance." (NEA 2007). The has been more amenable to differential pay:

“[T]he AFT is encouraging its locals to explore various teacher compensation systems based on local conditions. It is **not** recommending abandoning the traditional salary schedule. An adequate salary base for all teachers, labor-management

collaboration based on mutual trust, and easy-to-understand procedures for awarding teachers additional compensation are among the conditions that must be part of any professional compensation system. . . . The AFT supports such efforts, but wholeheartedly rejects any pay proposals that resemble the failed merit-pay plans that some have advocated.” (AFT 2008 (emphasis in original))

Unions’ opposition to performance-based pay is founded upon several concerns. First, about half of teachers teach non-tested subjects such as art or other specialized subjects. Second, teachers argue that incentives lead teachers to alter their instruction in harmful ways, focusing on lower-level skills rather than higher-order thinking skills. A subject-matter bias is also created in favor of subjects measured by standardized tests. Third, individual incentives combined with scarcity of those incentives can foster competition at the expense of cooperation. And fourth, performance incentives raise fairness issues. The measures may not be accurate; they may not account for individual traits of students assigned to the teacher; and they may not take school conditions into account. (Hannaway & Rotherham 2008). Goldhaber (2005) concluded from SASS data that districts with stronger unions are less likely to have pay incentives for “excellence in teaching.” Districts with no collective bargaining agreement were twice as likely to have some form of merit pay as districts with a collective bargaining agreement.

### *Teacher attitudes regarding performance pay*

Attitudes toward performance pay vary among teachers themselves.

Teachers themselves have expressed views that appear to indicate generally that it should be possible for administrators to decide which teachers deserve performance incentives:

- 78% of teachers believe it is easy to spot who the truly great teachers are
- 72% say most teachers could pretty much agree who the truly great teachers are
- 70% support giving extra pay to teachers in “tough neighborhoods with low-performing schools.”
- 67% support extra pay for teachers “who consistently work harder than other teachers.”
- 62% support extra pay for teachers “who consistently receive outstanding evaluations from their principals.”
- 78% say there are at least a few teachers in their school who “fail to do a good job and are simply going through the motions.”
- 58% say tenure doesn’t necessarily mean teachers have worked hard or proven their ability. (Public Agenda, 2003).

Ballou and Podgursky (1993) conducted one of the first studies examining teacher attitudes. They found that teachers who had previously received performance pay were more likely to support it; that private school teachers held more favorable opinions

about it than did public school teachers; and that female teachers and more experienced teachers tended to oppose it --- all of which were expected results. However, Ballou and Podgursky's study also challenged the widely held belief that most teachers oppose performance pay. For example, contrary to conventional wisdom that failure to receive a reward would turn teachers against performance pay, non-recipients in districts that used performance pay were generally more supportive of performance pay than teachers in districts that did not use it. And contrary to conventional wisdom that teachers of low-performing students would consider performance pay unfair, they found that teachers of disadvantaged and low-achieving students were more supportive of performance pay than most teachers.

A survey in Washington State in 2006 found that only 17% supported merit pay, but 72% supported "combat pay" for teachers in high-need schools, and 41% supported extra pay for subject-area expertise. In all three forms of differential pay, veteran teachers were less supportive than novice teachers; and high school teachers were more supportive of merit pay and subject-area pay than elementary school teachers. Interestingly, teachers who trusted their colleagues were less supportive of merit pay. (Goldhaber et al., 2007). A Public Agenda survey of teachers with five or fewer years of experience found that 69 percent support differentiated pay in the abstract, though most opposed pay tied to student performance. (Farkas, Johnson, & Foleno, 2000). A Public Agenda poll conducted for The Teaching Commission found that 85 percent of teachers and 72 percent of principals said that providing financial incentives would help to attract and retain high-quality teachers. (Public Agenda, 2004).

A more extensive 2003 Public Agenda poll of teachers nationwide found that 76% of teachers favored paying more to teachers in low-performing schools; 67% favored financial incentives for teachers who “consistently work harder, putting in more time and effort than other teachers”; 63 % favored paying more to teachers who teach difficult classes in hard-to-staff schools; 62% supported incentives to teachers who consistently receive outstanding evaluations from their principals, and 57% favored incentives for teachers who earn certification through the National Board for Professional Teaching Standards. (Farkas, Johnson & Duffett, 2003). However, only 42 % favored paying more to teachers in shortage areas such as mathematics and science, and only 38 % support financial incentives for teachers whose students score consistently higher on standardized tests. (Farkas et al., 2003). Sixty-three percent indicated that they believe “merit pay” would create unhealthy competition and jealousy among teachers, and 52% said that such a system also would prompt principals to play favorites, rewarding teachers who are loyal to them. (Farkas et al., 2003).

Finally, a recent study found that while only 33% of teachers with more than twenty years of experience support new compensation schemes, 55% of teachers with less than five years of experience did so. (Hannaway & Rotherham, 2008).

### *Successful models*

Hannaway and Rotherham (2008) examined five prominent teacher performance incentive plans: The Denver “ProComp” plan, a New York pilot program,

the Teacher Advancement Program; the Toledo, Ohio “TRACS” program, and Minnesota’s “Q-Comp” system. Most had four elements in common: (1) the local union was involved in its design and implementation, (2) they had provisions allowing teachers, schools or districts to participate, rather than mandating participation, (3) they used more than one basis for evaluation, and (4) they provided some form of “off-the-books” funding, at least in the initiation stage.

An essential condition for securing union cooperation in most plans has been to ensure that existing teachers do not lose money, which means that bonuses must come from increased funding. Denver received money from foundations to finance its pilot, and then from a levy passed by 58% of the voters. New York’s pilot program was supported by private funding. Several programs receive funding from the Teacher Incentive Fund, including the Toledo TRACS Plan. In Minnesota, funding comes from the state. (Hannaway & Rotherham, 2008).

Providing incentives to entire schools rather than individual teachers may alleviate concerns about the erosion of cooperation between teachers, but it can also provide incentives for “free-loading” by some teachers. (Hannaway & Rotherham, 2008). For example, the New York City plan allows the principal, with two union members, to make decisions on the distribution of a school-wide bonus. This is intended to empower the principal to encourage high performers and sanction poor performers.

Performance pay is made difficult by the irregularity of the evaluations upon which variations in pay are usually based. Among the country’s fifty largest school

districts, as of December 2007 only 42% required observation of tenured teachers once each year, and 20% only require it once every three or more years. (Hannaway & Rotherham, 2008). Even among non-tenured teachers, only about 25% of the districts require observation two or three times per year, while over 20% had no requirement at all. As reported in Education Week, 43 states require formal evaluations, but only 12 states require it annually, and only 12 states consider student performance as part of the evaluation process. (Hannaway & Rotherham, 2008). It is also difficult to predict whether compensation incentives will draw high-quality teachers into high-poverty schools or attract other high-quality individuals to join the teaching profession. (DeArmond & Goldhaber, 2008).

### *Charter Schools in California*

#### *General background of charter schools*

Chubb and Moe's 1990 book, "Politics, Markets and America's Schools" is considered a significant development in the argument over school choice. Although the book did not specifically advocate for charter schools, its demand to release schools from bureaucracy and restrictive personnel rules formed part of the impetus for the development and spread of charters. Chubb and Moe argued that people at the school level "know collegiality, enthusiasm and sensitivity when they see them," but there is no formal test for such factors, and they are therefore removed from the realm of administrative discretion. The bureaucratization of personnel tends to ensure that public schools "will lack the proper mix and balance of talents on which effective education

inherently depends.” Chubb and Moe predicted that schools operating in a market system would operate very differently. The principal would be free to recruit the type of teachers he wanted, based on the qualifications he correlated with organizational performance (including a “good fit,”) and reward them through an incentive system. This would encourage teachers to be “team players,” and motivate them to focus on actual performance rather than “paper qualifications.” Having the ability to form his own team would actually empower the principal to share power with his teachers, since the teachers would have a strong incentive to succeed both individually and collectively. While unions would have the ability to organize such schools, Chubb and Moe predicted that they would be at a disadvantage, because teachers would have autonomy, a share in decision-making, and would be treated as professionals. (Chubb and Moe, 1990).

#### *California’s charter school law*

The Charter Schools Act of 1992 made California only the second state in the country to allow public charter schools. The stated intent of the law was to “provide opportunities for teachers, parents, pupils and community members to establish and maintain schools that operate independently from the existing school district structure.” Cal. Educ. Code § 47601.

Charter schools are governed by the California Charter Schools Act, codified as Education Code sections 47600-47664. The legislation initially limited the number of schools to 100, with a limit of 10 per school district. The law provided that



funding would follow any student who left a district school to attend a charter school. In 1998, Assembly Bill 544 the state increased the number of charters from 100 to 25, and allowed the state to approve up to 100 per year thereafter. The law allowed only non-profit organizations to operate charters, and authorized the State Board of Education to grant and revoke charters, in addition to local school districts. Assembly Bill 544 also required charter school teachers in core academic subjects to hold a Commission on Teacher Credentialing certificate or equivalent document equivalent to the certification that traditional public school teachers are required to hold. Educ. Code § 47611.5

Assembly Bill 1115, passed in 1999, allowed all charter schools to receive funding either through their district or directly from the state in the form a general purpose entitlement and a categorical block grant. The block grant program allows charters to receive the state average amount allocated to schools for the programs in the block grant, but schools cannot apply for additional funds from those programs. Charters were authorized by the law to apply directly for categorical programs not included in the block grant. The law also provided charter schools with the state average in Economic Impact Aid for disadvantaged pupils through the categorical block grant. Finally, AB 1115 allows charter schools to serve as their own Local Area Authority for special education funding.

Assembly Bill 631, passed in 1999, made clear that charter school employees are allowed to join or form a union and engage in collective bargaining. It

also required charter schools to declare whether the school or the charter-granting entity would be the employer for purposes of collective bargaining.

In 2001, Senate Bill 740 placed tighter controls on charters offering non-classroom based instruction. It also provided schools up to \$750 per student based on Average Daily Attendance (“ADA”) to assist with lease or rent costs, up to a maximum of 75% of such costs. In 2002, responding to complaints about financial mismanagement by some charter schools, the state passed Assembly Bill 1994, which increased oversight of charter schools and restricted their ability to serve any grade or to locate anywhere in the state. Assembly Bill 1137, passed in 2003, increased charter accountability by requiring districts or other authorizers to identify a contact person for charter schools, visit each charter once each year, and ensure that charter schools submit all required reports (including fiscal reports). The district is also required to monitor the fiscal condition of each charter, and notify the State Department of Education whenever a charter is granted, denied, revoked or closed. Finally, AB 1137 required that charter schools show a certain level of academic performance in order to have their charter renewed.

In the areas of personnel policy analyzed by this study, California law provides that charter schools are generally “exempt from the laws governing school districts.” Cal. Educ Code section 47610. One important exception, addressed below, allows a unionized charter school to choose between following California law regarding discipline and dismissal, or bargaining with its union on those subjects.

### *Studies of California's charter schools*

As charter schools in California have proliferated, they have been studied extensively, but little of the research addresses the presence or activity of unions. In a 1998 study, Amy Stuart Wells found that most conversion charter schools in California retained their union membership at the time of the study, while most start-up charter schools began, and remained, non-union. (Wells, 1998). While that is still mostly true, as this Study finds, significant exceptions have emerged since that study.

In 2002, the Rand Corporation studied all California charter schools, and compared them to conventional public schools according to socioeconomic status and race of their students. The study paid particular attention to the difference between “dependent” charter schools, which effectively remain under the control of the district, and “independent” charters. Rand found that 70% of chartering authorities with dependent schools require collective bargaining, compared with only 26% of authorities with independent or undefined charters. They also found that in staff hiring, discipline and dismissal, 55% of charter authorizers exerted no control over independent charter schools, while only 15.2% of authorizers exerted no control over dependent schools in these policy areas. (Rand, 2003). However, little has been done to study the specific terms of collective bargaining agreements in charter schools at the school level.

### *Charter school performance*

There is abundant, yet conflicting and incomplete, research on the success of charter schools as compared to conventional public schools. The National Alliance for Public Charter Schools, a charter advocacy group, examined 70 comparative analyses of charter schools and traditional public schools. They found that only 40 of the studies attempted to measure change in student performance over time; of those, 21 found gains in charter schools that were larger than in other schools, ten found gains that were higher in certain significant categories of schools, five found comparable gains in charters and district schools, and four found that charters' gains lagged behind district schools' gains. (Hassell et al., 2007) However, another researcher examined the reports reviewed by the National Alliance, re-coded them, excluded certain studies for failing to examine statistical significance, and concluded that that only 15 studies showed that charters were out-performing district schools, while 21 showed that charters were comparable or worse than district schools. (Gyrko 2008). Both new research and debate over the merits of existing research continue to shape our understanding of the results of charter schools. This study will not attempt to compare the performance of charter schools with conventional public schools, but will focus narrowly on the influence of bargaining agreements and policy documents on the personnel decisions of charter school administrators.

### *Performance pay in charter schools*

As most charter schools are not unionized, they present a more open field for introduction of differential compensation schemes. Kowal, Hassel and Hassel (2007) studied data from 2000 through 2001, mostly in charter Networks, as these multi-site charter operators most closely resemble school districts. As of 2000, 71% of the charters they studied used a salary schedule. However, only 23% of the schools used the same schedule as the local district. Charters offered teachers a higher base salary – an average of \$26,977 for teachers with a bachelor’s degree and no experience, while public schools offered an average of \$25,888. However, at the highest step of the salary schedule public schools paid an average of \$48,728, while charters paid an average of \$46,314. The authors determined that charters tend to use a salary schedule as a starting point, but are more innovative after a teacher has spent time working. (Kowal, Hassel and Hassel, 2007).

Another study by Podgursky and Ballou supports this conclusion. They found that in initial job offers, just over 25% of charters consider performance, while more than 30% provide extra pay for hard-to-staff subjects. The least important factor was certification from the NBPTS, for which only 7% provided additional pay. However, more incentives became available for teachers after the initial hiring phase. When determining raises, individual teacher performance was considered in nearly 50% of the charters studied; 30% considered schoolwide performance; 44% paid more for difficult subjects; and 50% provided individual performance incentives. In 2000, a total

of 46% of the charters studied used merit or performance as the basis for additional pay. Where such rewards were offered, approximately 75% of the teachers received a reward. (Podgursky & Ballou 2001).

### *Charter Schools and Collective Bargaining*

#### *Historical background*

The history of the charter school movement is intricately intertwined with that of the major teachers' unions. AFT President Albert Shanker was one of the earliest advocates of charters, laying out his vision of innovative and relatively autonomous schools in a seminal address to the National Press Club in 1988 and in subsequent articles and speeches. (Gyurko, 2008). Shanker described schools that would be released from many regulations and bureaucratic restraints, control their own budget, allow parents to choose to send their children and teachers to choose to work, and would be accountable to meeting pre-determined goals. (Gyurko, 2008). Shanker followed up by advocating the professionalization of teaching through concepts such as peer review, board certification, and choice among public schools. (Kahlenberg, 2006) Shanker argued that many of the major reforms of the era, including higher standards, higher salaries, stronger certification standards and standardized tests, were not succeeding, partially because they were implemented in a top-down fashion that stifled local school leaders' ability to adapt and customize their educational approach. (Gyurko, 2008). Shanker argued that creating an environment where innovation was encouraged, and teachers were involved in shaping

the direction of the school, would allow schools to attract and retain a more capable work force. He announced that the AFT planned to visit schools across the country empowering teachers to implement this vision. (Gyurko, 2008).

Other reformers, including Chubb and Moe, shared Shanker's interest in freeing schools from bureaucratic restraints, but advocated that the entire school system be de-regulated to introduce choice and competition through a market-driven, voucher-based system.

In 1991, the first Charter School law was passed in Minnesota. The law established charters as independent corporations, freed from the school district and from existing collective bargaining agreements. Conservative advocates of charters, while agreeing with Shanker on the need for autonomy, extended that desire to include freedom from the unions that Shanker viewed as essential for teacher support and professionalism. (Gyurko 2008; Kahlenberg 2007)

For-profit "Education Management Companies" ("EMOs") such as Edison Schools, launched in 1991, set out to open and manage charter schools, prompting Shanker and other union advocates to warn that such groups threatened to put profit ahead of the core educational interests of their students. (Kahlenberg 2007). Ultimately, Shanker and his allies turned against the charter movement, arguing that it had become essentially an anti-union effort. (Gyurko 2008).

Shanker predicted that opposition from Unions would ultimately undercut the potential of the charter movement. Indeed, Shanker and other leaders have presented strong resistance to the expansion of charters. Among other examples, the Detroit Public

Schools staged a one-day walkout to protect charter expansion in 2003, and the Ohio Federation of Teachers filed lawsuits challenging the constitutionality of charters in 2001. (Gyurko 2008). Charter advocates have responded in the legislatures, in the courts and “on the ground.” The Atlantic Legal Foundation has even issued guides for charter schools seeking to avoid unionization, prepared by a management-side labor law firm. (Jackson Lewis, 2005).

Union resistance has helped to impose restraints on the growth of charters, including funding limitations and human resource barriers. (Gyurko, 2008). A 2005 study by the Fordham Institute covering 16 states and the District of Columbia, as well as 27 school districts, found that charters were under-funded in 26 of the 27 districts studied, and 16 of the states, facing deficits between \$414 per pupil and \$3,638 per pupil. (Hassel et al., 2005). This funding deficit creates obvious challenges for schools seeking to attract top teaching talent. According to the National Charter School Alliance, charters tend to hire teachers who attend more selective colleges, but are younger and less experienced than their district counterparts. (Gyurko, 2008). One study by researchers at Western Michigan University found that the national attrition rate for new charter school teachers was close to 40%. (Miron and Applegate, 2007). The National Charter School Research Project’s 2006 report questioned how charters can build a “sustainable teacher force” given the human resource constraints which are likely to increase in the next five years. (Gyurko, 2008). Charters have compensated by turning to private philanthropy, and have received support from foundations such as the Walton Family Foundation.



Some have speculated that the growth of charter schools might eliminate collective bargaining entirely, if charters empower teachers and administrators to collaborate as professionals. However, a survey by Johnson and Ladman showed that (1) teachers in charter schools still wanted limits on what they can be asked to do, (2) teachers wanted a role in policymaking; (3) they a wanted way to voice complaints and resolve disputes, and (4) they might move toward collective bargaining (Johnson and Kardos, 2000).

#### *The EERA and charter schools*

The EERA applies to charter schools as well as conventional public schools. Cal. Education Code § 47611.5<sup>1</sup> Under Education Code section 47611, the school's charter must state whether the school will be the exclusive public employer for purposes of collective bargaining if the school's employees choose to unionize. If the charter is not designated as the exclusive representative, the conventional school district becomes the exclusive employer for bargaining purposes (Cal. Educ. Code § 47611.5).

A 1999 amendment to California's charter school law provides that if the charter school, or its authorizing charter, does not state that the school will comply with California's statutes and regulations governing tenure, then discipline and dismissal become mandatory topics of bargaining (Cal. Educ. Code § 47611.5(c)).

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<sup>1</sup> However, the PERB has confirmed that collective bargaining agreements do not regulate the process of granting or denying a charter to a charter school. *Unified Educators of San Francisco v. San Francisco Unified School District*, PERB Decision No. 1438 (2001).

Unionization of charter schools presents a possible dilemma when teachers have taken on a management role in the school. For charter school advocates, one of the most appealing aspects of charter schools is that teachers often lead the drive to develop a charter petition, and are often given a significant role in the operation and management of the school. The EERA excludes management employees from the bargaining unit. (Government Code sections 3540.1(g) and 3543.4). However, the PERB ruled in 2003 that rotation of teachers into management roles, blurring the distinction between management and employees, did not violate the EERA by precluding other teachers from organizing, while leaving open the question of whether teachers holding management positions should be excluded from the bargaining unit. *Robert L. Mueller Charter School*, PERB Order No. Ad-320.

Charters which include teachers in a management role must also negotiate through California's laws governing conflicts of interest. State law currently provides that the Board of a non-profit corporation cannot have a majority of voting members with a financial interest in the school, which includes teachers receiving salaries from the School. State law also prohibits any Board member from voting on any measure in which the member has a financial interest, which would include any teacher's own salary.<sup>2</sup> A change proposed in 2004 and again in 2008, which was vetoed but remains a topic of debate, could prohibit *any* members of the Board from having a financial interest.

As explained in Chapter 4, some of the charter school administrators interviewed for this

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<sup>2</sup> See California Corporations Code § 5227 (only 49% of board of directors for nonprofit may be "interested person," including person receiving salary from nonprofit); Gov't Code § 1090 (public school district trustee is prohibited from holding a financial interest in any contract the board votes on).

study are concerned that this reform, which was primarily prompted by concerns about Board members who used their position to contract with companies in which they had a financial interest, could also prevent teachers from serving on charter school boards.

A union organizing drive at the LA Leadership Academy in 2005 initiated an important legal dispute over the nature of charter schools in California. In 2005, a group of teachers formed LA Leadership Academy Community United, as a CTA/NEA affiliate. In December of 2005, the Union filed a petition for representation with the PERB. In response, LA Leadership filed a Petition for a Representation Election with the National Labor Relations Board, contending that the school was not a public entity within the jurisdiction of the PERB. A number of prior decisions had held that charter schools were not public entities for certain purposes, including California's Tort Claims Act, access to records, and issues regarding the ability of employees to hold a financial interest on the Board. Charter schools, which can qualify as non-profit organizations under Internal Revenue Code section 501(c)(3), may allow employees to have a 49% interest in the organization, while true "public" organizations cannot allow employees to do so, which would preclude teachers from being on board. In response to LA Leadership's NLRB petition, the PERB filed a motion to intervene, seeking to dismiss the petition.

The NLRB ultimately dismissed the Academy's petition in March of 2006, holding that charter schools are part of the state's public school system and a political subdivision of the state, and that the NLRB therefore lacked jurisdiction over the

school. (*See Los Angeles Leadership Academy and Los Angeles Leadership Academy Community United*, Docket No. 06-0371, National Labor Relations Board, Case No. 31-RM-1281 (PERB Case No. LA-RR-1123-E)). The Union was then recognized by LA Leadership Academy, and has since represented the Academy's teachers at both schools.

Another legal question raised by the proliferation of charter school operators is whether teachers at a charter school operated by a private company remain public employees. In such schools, are the teachers subject to the EERA, covering public employees, or the NLRA, which applies to private employees? If the school does not substantially affect interstate commerce, it may not be subject to the NLRA. (Kemerer, p. 155). A private nonprofit entity called Options for Youth obtained a charter from the Victor Valley Union High School District. When the teachers chose to be represented by a union, which then petitioned for recognition by the PERB under the EERA, the school opposed the request on the grounds that the teachers were not public employees. The PERB followed a test established by the Supreme Court in *National Labor Relations Board v. Natural Gas Utility District of Hawkins County, Tennessee*, 402 U.S. 600, 604-05, 91 S.Ct. 1746, 1749, 29 L.Ed.2d 206 (1971), which treats employees as public if the employing entity is created by the state or is administered by officials accountable to the state or the electorate. In the case of Options for Youth, the Board found that the charter, like all charters, was part of the public school system created by the State, and that the operators were clearly accountable to the chartering institution, an arm of the State.

### *Teachers unions' vision for charter schools*

In 2004, Randi Weingarten, then President of New York City's United Federation of Teachers ("UFT"), an affiliate of the AFT, convened a Charter School Task Force to study the possibility of AFT-founded charter schools, which resulted in the recommendation to form two charters. The Task Force was in part a reaction to Mayor Bloomberg's 2002 assertion of mayoral control over New York's schools, which produced widespread changes implemented with less consultation with the Union than in previous administrations. The UFT set out to demonstrate that Shanker's original vision for teacher professionalism could be implemented in a union-driven charter. (Gyrko 2008). The UFT's elementary school opened in September of 2005, and its secondary school opened in 2006. According to Gyrko, the UFT seeks to alter the charter school image from markets and competition to innovation and professionalism. (Gyrko 2008). Weingarten argued that the UFT intended to shift the debate over charter schools "back to best practices in education – just as Al Shanker intended."

The unions' critics and defenders disagree about the importance of administrative discretion in forging a collaborative workplace. Moe argues that "it is the principal's concentrated authority that frees him to . . . grant teachers discretion in their work . . . [given that] the effectiveness and success of the organization are heavily dependent on [teachers'] expertise and professional judgment." (Chubb and Moe, 1990). Union advocates argue that "power should be broadly and contractually distributed throughout an organization, and collective bargaining is an indispensable mechanism to vest teachers with greater ownership over their enterprise." (Gyrko, 2008). Koppich

(2006) asserts that “reform unions have bridged what conventional wisdom would have us believe is the unnatural divide between classic wages, hours, and conditions of employment issues central to building a quality profession.” Koppich’s examples include Denver’s ProComp system, Minneapolis’ merit-based tenure, and Toledo’s peer review program. (Koppich, 2006).

One significant modification to the collective bargaining landscape proposed by the UFT is school-based collective bargaining, which separates schools from the one-size-fits-all district agreement while establishing a free-standing relationship with the Union. (Gyrko 2008). This form of bargaining is in place in several unionized charter schools in New York, including the Amber Charter School in East Harlem, the Roosevelt Charter School on Long Island, Maritime Academy Charter School in Buffalo, and the Charter School for Applied Technology in Tonawanda. (Gyrko, 2008). Single-school contracts can apply to a single school or to school networks. According to one analyst, unionized teachers would likely insist on several key principles: “fair pay with compensation based on what is appropriately within a teacher’s control, fair treatment with a contractual guarantee of due process, and mechanisms to stimulate and heed the voice and judgment of employees.” (Gyrko, 2008).

*Charters and unions: grand bargain, or fundamentally incompatible?*

Given increased flexibility to formulate personnel policies independent of district policies, Charter schools typically make use of employee handbooks, board policies and administrative regulations, and individual contracts of employment to set the

terms of employment. These establish the “status quo” from which a union must bargain when it organizes charter school teachers.

Against this backdrop, as the unions have begun to show an interest in organizing charter schools, a variety of bargaining relationships have been formed between charters and unions in a limited number of charter schools across California. Malin and Kerchner (2007) assert that the central question in determining the proper model for union organizing and bargaining in charter schools is: “what legal regime can best encourage collaborative, high-trust workplaces, and simultaneously empower and safeguard workers against ‘domination,’ understood as illegitimate instrumental coercion and endogenous shaping of workers’ preferences and interests?” Their answer is to provide more choices to schools and unions. They advocate a charter-by-charter approach to unionizing – not an industrial model, yet not full employee empowerment. Some schools might choose joint problem solving groups, continuous negotiation, autonomous work teams, or other approaches. They explain that most districts adopting reform unionism have formed joint labor-management teams to address problems. In good times, union leaders and superintendents meet and work well at an interpersonal level, while principals and local union leaders meet less often. Malin and Kerchner recommend against legislative adoption of any particular model, leaving charters free to experiment. However, they argue that legislation should require charter agreements to specify a vehicle for teacher involvement in decision making as a condition of the charter. (Malin & Kerchner, 2007).

Malin and Kerchner suggest that teachers should agree to a fundamental trade-off with charter school operators, accepting less job security in exchange for a greater voice in running the school. This proposed bargain is based on several principles and assumptions:

1. Where teachers bet their jobs on the success of the school, they deserve a voice in its operation.
2. Teachers like charter schools because they give them the chance to practice their profession free of traditional restraints, but turnover in charter schools is high. Mandating that some form of voice be given to teachers may reduce turnover.
3. Placing a burden on schools to include teachers in management will lead to experimentation, such as teacher cooperatives.
4. Producing success in a joint-management approach places competitive pressure on traditional schools to include teachers.

As various forms of unionized charters have appeared, unions and charter leaders have begun to take a deeper look at their relationship, exploring areas of tension and areas of possible cooperation. (Gyrko 2008). In the Spring of 2006, the Progressive Policy Institute and the National Charter School Research Project held a conference involving twenty-five union and charter school leaders to explore areas of agreement and disagreement. (Hill, 2006). As recounted by Gyrko (2008), the 2006 convention of the American Federation of Teachers included intense discussion about charters. In April 2007, the annual conference of the National Alliance for Public Charter Schools included a session exploring the question of whether charter schools and unions can “get along.”



The AFT's July 2007 education conference included sessions for AFT members teaching in charter schools.

The 2006 conference resulted in the publication of a document titled "The Future of Charter Schools and Teacher Unions." The report indicated that the participants --- from the charter movement and the unions --- tried to move beyond confrontation and zero-sum analyses. The participants found six main themes that summarized the state of the union-charter relationship:

- Charter school and teacher union leaders are deeply divided by the metaphors they use and by their institutional histories;
- Each side assumes that the other is defined by the views of its most extreme members
- Leaders on both sides agree on many attributes of a good school
- Each side thinks the other insists on something that interferes with quality teaching
- The two sides' disagreements are exacerbated by conflicting beliefs about questions of fact that could be resolved empirically
- A gap exists in beliefs and values between the most flexible members of both sides, but it is much smaller than the gap between the extremes and could be narrowed further by reasonable steps that both could take.

The group reported that there is distrust in both camps: some union leaders believe charter leaders seek to shut down public school districts and "bust unions," while some charter leaders cite unions that sued public officials who sponsored charter schools, and unions that threatened to block hiring of teachers training at universities that authorized charter schools. However, there is actually significant

overlap among advocates in both camps: many charter leaders are former union members, and not all are strong free-market advocates. The group reported that it understood the assessment made by Stephen Page, “Chartering is a left-wing movement with right-wing money.” (Hill, 2006). Most leaders on both sides agreed on certain common principles:

- All children need safe and serene environments, personal attention from adults, pressure to achieve, combination of didactic and self-initiated learning activities; institutions and teachers matter.
- United against a common enemy, school district bureaucracy. Believed cumbersome bargaining agreements in large urban districts are response to big district bureaucracies.
- Charter leaders saw benefit to having formalized group with which managers could collaborate and consult.
- No charter leaders believed charter could be governed by district-wide CBA without losing instructional flexibility. Every school needs its own bargaining unit.
- Union leaders open to charters agreed that mandatory transfer rules to protect senior teachers and other forms of standardization common in district wide agreements were inappropriate for charters.
- Many agreed that unionization transforms teachers from employees to partners.

The participants also clarified areas of disagreement:

- “Sticking points” include hiring, firing, differential pay, turnover, the formalities surrounding at-will employment, and the ability of administrators to select teachers on basis of fit with school’s need.
- Union leaders dislike charters having cadre of senior teachers and rotating younger teachers spending only a few years; teaching can only be profession if it is lifelong career

- Union leaders say no school's staffing decisions should be determined by how expensive a teacher is. Seniority is the only unbiased basis for career progression.

Finally, the participants agreed on the need for more empirical research on several questions:

- How does the charter teaching force differ from the teaching force in neighboring district?
- Are charters constantly disrupted by teacher turnover, or have they learned to stabilize instruction and build teacher skills despite turnover?
- Are charter teachers more or less satisfied in their jobs than teachers in public schools?
- Do charter teachers use their market power (ability to leave jobs they don't like) to exert influence on schools? How?
- Do parents use their market power (ability to choose and leave) to exert influence on schools? If so, how?
- How does at-will employment work in charter schools? What proportion are bullied or arbitrarily dismissed in charter schools?
- Do charter school principals differ from conventional public school principals in leadership styles and openness to teacher input?
- Do unionized charters suffer more internal conflict and focus less on instruction than non-unionized schools?

The participants also agreed that it would be helpful to be able to review certain exemplars and models:

- Charters that have thrived after unionization
- Innovative district-union agreements allowing different uses of teacher time and tradeoffs between teacher labor and technology

- Non-unionized charter schools in which teachers play strong leadership roles
- Charters that successfully mix teachers who expect to stay for many years and those who expect to leave after one to three years. (Hill, 2006).

Perhaps the most significant example of union-charter cooperation is the Green Dot model. In September of 2007, the Los Angeles Unified School District's Board of Education voted to turn over Locke High School to the Green Dot schools, a Charter operator launched by former labor organizer Steve Barr. Barr had successfully convinced a majority of teachers to vote to leave LAUSD and re-establish Locke, a failing high school near downtown Los Angeles, as a charter school. The unique element of the turnover is that Barr and Green Dot voluntarily supported the creation of a union for Green Dot teachers when Green Dot began operating, the Asociacion de Maestros Unidos, meaning that all teachers at the Locke campus remain bargaining unit members, but are no longer governed by the LAUSD contract. Instead, they are protected by a smaller, more streamlined agreement designed to encourage the kind of cooperation between the union and the school that reform-union advocates have sought. The extent to which this model succeeds in encouraging the type of reforms that both union critics and union-reform advocates seek will contribute significantly to our understanding of the possibilities for charter-union cooperation.

## Chapter III - Methodology

### *Introduction*

This chapter will describe the design, sample, data collection and data analysis portions of the study. As set forth in Chapter 1, the purpose of the study is to compare collective bargaining agreements in unionized charter schools with the agreements of conventional school districts, to explore the relationship between the unions and charter school administrators, and to examine the effect of unions and bargaining agreements on the personnel practices of charter school administrators. The study focuses on four areas of decision-making in which unions and/or collective bargaining agreements may impact administrators' decision-making ability: (1) assignment and transfer, (2) evaluation, (3) classification, discipline and dismissal, and (4) differential pay. In each of these areas, California's charter school laws make it possible for charter schools to operate outside of many of the restrictions on administrative discretion that are imposed by state law or collective bargaining agreements, but union bargaining agreements have the potential to diminish that flexibility. The study asks four primary research questions, related to the specific areas of personnel policy outlined above:

*Research Question No. 1:* To what extent, and in what ways, do the collective bargaining agreements in unionized California charter schools differ from the

agreements of the school districts by which they are chartered, and from each other, with respect to provisions governing assignment (or reassignment) and transfer decisions?

Research Question No. 2: To what extent, and in what ways, do the collective bargaining agreements in unionized California charter schools differ from the agreements of the school districts by which they are chartered, and from each other, with respect to provisions governing teacher evaluation?

Research Question No. 3: To what extent, and in what ways, do the collective bargaining agreements in unionized California charter schools differ from the agreements of the school districts by which they are chartered, and from each other, with respect to provisions governing teacher classification (including whether or not the school provides any form of “permanence” or “tenure”), discipline, and dismissal?

Research Question No. 4: To what extent, and in what ways, do the collective bargaining agreements in unionized California charter schools differ from the agreements of the school districts by which they are chartered, and from each other, with respect to provisions governing differential compensation or “merit pay”?

The study was originally designed to use a combination of three tools to evaluate the effect of union presence and bargaining agreements on administrators’ decisions: (1) bargaining-agreement analysis and coding for unionized schools, (2) quantitative data-collection, using a questionnaire given to all unionized and selected comparable non-unionized schools, and (3) semi-structured interviews with a smaller set

of unionized and non-unionized charter schools. Due to the low rate of response to the questionnaire, the quantitative element of the study was eliminated. Instead, the first element of the study was expanded to include a more in-depth analysis of the terms of each school's collective bargaining agreement, and included a comparison with the district in which the charter school was located, which would govern the personnel practices of that school if it was not a charter school. Additionally, due to the difficulty of making direct comparisons between a small number of unionized charters and comparable non-union charters, the interviews with non-unionized charters were also eliminated from this study. The elements that were not included in this study could provide useful topics for further study.

Researchers, policy makers, administrators, teachers, unions and interested citizens (including parents) could benefit from the availability of more information and analysis regarding the variety of approaches to bargaining agreements, and the formation of policies on similar topics currently being used by non-union charter schools in the Los Angeles area. Such information could be used to evaluate the success of charter schools in increasing flexibility in policy areas in which the LASUD agreement has been considered too restrictive. The study could also help schools and unions choose their own approach to bargaining, or re-evaluate their existing approach.

## *Population*

The sample for this study was intended to cover the full spectrum of unionized charter schools in California. Charter schools are generally classified as either “conversion” or “start-up” schools, and as “dependent” or “independent.” “Conversion” charter schools --- existing public schools that become charters --- enter into a charter agreement with a school district, almost all of which are unionized. “Start-up” charters are schools that commence as charters, rather than conventional district schools, although they are usually chartered by a conventional school district.

A “conversion” charter school may be chartered as a “dependent” charter school, which typically is part of the district for funding purposes, and may be required to retain obligations under an existing collective bargaining agreement, depending on the terms of the charter, or may be “independent”; some conversion schools, like one in this study, begin as dependent charters and become independent. By contrast, most “start-up” charter schools, although they are usually authorized and chartered by their local district, are exempted by their charter from any obligation to bargain with the district’s union, or to comply with the district’s bargaining agreement. Such schools are more likely to be “independent,” meaning they are not bound by the district’s policies. “Conversion” schools have the ability to decertify the district’s union by a majority vote of the certificated staff, but few conversion schools have used that procedure. Conversely, although the terms of a “start-up” charter may exempt the school from any union obligation, the school remains subject to organizing efforts by a teachers’ union.



The two national teachers' unions, the National Education Association and American Federation of Teachers, have recently made organizing charter school teachers a high priority. This is accomplished by obtaining a majority vote of the teachers in the bargaining unit in an election supervised by the National Labor Relations Board. Because most California charter schools are single campuses, the bargaining unit is typically a single school site.

To date, these unions have organized only a limited number of charter schools in California. As of the date of this study, a total of just over 30 charter schools in California had executed collective bargaining agreements that were independent of a district bargaining agreement. These include all five campuses operated by the Camino Nuevo Charter Academy in Los Angeles, one of the schools analyzed in this study, and two of the four campuses operated by Leadership Public Schools in the Bay Area. Organizing efforts will likely continue, and could have a dramatic impact on the future of staffing policy and practice in California's charter schools. While this study was being completed, Accelerated Charter School in Los Angeles, one of California's first successful charters, was presented with a demand for union recognition. Given the rise in importance of non-profit Charter Management Organizations ("CMOs") (such as Green Dot, one of the schools in this study) and for-profit Education Management Organizations (such as Edison Schools, which is also included in the study), multi-site organizing efforts may become more prevalent. Finally, Green Dot Schools, a CMO based in Los Angeles, has forged a new direction in charter-union relations by supporting the creation of its own union, and voluntarily entering into a bargaining agreement with

that union that applies to all Green Dot schools --- which now include twelve high schools in the Los Angeles area.

This study was originally designed to include all unionized charter schools (a number of which, including Green Dot schools, are covered by the same bargaining agreement). However, due to a low response rate, bargaining agreements were only obtained for a total of nine schools, and the school districts by which they are chartered, and these schools formed the population for the first part of the study (analysis of collective bargaining agreements). Five of those schools agreed to be involved in the administrator interviews. However, the schools that agreed to participate actually reflected fairly well the diversity of charter types described above; some began as dependent charters and became independent, while some took the opposite path, and some have remained independent throughout their existence. As explained in Chapter 4, the history of the union's involvement at the schools also varied widely, providing a fairly representative, if anecdotal, view of the possible paths to unionization for charters in California.

The chart below provides information for each school in the group of charter schools included in the study: the school district by which the charter school is chartered, the grades taught at the school, the type of charter (whether a "conversion" or "start-up"), the date on which the school was originally authorized, and the name of the union recognized by the school, with its organizational affiliation.

California Charter Schools With Collective Bargaining Agreements in This Study

| School Name                       | School District                             | Grades Served | Type of Charter | Date Chartered | Union                                       |
|-----------------------------------|---|---------------|-----------------|----------------|---|
| Green Dot Public Schools          | LAUSD (most schools)                        | 9-12          | Start-up        | 2000           | Asociacion de Maestros Unidos (CTA)         |
| Camino Nuevo Charter Academy      | LAUSD                                       | K-8           | Start-up        | 2000           | Camino Nuevo Teachers Association (CTA)     |
| Choice 2000 On-line School        | Perris Union High School District           | 7-12          | Start-up        | 1994           | On-line Teachers Association (CTA)          |
| Darnall Charter School            | San Diego Unified School District           | K-6           | Conv.           | 1993           | Darnall Charter Tchrs Assoc (CTA)           |
| Ravenswood Edison Charter Schools | Ravenswood City School District (Palo Alto) | 5-8           | Conv.           | 1998           | RTA/Edison McNair Edison Brentwood (CTA)    |
| Helix Charter High School         | Grossmont Union High School District        | 9-12          | Conv.           | 1998           | Helix Teachers Association (CTA)            |
| LA Leadership Academy             | LAUSD                                       | 6-11          | Start-up        | 2002           | Los Angeles Leadership Academy United (CTA) |
| Live Oak Charter School           | Petaluma City Elementary School District    | K-8           | Start-up        | 2001           | Live Oak Teachers' Association (CTA)        |
| Ocean Charter School              | LAUSD                                       | K-8           | Start-up        | 2004           | Ocean Charter Teachers Association (CTA)    |

*Collective Bargaining Agreement Analysis*

The first step in the study was to compare the level of restriction placed on the decision-making ability of administrators by (1) collective bargaining agreements at unionized charter schools, and (2) the collective bargaining agreements in the conventional school district by which each charter school is chartered. Originally, each school's governing document containing the policies relevant to the study was to be

evaluated and coded, by assigning it a rating for each subject in the study. A higher score would be used to indicate a greater level of restraint on administrators' discretion. These codes were intended to allow a quantitative comparison between the bargaining agreements and administrators' responses to the study's questionnaire. Because the questionnaire was eliminated, the bargaining agreement analysis was expanded to include a more descriptive evaluation of each school's provisions in the same areas originally outlined for study. Following is a description of the research questions used in the study.

#### *Assignment and transfer*

The first research question analyzes the assignment and transfer provisions in collective bargaining agreements.

Schools assign teachers to classrooms when they are hired; they may later "reassign" teachers within the same school; both decisions can be the subject of seniority-based rules. Transfers from one school to another may also be governed by seniority rules. Transfers can be initiated by teachers seeking a transfer to an open position for a variety of reasons, which are termed "voluntary transfers" in the study. They can also be initiated by teachers who have been displaced from their positions due to declining enrollment, or by the administrator's decision to reallocate the school's staff. These are termed "involuntary transfers." Schools may require seniority to be considered in either voluntary or involuntary transfers, or in both types of transfers. When a senior teacher requests a transfer, she may or may not have the right to take a position currently held by a more junior teacher, "bumping" that teacher to another position or out of the school.

Such a transfer has both a voluntary component (for the senior teacher) and an involuntary component (for the “bumped” junior teacher). In conventional public schools, the “bumping” process is determined on a district-wide basis: a teacher may bump a junior teacher in another school within the district, and seniority is determined by the teachers’ tenure within the district.

As explained above, most California charter schools are single-campus operations, so inter-school transfers are rare. However, California’s unionized charter schools’ intra-school “reassignment” policies must take into account the same competing interests that affect transfer decisions in conventional districts --- the administrator’s need to make school-wide judgments about the best match between teachers and students, and the interest of senior teachers in applying their own judgment and maintaining stability. As a result, the intra-school transfer or “reassignment” provisions of the charter schools in the study reflect the same type of diversity as conventional multi-school districts’ inter-school transfer provisions. Additionally, multi-site charter school operators now run many charter schools in California, including some of the schools analyzed in this study, and these operators may have the ability to transfer teachers from one campus to another. Although there are differences between “reassignment” and “transfer” decisions, because both decisions can involve tension between an administrator’s judgment about the best location for the teacher, and the teacher’s own judgment and interests, and because single-campus charters’ “reassignment” decisions provide the closest comparison to conventional districts’ “transfer” decisions, this study treated

grouped both types of decisions together for purposes of comparing the degree of restraint placed on administrators.

Originally, a quantitative rating was to be assigned to each school's agreement for the degree to which administrators were required to consider seniority when making assignment or transfer decisions: no consideration, one factor required for consideration, or the determinative or "tie-breaking" factor. Due to the low response rate, the quantitative comparison was eliminated. Instead, the study analyzed the same aspects of each school's assignment and transfer policies using a more in-depth, qualitative and descriptive approach, comparing each school's provisions to those of the school district by which it is chartered, and to the other charter schools in the study.

#### *Teacher evaluation*

Second, the study was intended to evaluate designed to rate the amount of discretion given to administrators in the area of teacher evaluation, focusing on the aspects of evaluation in which conventional district agreements have been criticized for being overly restrictive, and other elements that the district agreements frequently contained, including: the frequency of evaluation, the process of establishing evaluation criteria for each teacher, the flexibility of the evaluation instrument, the ability to use informal or "drop-in" observations in the evaluation process, and the ability to challenge the evaluation process or outcome.

As with assignment and transfer provisions, an intended quantitative component was eliminated in favor of a more in-depth qualitative comparison.

### *Teacher discipline and dismissal*

Third, the study was intended to evaluate the degree of restriction placed on administrators' ability to make discipline and dismissal decisions.<sup>3</sup> As conventional public schools are heavily regulated by California law in this area, most significantly by providing "permanent" status after two years of teaching, this research question presented the most significant opportunity for charter schools to depart from their comparable school districts.

As with assignment and transfer provisions, the study was modified to address the same issues, but through a more detailed, qualitative approach.

### *Differential pay*

Finally, bargaining agreements were reviewed to determine whether they provided differential compensation to teachers. This study is interested in three forms of additional pay: (1) individual "merit pay," or pay for performance (2) pay for performance by the entire school, as opposed to an individual teacher; and (3) pay for teaching a subject that is in demand and hard to staff. As explained in Chapter 2 these are among the more controversial and infrequently-used forms of differential pay. They require an administrator to make a judgment about the value or "output" a particular teacher might provide to their school (in the case of hard-to-staff schools or hard-to-staff subjects), or about the value they have added to their students' performance (in the case

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<sup>3</sup> As explained in detail in Chapter 4, some charter schools offer a form of permanency or "tenure"; some employ teachers "at will," and others offer renewable contracts of employment for a term of one or more years.

of merit or performance pay), rather than the “input” provided by additional education or training. (Podgursky & Springer, 2006).

### *Data Gathering and Analysis*

The study was designed to gather and analyze data regarding administrators’ decisions in the policy areas outlined above, from the same sample of unionized charter schools and conventional school districts.

The study was initially designed to include a quantitative element. After receiving IRB approval and obtaining approval from the operator of each charter school in the study, quantitative data would be gathered using a questionnaire submitted by e-mail to the administrator of each school. The questionnaire was sent via e-mail to all of the unionized schools in California, followed by telephone and e-mails. However, only four administrators completed and returned the questionnaire, out of a total of approximately 30. As the initial population was very small, it was unlikely that any definitive conclusion could have been drawn from quantitative data obtained through the questionnaire. Given the low response rate, the results could not be used even anecdotally, and this element was therefore eliminated.

Therefore, instead of conducting a quantitative analysis of the schools’ bargaining agreements, a more in-depth, qualitative and comparative analysis of the schools’ bargaining agreements was used, expanding each of the four main Research Questions into a number of sub-topics. The sub-topics consist of common elements in



the relevant sections of the conventional school districts' bargaining agreements, as determined through a preliminary review of all of the agreements. In reviewing and comparing the agreements, I did not ask specific questions regarding each sub-topic, but asked essentially the same questions for each element: to what extent does the agreement reserve administrative decision-making authority to the school, or restrain such authority (which includes the granting of enforceable rights to teachers or their union); and how does this allocation of decision-making authority differ from the comparable district agreement? Given the qualitative and exploratory nature of the study, I did not make any attempt to quantify the results, and focused more closely on those schools whose agreements were unique or innovative, or those in which the difference from the district agreement was significant. Some schools' agreements were silent as to certain sub-topics or even major topics, and such silence (and its effect) was noted. The sub-topics examined were the following:

Research Question 1: Assignment and Transfer Policies:

- Assignment: Procedure
- Assignment: Criteria for Selection
- Assignment: Ability to Challenge or Grieve
- Voluntary Transfer: Procedure
- Voluntary Transfer: Criteria
- Involuntary Transfer: Procedure
- Involuntary Transfer: Criteria
- Transfer: Ability to Challenge or Grieve

Research Question 2: Evaluation policies:

- Frequency of Evaluation
- Timing of Evaluation, Planning Process
- Type, Frequency, Notice of Observation
- Individuals Involved in Evaluation
- Evaluation Instrument and Criteria
- Evaluation Report
- Alternative Evaluation / PAR
- Follow-up for Low-Rated Teachers
- Ability to Challenge or Grieve

Research Question 3: Discipline and Dismissal policies:

- Classification / Security
- Standard / Grounds for Discipline
- Discipline Process / Progressive Discipline
- Discipline: Challenge or Grievance
- Dismissal: Procedure
- Dismissal: Grounds
- Dismissal: Ability to Challenge or Grieve

Research Question 4: Compensation policies:

- Pay for Performance – Individual

- Pay for Performance – School
- Pay for Subject-matter

For each Research Question, the study first analyzed California law as it relates to each subject (including each sub-topic where applicable), and then discussed the application of California law to charter schools on that topic. I then analyzed the bargaining agreement for each charter school in the study, and applied the same analysis to the district in which each charter school is located, providing a point-by-point comparison on each sub-topic listed above. In Chapter 4, I summarize the most significant differences among the charter schools, and between the charter schools and the conventional school districts. In the attached Appendix, each element is analyzed in detail.

#### *Semi-Structured Interviews*

In addition to the bargaining agreement analysis, the study involved semi-structured interviews at a smaller number of charter schools, in order to add context and history to the document analysis. I initially planned to interview both administrators and union representatives, but ultimately limited the study to administrators in the interest of time and space. These interviews included questions about the school's approach to collective bargaining, including the use of "interest-based" bargaining; expansion or modification of bargaining agreements since the school's creation or conversion to a charter, whether through formal modification, extraneous memoranda, or informal

agreements between unions and administrators; the reasons for any modifications to the bargaining agreement among unionized charters; and the administrators' and union representatives level of satisfaction with their school's current contract. All responses were anonymous. I used the following questions as my guide in the interviews:

#### School's Union History

1. Were your school's teachers represented by a Union when the school began operating? If teachers are not currently represented, how did they eliminate representation?
2. If your teachers are currently represented, but were not represented when the school began operating, how was the Union recognized? Did the School resist unionization / welcome it?
3. Has any Union attempted to represent your teachers? What was your response?
4. Has your school attempted to negotiate a collective bargaining agreement with any Union? Explain the history of negotiations.
5. If your teachers have never been represented by a Union, what is your school's philosophy toward unions? Would you resist or welcome a Union that tried to organize your teachers?

#### School's Relationship with Union

6. Would you describe your school's relationship with the Union as adversarial or cooperative?
7. Would you describe the bargaining process between your school and the Union as traditional/adversarial or interest-based?
8. Has the collective bargaining agreement become more or less restrictive since the Union became the representative of your school's teachers (referring to your school's commencement as a charter school for conversion charter schools)?
9. Has your relationship with the Union become better or worse since the Union became the representative of the teachers at your school (referring

to your school's commencement as a charter school for conversion charter schools)?

10. Has the Union's grievance-related activity at your school increased, decreased or remained the same since it became the representative of your school's teachers (referring to your school's commencement as a charter school for conversion charter schools)?

#### Collective Bargaining Agreement: Compensation

11. Do you feel that the compensation authorized by your school's collective bargaining agreement allows you to recruit the best available teachers, or would you prefer that your school offer some form of additional compensation such as (a) pay for hard-to-staff subjects, (b) pay for hard-to-staff classrooms or schools, or (c) performance pay?
12. If you were able to offer performance pay, would you prefer to offer bonuses for individual performance or school-wide performance?
13. Do you know whether you be able to negotiate such compensation with your school's Union?
14. During the 2007-2008 school year, how many teachers would you have provided additional compensation based on their performance if additional pay was allowed by your school's collective bargaining agreement?
15. Are there any specific teachers you believe you could have hired if you had been able to offer them additional pay based on performance?
16. Are there any specific teachers who left your school, whom you believe you could have retained if you could have offered them additional pay based on performance?

#### Collective Bargaining Agreement: Assignment

17. Do you agree with the following statement: "The assignment process at my school allows me to select the best teachers for each classroom."
18. For those teacher assignment decisions in which you considered seniority, did you do so because you believed a more senior teacher would likely be better for the position, or because you felt you required to do so by the collective bargaining agreement?
19. During the 2007-2008 school year, in how many assignment decisions did you *take seniority into account* because you believed you were required to

do so by your school's collective bargaining agreement or personnel policies?

20. During the 2007-2008 school year, in how many assignment decisions did you *use seniority as the determinative factor* because you believed you were required to do so by your school's collective bargaining agreement or personnel policies?
21. During the 2007-2008 school year, how many assignment decisions would you have made differently if not for seniority provisions governing such decisions contained in your school's collective bargaining agreement or personnel policies.

#### Collective Bargaining Agreement: Transfer

22. Do you agree with the following statement: "The transfer process at my school allows me to select the best teachers for each classroom."
23. For those teacher transfer decisions in which you considered seniority, did you do so because you believed a more senior teacher would likely be better for the position, or because you felt you required to do so by the collective bargaining agreement?
24. During the 2007-2008 school year, in how many transfer decisions did you *take seniority into account* because you believed you were required to do so by your school's collective bargaining agreement or personnel policies?
25. During the 2007-2008 school year, in how many transfer decisions did you *use seniority as the determinative factor* because you believed you were required to do so by your school's collective bargaining agreement or personnel policies?
26. During the 2007-2008 school year, how many transfer decisions would you have made differently if not for seniority provisions governing such decisions contained in your school's collective bargaining agreement or personnel policies?

#### Collective Bargaining Agreement: Evaluation

27. Do you feel that your school's collective bargaining agreement allows you enough discretion to give negative evaluations to poor teachers?
28. During the 2007-2008 school year, how many teachers would have been given the lowest performance rating allowed by your school's rating

system, but were not given that rating because of rules contained in your school's collective bargaining agreement or personnel policies? Why?

29. During the 2007-2008 school year, how many teachers would have been given the lowest performance rating allowed by your school's rating system, but were not given that rating because you were concerned about a possible challenge by the teachers' union?

#### Collective Bargaining Agreement: Dismissal

30. Do you feel that your school's collective bargaining agreement allows you enough discretion to dismiss poor teachers?
31. During the 2007-2008 school year, how many teachers would you have dismissed for poor performance, but did not do so because of rules contained in your school's collective bargaining agreement or personnel policies? How many? Why?
32. During the 2007-2008 school year, how many teachers would you have dismissed for poor performance, but did not do so because you were concerned about a possible challenge by the teacher's union? How many? Why?
33. Have you / other administrators at your school ever had a discussion with a teacher about leaving the school, because you believed you could not dismiss the teacher? During the 2007-2008 school year, how many teachers left the school after such a discussion with you or another administrator regarding their performance?

#### Collective Bargaining Agreement: Union Activity and Presence

34. Aside from any direct effect that the terms of your school's collective bargaining agreement may have on your personnel decisions, does the Union's *presence as the bargaining representative of teachers at your school* have any effect on your decision-making process in the areas of teacher assignment, transfer, differential compensation, evaluation, or dismissal? What effect? Has this effect changed over time?
35. Aside from any direct effect that the terms of your school's collective bargaining agreement may have on your personnel decisions, does the Union's *activity at your school (including the filing of any grievances)* have any effect on your decision-making process in the areas of teacher assignment, transfer, differential compensation, evaluation, or dismissal? Has this effect changed over time?

Due to the time constraints of the interviewed administrators, and the variation in the significance of each subject from one school to another, I did not ask all questions to each interviewee. Rather, I attempted to address each of the main topics covered by the study, while focusing on those areas in which the administrator indicated that his or her interaction with the Union and the school's teachers, or the application of the particular provisions of the bargaining agreement, had been most interesting or significant, and on areas or in which the administrator expected future activity that could affect the school's personnel policies and practices. The interview responses are reported in Chapter 4, and are used to provide context to the bargaining agreement analysis. In Chapter 5, the Study presents recommendations and conclusions for charter schools, unions and policy-makers.



## CHAPTER IV - Results and Analysis

This Chapter will present the results and analysis of the Study for each of the Research Questions described in Chapter 3 (Assignment and Transfer, Evaluation, Discipline and Dismissal, and Teacher Compensation), each of which was divided into several sub-topics. After a summary of the key findings, for each Research Question the Chapter will first review the requirements of California law that apply to conventional public schools, and the scope of collective bargaining required or allowed by California law. Next, it will present a descriptive analysis of the key elements of the collective bargaining agreement of each charter school for which agreements were obtained, comparing the agreement with the provisions of the bargaining agreement for the school district by which the charter school is chartered. The complete descriptive analysis of these agreements is found in the Appendix.

The Chapter will then present the results of interviews conducted with administrators at five of the charter schools: Green Dot Public Schools, LA Leadership Academy, Choice 2000 Online Charter School, Darnall Charter School, and Live Oak Charter School. The interviews were focused on the same topics as the bargaining agreement analysis, but also included questions regarding the school's union history, and the relationship between the schools' administration and the union.

## *Summary of Most Significant Findings*

### *Research Question 1: Assignment and Transfer*

California's conventional school districts, and its charter schools, are free to negotiate the amount of discretion given to administrators for assignment and transfer decisions. Most of the charters in this study have negotiated more lenient provisions than the comparable districts in these areas.

Assignment. While LAUSD requires assignment of permanent teachers before probationary teachers, and requires that initial assignments be made on the basis of seniority, most schools eliminated consideration of seniority, although Green Dot made seniority the determining factor where there are no "substantial distinguishing differences," and another made seniority only a "major factor," departing from its district's requirement that it be the "deciding factor."

Voluntary Transfer. The charter schools in the study were also able to negotiate more discretion to make transfer decisions, or reassignment decisions, than their comparable districts, and that departure from the district agreements was fairly consistent. Most schools omitted any consideration of seniority, while some prohibited decisions made in an "arbitrary, capricious or punitive" manner, which avoids a bright-line seniority rule but introduces significant ambiguity and may invite grievances. Green Dot and Darnall departed from their districts by allowing voluntary transfer of poorly-performing teachers, which the district Agreements prohibits.

Involuntary Transfer. The charters in the study generally departed from district provisions protecting senior teachers from involuntary transfer, or requiring the district to accept voluntary applicants rather than making an involuntary transfer. Green Dot must transfer a voluntary applicant if one can be found, and must otherwise have “just cause” for involuntary transfers, but was not bound by seniority. Unlike standard district agreements, which protected senior teachers from involuntary transfer, under Darnall’s agreement teachers in their first three years were completely protected from involuntary transfer.

*Research Question 2: Evaluation of Teachers*

Frequency of Evaluation. While California law requires the conventional districts in the study to evaluate permanent teachers every other year, and probationary employees every year, many of the charter schools in the study require more frequent evaluation, for a longer period of time, and some agreements were silent, effectively allowing administrators to decide how frequently to conduct evaluations.

Evaluation Planning / Setting Objectives. The charter schools in the study generally provided administrators more discretion to establish the objectives by which teachers will be evaluated, requiring that the evaluation criteria be discussed with the teacher without giving the teacher a right to select criteria.

Type, Frequency, Notice of Observation. Teachers’ unions in public schools generally negotiate the right to receive notice of the date for formal evaluation, to establish the length of the observation, to have more than one observation, and to define

the criteria by which the teacher will be evaluated. The charter schools in the study usually required pre-notification of formal observations, but allowed administrators to supplement planned and controlled observations with informal observations, often allowing those observations to be used in the teacher's official evaluation.

Individuals Involved in Evaluation. The districts in the study generally prohibited anyone but the teacher's supervisor to evaluate the teacher. Several of the charter schools allowed others, including fellow teachers, to be involved in the evaluations.

Evaluation Instrument and Criteria. Conventional school districts, including those in the study, usually use a binary, "Satisfactory or Unsatisfactory" or "yes or no" evaluation form. Most of the charter schools adopted more detailed, rubric-style evaluation instruments, with more elements and a greater range of possible ratings. Like the districts, the charter schools often made use of the California Standards for the Teaching Profession, but they were more likely to select only Standards the school deemed relevant, to apply different Standards to teachers at different levels of experience, or to add their own unique Standards.

Alternative Evaluation / Peer Assistance and Review ("PAR"). The charter schools in this study generally distinguish between newer and more experienced teachers in the use of alternative forms of evaluation, including Peer Assistance and Review ("PAR"), more often than conventional district agreements. While the districts generally authorized the use of PAR only for low-performing teachers, the charter

schools were more likely to authorize variation in the evaluation process for experienced teachers, who were given greater control over evaluation standards.

Follow-up for Low-Rated Teachers. While the charter school agreements in this study generally were more likely to depart from the standard evaluation process for experienced teachers, they were generally less likely to mandate formal assistance for poorly-performing teachers than the conventional districts, while holding teachers more strictly accountable for their failure to improve their performance --- including possible dismissal.

*Research Question No. 3: Teacher Classification, Discipline and Dismissal*

Classification and Security. The conventional school districts in the study are subject to the Education Code, which provides that teachers who serve two complete, consecutive years, and are not dismissed, become permanent employees. The charter schools in the study were able to obtain some flexibility in these areas, but their unions negotiated for more restraint than they did in the areas of assignment, transfer and teacher evaluation, often providing a form of “permanence” or “tenure.”

Discipline. While California law allows conventional public school districts to bargain over discipline short of 15-day suspension, the charter schools in the study were able to bargain regarding *all* disciplinary causes and procedures. However, they often followed the example of the conventional school districts, even though they were not required to do so, and several negotiated requirements of “good cause” or “just

cause” for discipline. Some of the charter schools also negotiated elements of “progressive discipline,” while the complexity and restrictiveness of the provisions varied.

Dismissal. LASUD and the other conventional districts in the study are governed by the Education Code, which requires that permanent teachers may be dismissed for unsatisfactory performance under The Stull Act, or “for cause,” as defined by the Education Code. Although charter schools in the study were free to negotiate their own terms for dismissal, a number of the charters negotiated fairly restrictive provisions, often requiring “good cause” or “just cause” for “permanent” teachers, although Green Dot provides that protection for all teachers. The schools varied in the extent to which they provided examples of the “cause” standard to guide administrators in the application of the standard.

#### *Research Question 4: Teacher Compensation*

Despite the current interest in differential pay, discussed in Chapter 2 of the study, few of the charter schools in the study have implemented any form of differential or “merit” pay. However, some of the schools reported that they were considering modification of their Agreements to incorporate merit pay; these efforts will be an interesting topic of further study.

## *Review of California Law and Comparison of Bargaining Agreements*

Having presented the central findings regarding the four primary research questions, the study will now present (1) a description of California law governing conventional school districts on the topic addressed by each research question, (2) a description of school districts' and charter schools' ability under California law to negotiate provisions on the subject addressed by each research question, and (3) a more detailed comparison between the provisions of the conventional school districts and the unionized charter schools chartered by those districts, on each sub-topic of each research question.

### *Research Question 1: Assignment and Transfer*

As explained in Chapter 2, some critics of collective bargaining agreements have argued that conventional district agreements unduly restrict administrators in their ability to place teachers where they are best suited to help students achieve. This Research Question was intended to evaluate the extent to which the charter schools in the study have been able to negotiate less restrictive assignment and transfer provisions than those governing conventional school districts, to the extent authorized by California law.

#### *California law governing teacher assignment and transfer*

Under California law, the district Superintendent has the duty of assigning teachers to their positions. Subject to limited exceptions, the Superintendent may

generally transfer a teacher when the district concludes that the transfer is in the best interests of the district (Cal. Educ. Code § 35035(c)).<sup>4</sup> Although a teacher has a vested property right in his position as a teacher, there is no vested property right in the *location* of the teaching assignment. *See Bolin v. San Bernardino City Unified Sch. Dist.*, 202 Cal. Rptr. 416 (1984). California’s tenure law does not interfere with a Board’s general power to assign teachers to particular classes and to particular schools, in accordance with its reasonable judgment. *Leithliter v. Board of Trustees* (1970, Cal App 2d Dist) 12 Cal App 3d 1095, 91 Cal Rptr 215, 1970 Cal App LEXIS 1695.

*Collective bargaining regarding assignment and transfer decisions*

Collective bargaining agreements can diminish the discretion otherwise permitted by California law, by establishing specific criteria and procedure for transfers. Under California law, mandatory subjects of bargaining include wages, hours, and other “terms and conditions of employment,” which include transfer and reassignment policies (Cal. Govt. Code § 3543.2(a)). Thus, each school district or charter school in this study was required to consider and respond to any bargaining proposals presented by its union regarding assignment and transfer of teachers.

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<sup>4</sup> A District may not transfer a teacher to a K-12 school that is ranked in deciles 1 to 3 on the Academic Performance Index if the principal of the school refuses to accept the transfer (Cal. Educ. Code § 35035(a)). Additionally, a district may not give priority to a teacher applying after April 15 for a transfer to a position sought by other qualified applicants who have applied for positions requiring certification qualification at the school (Cal. Educ. Code § 35035(b)).



*Findings related to bargaining agreement provisions on assignment and transfer*

Assignment. California's conventional school districts and its charter schools are free to negotiate the amount of discretion given to administrators for assignment and transfer decisions. Most of the charters in this study have negotiated more lenient provisions than the comparable districts in these areas. LAUSD's Agreement restricts administrators' assignment decisions in several ways: permanent teachers must be assigned before probationary teachers apply; each school must ensure that the proportion of permanent to non-permanent teachers is consistent with the district's proportion; and initial assignments are made on the basis of seniority. The Agreements negotiated by some of the schools within LAUSD --- Camino Nuevo, LA Leadership and Ocean --- differ significantly from LAUSD: they do not require any consideration of seniority, and these schools' administrators reported that, in fact, seniority is not considered in those decisions, demonstrating that they have achieved some of the flexibility sought by charter school advocates despite the establishment of a union agreement. However, Green Dot's Agreement is similar to LAUSD's, requiring that seniority is the determining factor where there are no "substantial distinguishing differences." Green Dot's Administrator reported that no grievance has been filed regarding this provision, but it is unclear how often school administrators determine that there are "substantial distinguishing differences," and make assignment decisions without regarding for seniority. This may be a fruitful topic for further study.

The Ravenswood District Agreement makes seniority the “deciding factor” in assignment decisions when other factors (certification, experience, and the school’s needs) are equal. Edison’s Agreement closely mirrors Ravenswood’s, but makes seniority only a “major factor,” rather than the “deciding factor.” On this topic and others, Edison’s Agreement was the most similar to its comparable district of any of the schools in this study, while providing slightly more discretion to administrators than the district’s agreement. The Perris District’s Agreement is more lenient than LAUSD’s, imposing no consideration of seniority, and Choice 2000 also does not require consideration of seniority. Likewise, the San Diego, Grossmont, and Petaluma District Agreements impose no seniority restriction on assignment decisions, and their comparator charter schools --- Darnall, Helix and Live Oak respectively --- also require no consideration of seniority. While the Petaluma Agreement guarantees an interview for any teacher interested in an open position, Live Oak’s Agreement requires only that available positions must be advertised internally --- another example of a charter Agreement using the District Agreement as a model, but modifying it slightly to provide greater discretion to administrators.

Voluntary Transfer. The schools in this study took widely varying approaches to consideration of seniority and performance in transfer decisions. LAUSD’s Agreement has been criticized for emphasizing teacher seniority over performance. However, although the Agreement uses seniority to break ties among teachers seeking voluntary transfers, it also prevents teachers with poor evaluations from requesting a transfer. Green Dot’s Agreement gives preference to teachers with

satisfactory performance, but differs from LAUSD's by giving administrators discretion to transfer a poorly performing teacher upon request; unlike LAUSD, it does not require consideration of seniority in transfer decisions. Ocean's Agreement requires consideration of both performance *and* seniority in reassignment decisions (the closest comparison to "transfer" decisions), but neither criterion is the "tie-breaker" or the determinative factor. LA Leadership's Administrator reported that it has never considered seniority in any transfer decision, because the school hires and contracts teachers for specific positions; these contracts have not yet been tested, raising another interesting question for future study.

While Perris's Agreement includes seniority as one factor in transfer decisions, Choice 2000 does not require any consideration of seniority. Choice 2000 requires that reassignment decisions cannot be made in an "arbitrary, capricious or punitive" manner --- a slight variation on the Perris District's provision that changes in assignment cannot be made for "arbitrary or capricious" reasons, a lower standard than requiring "good cause" or "just cause." San Diego's Agreement uses a "bid and post" process for transfer decisions, which requires that seniority be used as the basis for a decision where the administrator cannot make a selection among eligible bidders. The Darnall Agreement is actually more restrictive in this area, requiring that seniority be the determining factor for reassignment in the absence of "substantial determining factors." Like LAUSD, San Diego's Agreement precludes poorly performing teachers from participation in the "bid and post" process, while Darnall's Agreement departs from San Diego's by allowing administrators to consider such requests. Under the Ravenswood

Agreement, an administrator making a transfer or “assignment change” must make seniority a “major factor” if other factors are equal; Edison’s Agreement incorporates the same requirement.

Both Grossmont District’s and Helix’s Agreement require the school to follow five specific steps to facilitate transfers, which include making efforts to promote a positive view of transfers among teachers; and both Agreements include five criteria for any transfer decision, including seniority, which must be the deciding factor when other qualifications are equal.

The Petaluma District’s Agreement is procedurally unique in requiring that a Union representative must be invited to any staff meeting at which vacancies necessitating transfers will be discussed. The District must also allow application for transfer by existing teachers before opening a position to outside applicants. However, the Agreement gives administrators the discretion to choose the criteria they apply to such decisions. Live Oak’s Agreement does not include any of these provisions. The Agreement imposes no restriction on administrators’ ability to make transfer decisions according to the Administrator’s judgment regarding the educational needs of the school.

Involuntary Transfer. With respect to involuntary transfers, LAUSD’s agreement has detailed “displacement” provisions that apply during periods of declining enrollment or budget cuts. The teacher with the least district seniority in an affected group is displaced, unless the school administrator determines teacher has special instructional skills or qualifications not possessed by another available teacher. While

the schools compared to LAUSD in this study do not face the same scale of displacement as LAUSD, they can face the same issues on a smaller scale. The Camino Nuevo and LA Leadership Agreements do not address displacement, but they impose no restriction on administrators' ability to make transfer decisions. Thus, when positions are eliminated, modified or consolidated, administrators are able to transfer teachers to the any positions they deem most suitable for their educational objectives. The Green Dot Agreement does not impose specific criteria for involuntary transfers, but requires that the School have "just cause," and that there be no voluntary applicant. The Ocean Agreement does not address displacement, but, like Green Dot's Agreement, requires that before making any involuntary transfer, the School must seek voluntary applicants. Additionally, teachers' seniority is one of the factors the School must consider. This provides an element of protection for incumbent teachers somewhat similar to LASUD's, in restraining administrators' ability to determine that a teacher could better serve the school's objectives in a different position.

The Perris Agreement also requires the school to seek voluntary applicants before making an involuntary transfer decision; requires that seniority be the first criterion considered; and requires that the decision not be made for "arbitrary, capricious or punitive" reasons. The Choice 2000 Agreement includes the same standard for all transfer decisions. The Choice 2000 Administrator had been faced with one involuntary transfer decision involving competing requests, and felt that the discretion given to Choice 2000 that is not provided in the Perris agreement allowed the School to make the decision that was in the best interest of the students.

The San Diego District Agreement requires that before making involuntary transfer decisions, the school must seek voluntary applicants, but the School is not required to select a voluntary applicant; if none apply, the applicant with the least seniority generally must be chosen. The Darnall Agreement *requires* the School to transfer any voluntary applicant rather than making an involuntary transfer. This is one of the few instances in which the charter school Agreement is more restrictive than the comparable district agreement. Additionally, under the Darnall Agreement, *new* teachers (as opposed to more senior teachers) are completely protected from involuntary transfer. This provision takes a position opposite to most district agreements, including San Diego's, which generally protect the most senior teachers from involuntary transfer. This apparently reflects agreement between Darnall and its Union that new teachers need time to develop without the disruption caused by involuntary transfer.

This contrast in perspectives likely results from the administrators' differing experiences, pointing to the need for charter school operators to consider all possible applications of bargaining agreement terms when negotiating the school's first agreement. The Darnall Administrator interviewed for this study reported that the School had not yet encountered any tension between the Agreement's transfer provisions and the Administrator's views regarding the needs of the School.

Ravenswood's Agreement requires administrators to have a "rational basis in fact" for any involuntary transfer; the administrator must consult with the teacher before making the transfer decision; and such decisions cannot be made for disciplinary

reasons. As with assignment decisions, Edison's Agreement incorporates all of these provisions. As in the areas of assignment and voluntary transfer, Helix's Agreement is very similar to Grossmont's. Both Agreements limit the permissible reasons for involuntary transfers to staff imbalances, reduction in enrollment, or reduction in programs or services. Thus, the transfer of a teacher to better address student needs does not appear possible under either Agreement. Both Agreements regulate "reassignment" necessitated by overstaffing, requiring the school to advertise available openings elsewhere in the district and seek volunteers to transfer out of the school; if no teacher volunteers, the school must attempt to assign the teacher at the teacher's school. Although Helix cannot transfer teachers to other schools in the district, it has taken on the responsibility of determining whether other positions are available in those schools. This appears to be a result of using Grossmont's assignment and transfer provisions as a template, although it was not required to do so. In this area, Helix demonstrates one model for the creation of a charter's bargaining agreement --- mirroring the local district not only in the degree of restraint imposed on administrators, but also in the selection of topics covered by the Agreements.

In contrast to the close relationship between Helix's Agreement and Grossmont's, Live Oak's Agreement is significantly different than the Petaluma District's, and this difference extends to involuntary transfer decisions. While Petaluma's Agreement specifies that district seniority, school-site seniority, and grade level experience are the criteria that must be considered in any such decision, Live Oak's Agreement requires only that the Administrator consult with the teacher as early as

possible when the transfer is for a reason other than filling a vacancy. As discussed above, San Diego's Agreement appears to view such transfers as a tool for reallocating poorly performing teachers, while Darnall's Agreement appears to treat them only as a tool for filling vacancies. In light of these differing approaches to involuntary transfers, Live Oak's provision on this topic is interesting, in that it distinguishes between filling vacancies and "other" purposes for involuntary transfers. This seems to indicate that performance concerns or filling vacancies could be legitimate reasons for such a decision. Finally, while the Petaluma Agreement prohibits any involuntary transfer decision based on any "arbitrary or capricious" reason, Live Oak's Agreement does not impose any substantive restriction on administrators' decisions.

In general, it is difficult to discern any pattern in the extent to which the charter schools in this study differ from each other, or from their districts, in the areas of assignment and transfer. As the need and opportunity for transfer decisions inherently depend on the number of teachers at a school or within a school system, the size of the charter organizations likely has a significant effect on the development of the organization's transfer policy, but the sample size of this study is too small to allow meaningful consideration of that question. Rather, the schools' varying approaches suggest several models for charter schools considering the prospect of unionization, or for schools and unions approaching negotiation of their first bargaining agreement.



*Research Question 2: Evaluation of Teachers*

Teacher evaluation is a multi-purpose human resources tool. It forces school leaders to pay attention to the performance and progress of teachers, and allows them to provide guidance, correction and motivation. It also enables schools to make formal decisions about teachers, which can include retention, assignment to leadership or other specialty positions, additional pay, or, if an evaluation is negative, discipline or dismissal. Because the evaluation process carries the potential for adverse action against teachers, California's "Stull Act" (from which charter schools are generally exempt) restrains school leaders' discretion, providing specific guidelines school districts must follow in developing and implementing an evaluation system. Cal. Ed. Code § 44660 *et seq.*

*California law governing teacher evaluation.*

Frequency of Evaluation. The Stull Act requires that permanent teachers in conventional public schools must be evaluated at least every other year, while probationary teachers must be evaluated every year (Cal. Educ. Code § 44664(a)). However, teachers who have been employed at least ten years by the district, met or exceeded standards in the teacher's last evaluation, and are considered "highly qualified" as defined by the No Child Left Behind Act, may be evaluated only once every five years if the evaluator and teacher both agree (Cal. Educ. Code § 44664(a)).

Type, Frequency, Notice of Observation. Under California law, evaluation must be conducted on a uniform basis, absent compelling circumstances (Educ. Code § 44660). Otherwise, this subject is left to the discretion of the district, subject to terms negotiated in a collective bargaining agreement.

Evaluation Instrument and Criteria. As explained in the sub-section on collective bargaining below, the specific criteria used to evaluate teachers may be negotiated with the teachers' exclusive bargaining representatives. However, those criteria must include certain minimum requirements, including (1) students' performance toward standards of expected achievement, as established by the district and, if applicable, "state adopted academic content standards as measured by state adopted criterion referenced assessments," (2) the teacher's instructional techniques and strategies, (3) the teacher's adherence to curricular objectives, and (4) the teacher's creation of a suitable learning environment (Educ. Code § 44662(b)(1)-(4)).<sup>5</sup>

The Stull Act does not limit the district's authority to adopt additional evaluation or assessment guidelines (Educ. Code § 44662(f)), with one significant exception: "The evaluation and assessment of certificated employee performance pursuant to this section shall not include the use of publishers' norms established by standardized tests (Educ. Code § 44662(e))." This measuring tool has recently been the

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<sup>5</sup> (b) The governing board of each school district shall evaluate and assess certificated employee performance as it reasonably relates to: (1) The progress of pupils toward the standards established pursuant to subdivision (a) and, if applicable, the state adopted academic content standards as measured by state adopted criterion referenced assessments. (2) The instructional techniques and strategies used by the employee. (3) The employee's adherence to curricular objectives. (4) The establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities.

subject of considerable discussion and controversy, including public debate between California's public officials and the United States Department of Education, which has supported the use of test results in evaluation through its Race to the Top initiative. As explained below, the charter schools in this study, which are exempt from the Stull Act's restriction, are currently grappling with the possible use of test scores in evaluation, spurred in part by the Obama administration's favorable position.

Delivery of Evaluation. A teacher's evaluation must be prepared in writing and given to the teacher no less than 30 days prior to the end of the school year (Cal. Educ. Code § 44663(a)). The evaluator must discuss the evaluation with the teacher prior to the last day of the school year, and the teacher has the right to provide a written response which must be placed in the teacher's personnel file (Cal. Educ. Code § 44663(a)).

Alternative Evaluation / PAR. If a school district participates in California's Peer Assistance and Review ("PAR") program, the teacher's involvement in the program must also be included in the teacher's evaluation (Educ. Code § 44662(d)). The PAR is a mentoring program applicable only to teachers in districts with 250 or greater units of daily attendance, and who volunteer for the program or are referred to the program pursuant to Section 44664, or pursuant to a collectively bargained agreement. PAR is an optional program, but districts that do not participate do not receive state money tied to the program, including funding for the Administrator Training and Evaluation Program (California Education Code section 44500(b)(2)) (although, as of

this writing, the state's financial problems have considerably depleted the budget for the PAR program).

If a district adopts a PAR program, it must include at least the following elements: (1) Performance goals for individual teachers must be in writing, clearly stated, aligned with pupil learning, and consistent with Section 44662 (described above); (2) Assistance and review must include multiple observations during periods of classroom instruction; (3) The program shall expect and strongly encourage a cooperative relationship between the consulting teacher and the principal with respect to the process of peer assistance and review; (4) The school district shall provide sufficient staff development activities to assist a teacher to improve his or her teaching skills and knowledge; (5) The program shall have a monitoring component with a written record; and (6) The final evaluation of a teacher's participation in the program shall be made available for placement in the personnel file of the teacher receiving assistance (Cal. Educ. Code §§ 44500(b)(2)-(7)).

Follow-up for Low-Rated Teachers. Under the Stull Act, the Superintendent or a designee must meet with any teacher receiving an unsatisfactory review, and provide specific recommendations for improvement. (Cal. Educ. Code § 44664(b)). The evaluation must include recommendations, if necessary, regarding areas of improvement for the teacher. If the teacher is not performing in a satisfactory manner according to the District's standards, the District must notify the teacher in writing and describe the unsatisfactory performance. The District must then confer with the teacher,

making specific recommendations for improvement, and endeavor to assist the teacher in his or her performance. If any permanent teacher receives an unsatisfactory evaluation, the District must annually evaluate the teacher until he or she “achieves a positive evaluation or is separated from the district” (Cal. Educ. Code § 44664(b)).

Any evaluation containing an unsatisfactory rating in the areas of teaching methods or instruction may also require that the teacher participate in a program designed to improve in those areas (Cal. Educ. Code § 44664(c)). Additionally, if a district participates in the Peer Assistance and Review Program for Teachers any certificated employee who receives an unsatisfactory rating on an evaluation must participate in the Peer Assistance and Review Program for Teachers (Cal. Educ. Code § 44664(c)). Thus, for districts that participate in California’s PAR, the practical effect of the combination of the Education Code’s PAR and dismissal provisions is that if a teacher’s performance is unsatisfactory, the teacher must spend at least one year in PAR; if performance is still unsatisfactory, the District may provide 90-day notice and move toward dismissal.

*Application of state teacher evaluation law to charter schools*

Subject to limited exceptions not relevant to this study, Charter schools are generally exempt from the Education Code provisions regarding employment by governing boards, unless stated in the school’s charter (Cal. Educ. Code § 47610).

### *Evaluation in collective bargaining*

The EERA applies to charter schools (Cal. Educ. Code § 47611.5(a)). Under California law, mandatory subjects of bargaining include “terms and conditions of employment,” which include “procedures to be used for the evaluation of employees. . . .” (Cal. Govt. Code § 3543.2(a)). Many districts have determined that a multi-faceted evaluation rubric is a more accurate and useful tool than a simple rating system that forces administrators to choose between “satisfactory” and “unsatisfactory,” or even a multiple-choice rating system. Rubrics generally enumerate a number of criteria for evaluation, list several possible ratings, and explain the type of performance on each criterion that would warrant each rating.

If a school district obtains the agreement of the Union representing its teachers, it may adopt or include standards from the California Standards for the Teaching Profession. The California Commission on Teacher Credentialing developed the California Standards for the Teaching Profession in 1997. The Standards are designed to help teachers: (1) prompt reflection about student learning and teaching practice; (2) formulate professional goals to improve teaching practice; and (3) guide, monitor and assess the progress of a teacher's practice toward professional goals and professionally-accepted benchmarks. (California Commission on Teacher Credentialing, 1997). There are Standards in six categories of teaching practice: (1) Engaging and Supporting All Students in Learning; (2) Creating and Maintaining Effective Environments; (3) Understanding and Organizing Subject Matter; (4) Planning

Instruction and Designing Learning Experiences; (5) Assessing Student Learning; and (6) Developing as a Professional Educator. (*Id.*, p. 3). Each Standard includes a number of “elements,” for each of which the Commission has provided a specific examples of development toward meeting the standard. The Standards are also used in California’s credentialing system, which is beyond the scope of this study. (Kemerer, p. 66.) As explained below, several of the schools examined in this study have adopted the Standards in whole or in part.

*Findings related to bargaining agreement provisions on teacher evaluation*

Frequency of Evaluation. Consistent with State law, most of the conventional districts in the study (LAUSD, Perris, Ravenswood, Grossmont, and San Diego), require that permanent teachers be evaluated every other year, and probationary employees every year. The charter schools in the study generally have adopted the same standards, or require more frequent evaluation for a longer period of time. Camino Nuevo requires that each teacher must be evaluated every year. Green Dot also requires schools to evaluate teachers every year: more experienced teachers on “Track II” are evaluated each year, while less experienced teachers are formally evaluated at least twice each year. Like the conventional school districts, Choice 2000 and Helix require evaluation of permanent employees every two years. Edison generally requires evaluation each year during the first four years, and then every other year. LA

Leadership's, Ocean's, and Live Oak's Agreements are silent regarding the frequency of formal evaluation.

Evaluation Planning / Setting Objectives. The charter schools analyzed in this study generally provide administrators more discretion to establish the objectives by which teacher will be evaluated. LAUSD requires the administrator to meet with each teacher to establish objectives by which the teacher will be evaluated, and allows the teacher to appeal to a higher level administrator if the administrator and teacher disagree, and to note on the evaluation that the teacher did not agree with the objectives. By comparison, Camino Nuevo requires the administrator to provide the school's checklist to the teacher each semester, but does not require the school to involve the teacher in establishing the objectives for evaluation. Green Dot requires a meeting to determine whether the teacher will proceed under "Track I" or "Track II." Track II, designed for more experienced and successful teachers, is less structured, and the teacher takes much more responsibility for the development of objectives and evaluation criteria.

Similarly, while Perris requires the school and teacher to meet and agree on the standards for evaluation, Choice 2000 does not require any meeting, or any form of discussion or collaboration. San Diego requires a meeting to review evaluation procedures and to reach agreement on the objectives and criteria for evaluation. The teacher must prepare a document setting forth the objectives, which the administrator must then approve or disapprove. The Darnall agreement is silent, reserving discretion to administrators. Ravenswood requires that the teacher be given a copy of the evaluation



procedure and criteria; in the event of disagreement which the teacher and evaluator cannot resolve, they must involve an Associate or Assistant Superintendent, who must issue a written statement which becomes part of the teacher's evaluation. The Edison Agreement also requires that the evaluator and teacher meet to discuss evaluation criteria, specifies that they must select three CSTP standards, only one of which is selected by the teacher. Grossmont requires a conference in which the teacher advises the evaluator of the teacher's objectives, but does not require the teacher's agreement to the objectives or standards. Likewise, Helix's agreement requires that teacher be given a copy of their evaluation form and the California Standards by which they will be evaluated; although the teacher may provide relevant material to the evaluator, the teacher's agreement is not required.

Type, Frequency, Notice of Observation. The central element of the evaluation process is the observation of teachers performing in the classroom. Where schools conduct only one observation, that single classroom experience can have a disproportionate effect on the teacher's reputation, and possibly on the school's decision about retention or dismissal. Accordingly, teachers' unions have sought to protect teachers by negotiating the right to receive notice of the date of the observation, to have more than one observation, and to define the criteria by which the teacher will be evaluated. The charter schools in this study provide some of these protections to teachers, but are also more likely than conventional districts to allow administrators to supplement these planned and somewhat controlled observations with informal observations.

LAUSD only requires the evaluator to provide a copy of written records related to the conference within four working days of the observation. Camino Nuevo requires the teacher to provide a lesson plan two days in advance of the observation; it allows informal observations throughout the year, and specifically allows such observations to be used in the teacher's formal evaluation. Green Dot requires two informal observations before the formal evaluation, requires a pre-observation conference for beginning teachers in which the teacher and evaluator identify areas of focus from the CSTPs, and requires the evaluator to include one artifact showing that the CSTP standard was met. Ocean's Agreement requires the teacher to provide a lesson form in advance of the observation, and requires the evaluator and teacher to agree upon and sign the form. The Perris District Agreement requires that the school provide formal notice in advance of each observation and that the observation last a full class period; requires a post-observation conference within ten days; and allows a teacher to request an additional observation. The Choice 2000 Agreement requires prior notice and a post-observation conference within 10 days, but does not mandate the length of the observation.

San Diego requires the teacher to provide an outline of the lesson to be observed, requires a written report by the evaluator within ten days, and allows the teacher to attach a written response; the Agreement also allows evaluators to observe teachers outside the formal evaluation process. Darnall's Agreement requires two formal observations, but also allows unscheduled observations and evaluations. Ravenswood mandates the length of time required for an observation, requires a pre-observation conference and at least two days notice of the observation; any teacher receiving a

negative observation must receive two additional observations. Edison's Agreement is very similar, mandating the length of time for the observation and requiring two days' notice with a pre-observation conference; but it requires three formal observations rather than two, and authorizes two informal observations. Grossmont's Agreement requires a pre-observation conference at which the teacher may provide material pertinent to the review process; a post-observation conference; a report must be given to the teacher within ten days; and each observation must be for the "appropriate" amount of time. The Helix Agreement requires the school to give a copy of the observation to the teacher within 7 days, and the teacher may submit a written response; any deficiencies must be stated in writing, with specific ways to improve, and the teacher may provide a written response. The Petaluma Agreement allows a teacher to request that a specific class be observed, while the Live Oak Agreement requires only 24-hour notice, and allows drop-in observations, enabling the school to obtain a more thorough understanding of the teacher's performance.

Individuals Involved in Evaluation. LAUSD generally requires that the teacher's supervisor must evaluate the employee, but allows the supervisor to delegate these evaluation functions. The charter schools in its area do not specify the individual who must conduct the evaluation, although Camino Nuevo's Agreement suggests that it may be someone other than the principal, by requiring advance notice if someone else will conduct the evaluation. The Perris District requires the site level administrator, and prohibits the use of non-administrators without the agreement of the teacher, while Choice 2000 is silent, imposing no restrictions on the school. The San Diego District

requires the teacher's supervisor to act as evaluator, while Darnall's Agreement is silent. The Ravenswood Agreement requires the teacher's immediate supervisor to perform the evaluation; Edison's Agreement prohibits teachers from evaluating other teachers, except through the Agreement's PAR program. The Grossmont Agreement requires advance notice of the identity of the evaluator, and allows teachers to request the participation of another teacher; the Helix Agreement allows the teacher to object to the choice of the evaluator, but the teacher cannot request that another teacher be assigned as part of the evaluation team. While the Petaluma Agreement requires evaluation by a management team member, the Live Oak agreement allows evaluation by an outside Waldorf teacher.

Evaluation Instrument and Criteria. Conventional public school districts have often been criticized for using a binary, "Satisfactory or Unsatisfactory" type of evaluation, which can allow the teacher to challenge any dismissal on the grounds that the teacher had previously received "Satisfactory" evaluations. Most of the charter schools in this study have adopted a more detailed, rubric-style evaluation instrument than those used by their comparable districts, allowing a broader range of overall evaluations. LAUSD's Stull Evaluation Form includes "yes" or "no" ratings on 25 categories in five enumerated Areas (Instructional Objectives, Preparation and Planning, Classroom Performance, General Professional Skills, and Punctuality and Attendance), and requires an overall rating of "Meets Standard Performance" or "Below Standard Performance." Camino Nuevo uses a detailed rubric for evaluation, based on the California Standards for the Teaching Profession; rather than requiring "yes" or "no" ratings and an overall "Meets" or "Below Standards" rating, it requires that each teacher

be rated on each of the CSTP standards using a rating from 1 to 4. Camino Nuevo has the discretion to offer two-year contracts to teachers based on their performance, as evaluated using this rubric. Green Dot uses a formal evaluation following criteria developed by teachers based on the CSTPs, and also a Unit Portfolio involving in-depth reflection and work samples, with customized requirements for Track I (beginning teachers) and Track II (more experienced and successful teachers). Ocean also uses a rubric, requiring one of four ratings for criteria that are based on the CSTPs. LA Leadership's agreement does not require any specific form for teacher evaluation.

The Perris Agreement requires evaluation on enumerated CSTP standards based on the teacher's years of experience, using one of four ratings: Meets Standard, Needs Improvement, Unsatisfactory, or Not Applicable. The Choice 2000 Agreement does not require the use of any specific form or criteria. San Diego requires evaluation on three objectives from enumerated standards similar but not identical to the CSTPs; teachers are rated "Unsatisfactory," "Requires Improvement," or "Satisfactory." Darnall's Agreement uses five ratings: "Far Below," "Below," "Developing," "Meets," and "Exemplifies Standard." Ravenswood's evaluation process uses the CSTPs, but requires one of four ratings. Edison's evaluation uses the six CSTP standards but adds its own: compliance with Edison's own professional requirements. Edison's evaluation departs from the district's in adopting a comprehensive approach that incorporates assistance by a lead teacher and peers, a professional portfolio, and self-appraisal in addition to the formal evaluation. Grossmont's Agreement requires evaluation according to CSTP standards, using one of four ratings. Helix's evaluation form also uses the five

CSTP standards, but adds its own measurement of the teacher’s professional attitude and interpersonal relationships, and requires one of three ratings. Petaluma’s Agreement focuses on the “affective domain,” while allowing the school and teacher significant leeway to develop goals. Live Oak’s evaluation process assigns one of four ratings on six areas of performance, which are spelled out in more detail than Petaluma’s, but are modified from the CSTPs to suit Live Oak’s own emphasis, including Yearly Curriculum Planning, Incorporation of the Arts in Teaching, and Parent & Organization Responsibilities.

Alternative Evaluation / Peer Assistance and Review (“PAR”). The charter schools in this study generally distinguish between newer and more experienced teachers in the use of alternative forms of evaluation, including Peer Assistance and Review, more often than conventional district agreements. As explained in the Evaluation Instrument section above, these schools generally give teachers less influence over the development of the standards by which they are evaluated; but they are more likely to authorize variation in the evaluation process for experienced teachers, who are given greater control over those standards.

LAUSD adopts the PAR program outlined by the State, but the program only supplements the standard evaluation. For teachers who receive a “Below Standard Performance” rating, the PAR program provides assistance from a Consulting Teacher, who may report to the PAR panel any teacher who does not make sufficient improvement. Green Dot does not provide a formal PAR program, but its Track II

program is available for all experienced teachers, and its Track I program includes many of the elements typically provided through a PAR program, including customized goal-setting, portfolios of teachers' work, and continuous interaction and observation. Camino Nuevo's Agreement allows teachers with three years of satisfactory evaluations to use an alternative form of evaluation, but does not include specific guidelines for that evaluation.

San Diego's Agreement allows an alternative form of review for teachers with five years of experience, which allows teachers to grow in self-chosen areas of interest, while still holding them accountable for basic Education Code performance requirements. The Agreement also provides a PAR for poorly-performing teachers. The Darnall Agreement allows a teacher to request a "process-based" approach, following a project and case-study method based on the CSTPs. Ravenswood requires teachers to participate in PAR when they receive unsatisfactory ratings in "subject matter knowledge," "teaching strategies," or "teaching skills" in any evaluation; a Consulting Teacher must monitor the teacher, provide customized assistance, and report to a PAR Panel. However, the District does not provide any form of alternative evaluation for more experienced teachers. As described above, Edison's standard evaluation could be considered an "alternative" evaluation process, and Edison does not provide a separate PAR program. Grossmont's Agreement provides one form of PAR for experienced teachers receiving "Meets Expectations" ratings, which is designed to shift to a "student-centered" evaluation, and also requires that any teacher receiving "Does Not Meet Standards" ratings in any three of the first five CSTP standards *must* participate in a PAR

program. Helix's Agreement also requires any teacher receiving an overall "Does Not Meet Standards" rating to participate in a PAR program, in which a Consulting Teacher monitors the teacher and determines whether further support will be productive; however, Helix provides no opportunity for experienced teachers to depart from the standard evaluation process.

Follow-up for Low-Rated Teachers. While the charter school agreements in this study generally are more likely to allow departure from the standard evaluation process for experienced teachers, they are generally less likely to require formal measures to assist poorly-performing teachers than their comparable school districts.

The LAUSD Agreement requires teachers rated "Below Standard Performance" to participate in its PAR program. Camino Nuevo does not have a formal PAR program, but teacher receiving low evaluations ratings (1 or 2 out of 4) must be provided a guidance plan and given customized resources. Green Dot allows, but does not require, the creation of a "Development Plan" for a teacher rated "meeting" or "partially meeting" any CSTP standard. If performance does not improve, or if a teacher is rated "Practice Does Not Meet Standards," an Improvement Plan must be implemented, and the Principal must take enumerated steps to help the teacher improve. Failure to improve can result in dismissal, which, under the Green Dot Agreement, requires "just cause." Ocean provides a less formal means of assistance, authorizing a second observation at the request of the teacher or administrator, and requiring



affirmative action by the school to assist the teacher, including released time and visits to other classes.

The Perris District Agreement requires an “Improvement Plan” for teachers receiving “unsatisfactory” or “needs improvement” ratings; the teacher must be given recommendations and assistance, but no specific forms of assistance are enumerated. The Choice 2000 Agreement requires only that teachers rated as “Unsatisfactory” must be evaluated every year until the teacher receives a “Satisfactory” rating or is separated from the School. San Diego’s Agreement requires the development of a remediation plan when a teacher’s evaluation is “less than satisfactory,” which must include specific direction for improvement, resources to be made available, and consultation with the principal. The teacher must also be evaluated every year under the evaluation is effective or other action is taken. The Agreement also provides a detailed improvement program, which involving development of detailed lesson plans, peer coaching, and in-service training. The Darnall Agreement requires the development of an “Improvement Plan” for teachers rated as “Below” or “Far Below Standards.” The Plan can lead to dismissal if sufficient improvement is not shown within 60 days. Darnall’s improvement plan imposes less detailed requirements on the school, and a greater obligation on teachers to show prompt improvement.

The Ravenswood Agreement also requires action by the evaluator after a low rating on any key CSTP standard, which includes the PAR program described above, or other district training; however, a teacher cannot be required to participate unless

notice has been given and the teacher has failed to improve. Edison’s Agreement closely mirrors Ravenswood’s, requiring participation after an unsatisfactory rating on any key CSTP element; but it also requires yearly evaluation for teacher performing unsatisfactorily, and requires additional two additional observations within the next two months. Grossmont’s Agreement requires participation in the PAR program if a teacher receives a “Does Not Meet Standards” rating on an of the first three CSTP standards, and requires the school to evaluate the teacher annually until sufficient improvement is shown. Helix’s agreement tracks Grossmont’s in requiring any teacher receiving three “Does not Meet Standards” ratings to enter PAR, and requiring annual evaluation until a Satisfactory rating is achieved or the teacher is dismissed. The Petaluma Agreement requires an additional evaluation the next year for teachers receiving an overall “Needs Improvement” or “Not Satisfactory” rating, but does not mandate any specific assistance. The Live Oak Agreement does not include any specific requirement of assistance for low-rated teachers.

*Research Question No. 3: Teacher Discipline and Dismissal*

*California law governing teacher discipline*

Discipline of teachers is action taken against the teacher falling short of dismissal. Other than serious misconduct warranting immediate action, progressive discipline is usually followed, which can include placement of a derogatory comment in the teacher’s file, an oral warning, a conference, a written warning, a letter of reprimand, or suspension. California law establishes a fairly detailed process for unpaid suspension

of more than 15 days, but is silent regarding the standards and procedures for less serious discipline, allowing the school and union to negotiate such provisions(addressed below).

In California’s public schools, a probationary teacher may be dismissed during the school year for cause (as defined in Cal. Educ. Code § 44932), or for unsatisfactory performance, 44660 (the Stull Act) (Cal. Educ. Code § 44948.3(a)). A teacher may be suspended on the same grounds (Cal. Educ. Code § 44948.3(b)).

A permanent teacher may be suspended on grounds of unprofessional conduct, provided the school provides a written description of the improper conduct and an opportunity to improve (Cal. Educ. Code § 44932(b)).<sup>6</sup> A teacher may be immediately suspended based on written charges of immoral conduct, conviction of a felony or a crime involving moral turpitude, incompetency, or willful refusal to perform regular assignments without reasonable cause. Cal. Educ. Code § 44939.

A “Skelly” conference --- an informal meeting between the administrator and employee --- must be held before a certificated teacher is suspended without pay, as the loss of pay constitutes an infringement on the teacher’s property right. *See Skelly v. State Personnel Board*, 15 Cal.3d 194 (1975). The conference provides the teacher

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<sup>6</sup> As the Court held in *Crowl v. Commission on Professional Competence* (1990, Cal App 3d Dist) 225 Cal App 3d 334, 275 Cal Rptr 86, Education Code section 44938, subd. (a), providing that a school board shall "not act upon any charges of unprofessional conduct" unless the statutory notice is given, requires that notice be given when it suspends a teacher on the ground of unprofessional conduct, not merely when it dismisses a teacher on that ground. Education Code section 44938, subd. (c) states that "unprofessional conduct as used in this section means, and refers to, the unprofessional conduct particularly specified as a cause for dismissal or suspension ..."

written notice of the charges justifying suspension, and an opportunity to respond to the administration's accusations.

A teacher must receive notice of any disciplinary document that could affect the status of his or her employment. If notice is not given, the discipline cannot proceed, and the disciplinary document may be ordered removed from the teacher's file (Cal. Educ. Code § 44031). Any information of a derogatory nature may not be placed in the teacher's file unless the teacher has been given notice and an opportunity to review it and enter his own comment in the file regarding the material.

Under the EERA, teachers potentially subjected to discipline are entitled to have a union representative present for any conference or discussion with the administrator when he or she reasonably believes, based on the objective circumstances, that the particular conference could lead to discipline (Cal. Govt. Code § 3543.1(a)); *Redwoods Community College Dist. v. PERB*, 150 Cal. App. 3d 619, 205 Cal. Rptr. 523 (1984).

#### *Collective bargaining regarding teacher discipline*

Under the EERA, bargaining is mandatory, if requested by either party, regarding the causes for discipline and disciplinary procedures, including suspension of pay for up to fifteen days. This applies to both probationary and permanent teachers. Cal. Govt. Code § 3543.2(b). In the absence of mutual agreement on these subjects, the provisions of the Education Code applicable to suspension and dismissal govern (Cal.

Govt. Code § 3543.2(b)).<sup>7</sup> Thus, conventional school districts can use the bargaining process to incorporate flexibility into the disciplinary process in most cases.

California law also provides that “[i]f the charter of a charter school does not specify that it shall comply with those statutes and regulations governing public school employers that establish and regulate tenure or a merit or civil service system, the scope of representation for that charter school shall also include discipline and dismissal of charter school employees” (Cal. Educ. Code § 47611.5(c)). Thus, while charter schools are not subject to the provisions of the Education Code governing discipline of fifteen days or more, or dismissal, if a charter becomes unionized and does not voluntarily adopt those provisions, it must negotiate with the union regarding those subjects. Accordingly, a charter’s ability to discipline or dismiss teachers will largely be based upon the position and strength of the union.

*California law governing non-reelection or dismissal of probationary teachers*

Classification. Teachers who are not substitute or permanent teachers are probationary teachers. Educ. Code § 44915. Certificated probationary teachers (in districts with more than 250 average daily attendance) become permanent employees

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<sup>7</sup> “Notwithstanding Section 44944 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding causes and procedures for disciplinary action, other than dismissal, including a suspension of pay for up to 15 days, affecting certificated employees. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 44944 of the Education Code shall apply” (Cal. Govt. Code § 3543.2(b)).

once they have taught for two complete, consecutive school years. Educ. Code § 44929.21(a).

Grounds for Non-reelection. A defining characteristic of probationary status is non-reelection. Educ. Code § 44944(a). A probationary teacher may be released by giving notice of non-reelection, meaning the teacher will not return to the school the following year. For teachers in their first year of employment, notice can be given at any time prior to the end of the school year that the district will not reelect the teacher for the following year. No finding of cause is necessary. *See Board of Education of Round Valley Unified Sch. Dist. v. Round Valley Teachers Association*, 13 Cal. 4<sup>th</sup> 269, 279, 52 Cal. Rptr. 2d 115, 121 (1996).

Grounds for Dismissal During School Year. In California's public schools, a probationary teacher may be dismissed during the school year for cause (Cal. Educ. Code § 44932), or for unsatisfactory performance, 44660 (Stull Act) (Cal. Educ. Code § 44948.3(a)). In the alternative, a teacher may be suspended on the same grounds. (Cal. Educ. Code § 44948.3(b)). Although Education Code section 44932, stating the grounds for dismissal of a permanent employee, by its terms refers only to permanent employees, the statute also applies to dismissals of probationary employees that occur during the school year. *See Pasadena Unified School Dist. v. Commission on Professional Competence* (1977) 20 Cal 3d 309, 142 Cal Rptr 439, 572 P2d 53.

Immediate suspension is authorized for immoral conduct, conviction of a felony or other crime involving moral turpitude, incompetency due to mental disability,

or refusal to perform assignments without reasonable cause (Cal. Educ. Code § 44939). The school's governing board must meet to adopt a resolution authorizing any non-re-election decision. The meeting can be held in a closed-door session, without notice to the public or the teacher. *See Fischer v. Los Angeles Unified School Dist.*, 70 Cal.App.4th 87 (1999).

Dismissal: Procedure. For teachers in their first or second consecutive year of employment, the school must give 30 days' notice of dismissal during the school year by March 15 of the second year of employment (Cal. Educ. Code § 44948.3(a)(1)). The Notice must include a statement of the reasons for the dismissal and notice of the opportunity to appeal (Cal. Educ. Code § 44948.3(a)(2)).

In the event of a dismissal for unsatisfactory performance, a copy of the evaluation conducted pursuant to Section 44664 (above) must accompany the written notice. (Cal. Educ. Code § 44948.3(a)(1)). If the school district fails to notify a probationary teacher that her performance was unsatisfactory, pursuant to Education Code sections 44948.3, 44938, or to work with her for a reasonable time to improve it, as required by Education Code section 44664, the dismissal will be considered void and reversed. *Achene v. Pierce Joint Unified School Dist.* (2009, 3d Dist) 2009 Cal App LEXIS 1336.

Dismissal: Right to Challenge. A probationary teacher has 15 days from receipt of the notice of dismissal to submit a written request for a hearing (Cal. Educ. Code § 44948.3(a)(1)). The district is authorized to establish procedures for the

appointment of an administrative law judge to conduct the hearing and submit a recommended decision to the board. The failure of an employee to request a hearing within 15 days from receipt of a dismissal notice constitutes a waiver of the right to a hearing. Cal. Educ. Code § 44948.3(a)(2). The school board may conduct a hearing or defer it to an administrative law judge, but the school district retains the discretion to make the final decision. The Education Code does not set forth specific requirements for a dismissal hearing for a probationary teacher, but the hearing must comport with basic due process requirements, including notice and an opportunity to be heard (Cal. Educ. Code § 44948.3(a)(2)). However, the decision cannot be challenged except on grounds that the decision was made for an unlawful reason, such as a bias against the teacher's race or gender.

*California law governing dismissal of permanent teachers*

Classification. Under California law, any teacher in a district with more than 250 average daily attendance, who serves two complete, consecutive years and is not dismissed, becomes a permanent employee (Cal. Educ. Code § 44929.21(b)). The term "complete" is defined as seventy-five percent of the days that schools are in session (which, by law, is 180 days between July 1 and June 30). Education Code section 44908; *Vittal v. Long Beach Unified Sch. Dist.*, 8 Cal.App.3d 112, 118 (1970). .



Dismissal: Grounds. Education Code section 44932 provides a specific

list of permissible reasons for dismissal of a permanent teacher:

1. Immoral or unprofessional conduct.
2. Commission, aiding, or advocating the commission of acts of criminal syndicalism.
3. Dishonesty.
4. Unsatisfactory performance.
5. Evident unfitness for service.
6. Physical or mental condition unfitting him or her to instruct or associate with children.
7. Persistent violation of or refusal to obey the school laws of the state, State Board of Education or the governing board of the school district.
8. Conviction of a felony or of any crime involving moral turpitude.
9. Advocacy or teaching of communism
10. Knowing membership by the employee in the Communist Party.
11. Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children.

Other grounds may justify dismissal, but the district must specify the instances of behavior that constitutes unprofessional conduct (Cal. Educ. Code § 44933).

Dismissal for Unsatisfactory Performance: Procedure. Dismissal for unsatisfactory performance requires that a teacher be provided 90-day notice, and the school must identify the specific instances of unsatisfactory performance. The teacher must be given a grace period in which to attempt to cure deficiencies before dismissal is carried out (Educ. Code § 44938(b)(1)). The *Morrison* factors do not apply to dismissals based on unsatisfactory performance. However, the Stull Act provides several factors

that may be relevant to such a determination: (1) progress of students toward meeting state standards, (2) instructional techniques and strategies, (3) adherence to curricular objectives, and (4) establishment and maintenance of a suitable learning environment (Cal. Educ. Code § 44662).

Under California law, dismissal of a permanent teacher or suspension for poor performance follows a four-step process. First, notice of intent to dismiss or suspend must be given to the teacher (Educ. Code §§ 44934, 44936). Notice must be given at least 90 days prior to the intended dismissal date. The teacher's evaluation must be included with the notice. The notice requirement is intended to provide the teacher sufficient time to correct any faults and overcome the grounds for the charge. Therefore, the notice must be sufficiently specific to allow the teacher to correct any faults addressed by the notice.

After the 90-day period has expired, written charges must be filed with the governing board (Cal. Educ Code §§ 44934, 44938(b)(1)). Charges must be sufficiently specific to allow the teacher to prepare a defense. The statutes or rules allegedly violated must be listed, as well as the conduct allegedly violating the rules or statutes. Only conduct occurring in the previous four years may be included.

Any teacher who wishes to contest the proposed dismissal may file a request for a hearing within 30 days of receiving notice (Cal. Educ. Code § 44934). If no hearing is requested, the teacher is dismissed or suspended at the end of the 30-day period. After receiving a demand for a hearing, the district may rescind its decision or

schedule the matter for a hearing (Cal. Educ. Code § 44943). The hearing is conducted in accordance with California's Administrative Procedure Act (Cal. Govt. Code § 11500 *et seq*). The hearing must be held within 60 days of the teacher's request. The Board must issue a formal accusation, after which both parties may take discovery as in a civil trial, including oral depositions. The teacher has the right to be represented by counsel, to obtain the names of the district's witnesses, and to inspect all relevant documents. The hearing is held by a 3-member board called a Commission on Professional Competence ("CPC"). One member is chosen by the teacher, one by the district, and the third is an administrative law judge. The teacher's representative is typically chosen by her Union, from a list of employees trained to serve as CPC hearing officers.

A majority vote is required for dismissal (or suspension), and the CPC must issue a written ruling containing findings of fact and determination of issues. If the district's decision to dismiss is overruled, the teacher is reinstated. Under the California Supreme Court decision in *California Teachers Assn. v. State of California*, 20 Cal. 4<sup>th</sup> 327 (1999), the district must pay the costs of the hearing, even if it prevails. Both parties must pay their own attorney's fees.

Finally, either party may petition to the Superior Court for review of the CPC's decision (Cal. Educ. Code § 44945). The Court exercises independent judgment in reviewing the CPC.

Dismissal on grounds that teacher is "unfit to teach." In *Morrison v. State Board of Education*, 1 Cal. 3d 214 (1969), the California Supreme Court provided

guidelines for determining whether a teacher's conduct makes him or her "unfit to teach." Such a dismissal requires an analysis of whether the teacher's conduct adversely affects students or teachers, the degree of such adversity, the proximity or closeness in time of the conduct, the type of teaching credential held by the teacher, the extenuating or aggravating circumstances, the likelihood of recurrence, and the extent to which disciplinary action might have a chilling effect on the constitutional rights of the teacher or other teachers.

If the teacher is dismissed for unprofessional conduct, the teacher must be given written notice 45 days before the filing of the charge specifying the nature of the conduct to allow the teacher to correct the problems. Educ. Code s 44938(a). The Court in *Woodland Joint Union School Dist. v. Commission on Professional Competence*, 2 Cal.App.4th 1429 (1992) established that the school need not apply the *Morrison* factors to each allegation, only to the allegations as a whole. If application of those factors indicates that the teacher is unfit, and the unfitness is a character trait, rather than specific unprofessional conduct that might be corrected, the teacher may be terminated without the 45 days' notice required for dismissals based on unprofessional conduct.

#### Dismissal for Refusal to Obey School or State Laws or Regulations.

California's Rules of Conduct for Professional Educators provide ethical rules for teachers which, if violated, may warrant dismissal. Conduct prohibited by the rules includes failure to use candor and honesty in letters of recommendation, obtaining private gain from the use of confidential student information, performance of duties when

mentally impaired, including impairment from drug or alcohol use, and harassment of those who report wrongdoing. 5 Cal Code Regs. §§ 80331-80339. A teacher's refusal to meet goals set by the teacher may constitute "Persistent violation of or refusal to obey the school laws of the state," also warranting dismissal. *See San Dieguito Union High School District v. Commission on Professional Competence*, 174 Cal.App.3d 1176 (1995).

Dismissal for Unprofessional Conduct. Education Code section 44938(a) requires that the Board may dismiss a teacher for unprofessional conduct after giving the teacher written notice of the conduct, specifying the nature of the conduct and providing specific examples with sufficient particularity to allow the teacher to correct the problems. The written notice must include the teacher's evaluation issued pursuant to the Education Code. Before filing charges, the teacher must have been given at least 45 calendar days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unprofessional conduct, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee." (Cal. Educ. Code § 44938(a)).

*Collective Bargaining Regarding Teacher Dismissal in California.*

Dismissal of permanent teachers is governed by the Education Code, and falls outside the scope of collective bargaining (Cal. Govt. Code § 3543.2(b)). Due process rights for probationary employees also fall outside the permissible scope of bargaining. Accordingly, attempting to bargain for such rights is nullified by the Education Code. *See Board of Education of Round Valley Unified School Dist. v. Round Valley Teachers Association*, 13 Cal. 4<sup>th</sup> 269, 52 Cal. Rptr. 2d 115 (1996). However, while charter schools are not subject to the provisions of the Education Code governing dismissal, if a unionized charter has not voluntarily adopted those provisions, it must negotiate with the union regarding teacher dismissal (Cal. Educ. Code § 47611.5(c)). Moreover, any dismissal must include consideration of whether the teacher was evaluated in accordance with the collective bargaining agreement.

*Findings related to bargaining agreement provisions on teacher discipline and dismissal*

Classification and Security (Including Permanence or “Tenure”). The conventional districts in the study ---- LAUSD, Perris Union, San Diego Unified, Ravenswood, Grossmont, and Petaluma --- are subject to the Education Code, which provides that teachers who serve two complete, consecutive years, and are not released, become permanent employees. Conventional school districts are prohibited from modifying those provisions through collective bargaining, but the charter schools in this

study were free to negotiate their own terms regarding classification, discipline and dismissal. Thus, Camino Nuevo’s Agreement gives the school discretion to offer a two-year contract after three years, renewable at the school’s option. Green Dot does not technically provide any form of “tenure,” but provides all teachers the primary protection associated with tenure, by requiring “good cause” for dismissal. Likewise, LA Leadership requires “good cause” for discipline or dismissal after two years. Ocean classifies teachers as “ongoing” after two years, and allows dismissal thereafter only for “just cause.” At Live Oak, after a teacher’s third year, if the teacher is invited back for a fourth year, the teacher becomes “permanent” and receives tenure. While the Perris District is subject to the Education Code, Choice 2000 does not include any provision classifying teachers; it requires “just cause” for discipline, but imposes no standard for dismissal. Darnall, which falls within the San Diego District, provides teachers a one-year contract after two years of service, which is automatically renewed only if the teacher receives a rating of “Developing,” “Meets” or “Exemplifies Standard.” This provision was a unique hybrid model not found in any other district or charter school: a semi-automated contract renewal requiring no new agreement by the school (similar to conventional districts’ permanent status), but dependent on performance (like at-will status in charter schools).

Edison’s Agreement is silent regarding “permanent” status for teachers. As explained in the Assignment and Transfer and Evaluation portions of this study, Edison’s Agreement closely tracks the Ravenswood District’s agreement in many elements, and appears to have tracked the District’s agreement on this provision as well.

However, while Ravenswood’s silence is mandated by the EERA due to the Education Code’s mandatory application regarding classification and dismissal, because the Education code does not apply to charter schools (as long as they bargain regarding discipline and dismissal), provided Edison bargained on those issues (Edison was not interviewed), its silence has the effect of eliminating any “permanent” status for teachers. Helix, which falls within the Grossmont District, requires “just cause” for discipline of any teachers after two years including suspension of up to 15 days, and classifies such employees as “permanent” for evaluation purposes, but does not impose any “good cause” or “just cause” standard for dismissal.

Standard and Grounds for Discipline. As explained above, California law allows conventional public school districts to bargain over the “causes for discipline and disciplinary procedures, other than dismissal, including suspension of pay for up to fifteen days.” The districts in this study have taken advantage of that flexibility in varying degrees. Surprisingly, the charter schools in the study --- which have complete discretion to bargain regarding disciplinary causes and procedures --- often followed the example of the conventional districts, although they were not required to do so. For example, LAUSD requires that teachers can only be disciplined for “just cause.” Although Camino Nuevo does not impose any specific standard for teacher discipline, Green Dot requires “good cause” for discipline of any teacher, as does Choice 2000, while LA Leadership and Ocean require “just cause” for any discipline after two years. Darnall’s Agreement authorizes discipline, up to a letter of reprimand, for “unsatisfactory performance,” unprofessional conduct, or violation of reasonable regulations, policies



and procedures. This list of permissible bases for discipline is somewhat similar to that provided by California law, and in that sense Darnall's Agreement is the closest to its comparable district among the schools in the study. *See* Cal. Educ. Code § 44948.3(b).

The Ravenswood District allows discipline only for "just cause," while Edison's Agreement imposes a lower standard, requiring only that discipline cannot be imposed for "arbitrary or capricious" reasons. The Helix Agreement is unique in specifically incorporating reference to the Education Code, requiring "just cause" for discipline not specifically permitted by the Education Code. The Petaluma District negotiated a modification from the Education Code provisions, requiring "just cause" but defining it more broadly than the Education Code, to include violation of district policy, the code of ethics, or the conduct expected of professional educators; abusive behavior; or failure to perform contractual obligations. Live Oak's Agreement provides that a teacher with permanent status (in the teacher's fourth year) can only be suspended without pay "for cause"; examples listed include unsatisfactory performance, neglect of duty, inefficiency, discourteous treatment, and unprofessional conduct.

Discipline Process / Progressive Discipline. As allowed by California law, LAUSD negotiated a specific process to govern discipline short of suspension of more than 15 days, including a Notice of Unsatisfactory Service or Act. The Agreement requires that "progressive discipline" must be followed in most situations; the Agreement also requires due process, consisting of notice to the teacher, a meeting to discuss the issue, and the presence of a Union representative if requested by the teacher. Other

discipline must follow the provisions of the Education Code. Camino Nuevo does not require any form of “progressive discipline.” Green Dot likewise does not impose any “progressive discipline” requirement, although it establishes procedural protections for teachers on an “Improvement Plan” for performance problems. Ocean’s Agreement require progressive discipline in several enumerated steps, from verbal warning to dismissal; in that respect, it is more restrictive than LAUSD’s Agreement, which does not establish a specific progression. Ocean also requires the elements of due process provided by the LAUSD Agreement. The Choice 2000 Agreement is similar to the Perris Agreement in requiring “progressive discipline,” without establishing any specific progression, while omitting the Perris Agreement’s requirement that the District must discuss the discipline with the teacher in advance and take the teacher’s response into account. San Diego’s Agreement, unlike LAUSD’s, requires several enumerated steps of “progressive discipline” in most situations (verbal warning, written warning and letter of reprimand), leading to suspension. Darnall’s Agreement is substantially similar, but also provides that each step must be followed for each distinct conduct by the teacher. Ravenswood’s Agreement establishes a four-step progressive discipline process. Edison’s Agreement, which tracks Ravenswood’s on many topics, does not require any form of progressive discipline. Helix closely follows Grossmont’s Agreement, requiring progressive discipline without establishing any specific progression. The Petaluma Agreement requires the elements of due process outlined above, and requires a verbal warning before any formal discipline, even for more “serious” incidents, followed by a written warning, suspension without pay for up to five work days, and additional

suspension (for up to 15 days). Live Oak does not require any form of progressive discipline.

Generally, the charter schools in this study have not retained as much discretion with respect to disciplinary decision as they have in assignment or transfer decisions. This is likely a reflection of the importance teachers place on protection from discipline, which clearly has a more immediate and negative effect on a teacher's career.

Grounds for Dismissal. As explained above, LASUD and the other conventional districts in the study are governed by the Education Code, which enumerates the grounds for dismissal. Because the districts are prohibited from modifying those provisions through collective bargaining, the Agreements are silent on that subject. Under California law, a probationary teacher may be released by giving notice of non-reelection, meaning the teacher will not return to the school the following year, with or without "cause." Permanent teachers may be dismissed for unsatisfactory performance under The Stull Act, or "for cause," as defined by Education Code section 44932. The same standards apply to dismissal of probationary teachers during the school year.

Most of the charter schools in the study negotiated some form of "cause" standard for dismissal. At one end of the spectrum, Camino Nuevo's agreement allows the school to provide two-year contracts, renewable at the complete discretion of the school. The agreement authorizes immediate dismissal during the term of a contract "for cause," and gives the school discretion to define "cause," while providing a number of

examples to guide administrators and assist in the adjudication of any dispute regarding a dismissal decision. Choice 2000 and Helix, which fall within the Perris and Grossmont Districts respectively, do not impose any standard for dismissal. Edison’s Agreement is silent regarding the grounds for dismissal. At the other end of the spectrum, Green Dot requires “good cause” for dismissal of *any* teacher. LA Leadership requires “good cause” for dismissal after two years. Ocean classifies teachers as “ongoing” after two years, and allows dismissal thereafter only for “just cause.” Darnall, which falls within the San Diego District, may choose not to renew the contract of any teacher who does not receive an evaluation rating of “Developing,” “Meets” or “Exemplifies Standard” (the top three of five possible ratings). Live Oak is authorized to dismiss a probationary during the school year only for “reasonable cause.” A permanent teacher can only be dismissed “for cause”; examples listed include unsatisfactory performance, neglect of duty, inefficiency, discourteous treatment, and unprofessional conduct.

Dismissal – Procedure. As with the grounds for dismissal, the Education Code’s provisions regarding the procedure for dismissal govern the conventional districts in this study. Dismissal of permanent teachers, and dismissal of probationary teachers during the school year, requires 90-days notice, providing a grace period in which to attempt to cure deficiencies before dismissal is carried out. Camino Nuevo’s Agreement allows dismissal during an employment contract “for cause” immediately, without requiring 90 days’ notice. Green Dot’s Agreement imposes a specific dismissal procedure only for teachers placed on an Improvement Plan for performance problems. LA Leadership’s Agreement is silent regarding the procedure for dismissal. For

dismissal of permanent teachers, Ocean must provide a copy of the materials and rules or regulations on which the dismissal is based, and provide an opportunity to respond.

Choice 2000's Agreement allows dismissal of any teacher with 30 days' written notice, or pay in lieu of notice. Darnall's Agreement requires that any teacher dismissed for poor performance must be notified by December 1 and placed on an Improvement Plan, after which the Board has discretion to terminate. The Edison and Helix Agreements do not establish any dismissal procedure. Live Oak is authorized to dismiss a probationary teacher during the year for "reasonable cause," provided the teacher is notified by April 1. Permanent teachers may only be dismissed for cause, but the school must provide a statement of charges and an opportunity to respond. Thus, although the charter schools generally provide *substantive* protection similar to conventional school districts (as described above), the *process* of dismissal was found to be generally less restrictive, and only Green Dot provided the equivalent of a "grace period."

#### *Research Question 4: Teacher Compensation*

The Compensation component of this study sought to determine the extent to which the charter schools have taken advantage of the flexibility afforded to them by negotiating for differential pay. Specifically, the study focused on additional pay for individual performance, additional pay for the performance of the school, and pay based on the subject matter taught by the teacher.

*California law governing teacher compensation*

The Education Code provides that certificated employees must be classified on a salary schedule, based on uniform allowance for years of training and experience (Cal. Educ. Code §§ 44944, 45028).

*Collective bargaining regarding teacher compensation*

Under California law, bargaining is mandatory, if requested by either party, regarding causes and procedures for disciplinary action (other than dismissal); payment of additional compensation based on criteria other than years of training and experience; and payment of a salary schedule based on criteria other than uniform allowance for years of training and experience (Cal. Govt. Code § 3543.2(a)). In the absence of mutual agreement on these subjects, the provisions of the Education Code govern (Cal. Govt. Code § 3543.2(b)).

*Findings related to bargaining agreement provisions on teacher compensation*

Despite the current interest in differential pay as discussed in Chapter 2, few of the charter schools in this study have implemented any form of differential or “merit” pay. However, some of the schools are considering modification of their

Agreements to incorporate merit pay; these efforts will be an interesting topic of further study.

Pay for Performance – Individual. None of the districts in this study provided additional compensation based on a teacher’s individual performance. Only one of the charter schools considered teacher performance as one element of compensation. Choice 2000’s Agreement did not provide a bonus payment for high performance, as recommended by many merit-pay proponents. However, Choice 2000 has a four-step salary schedule, and its teachers can only progress through the steps of the schedule if they receive a “Satisfactory” evaluation. Helix’s salary schedule includes an “Incentive (Merit pay) Salary” component. However, additional pay is actually provided only for good attendance: teachers using two days or less from their allotted ten days during the school year are eligible for a one-time payment of \$200 to \$600. None of the other schools include any performance-based component.

Pay for Performance – School-wide. As discussed in Chapter 2, some merit-pay proponents suggest that providing financial incentives on a school-wide basis is more equitable than individual merit-pay, given the difficulties of attributing the success of particular students to a single teacher, and is more likely to encourage cooperation among teachers. However, none of the schools in this study has implemented any form of school-wide performance pay.

Pay for Subject-matter. Finally, two of the charter schools in the study provided additional pay based on the subject being taught. Camino Nuevo provides a

bilingual stipend of \$2,000, and a stipend of \$1,000 for “hard to fill” positions. Edison also provides a bilingual stipend, originally set at \$750, or \$1,500 for teachers with BCLAD certification who are working in a bilingual setting. Some of the schools provide additional compensation for teachers who take on specialist duties, but such compensation, which does not reward teachers for performance in their regular classroom duties, is beyond the scope of this study.

*Plans for consideration or adoption of “merit pay”*

Several of the schools indicated in interviews that they are considering implementing some form of “merit pay.” Green Dot is interested in exploring the possibility, and believes it could have retained some teachers who left to enter other lines of work, including Teach for America teachers. Reflecting its collaborative approach to union relations, Green Dot reported that it had discussed a joint survey of teachers’ attitudes toward merit pay in cooperation with its Union. LA Leadership reported that it was too small to consider implementing merit pay, partly because the stratification on a small scale would be more obvious than at a large school or group of schools, and could create resentment that outweighed the motivational aspects of the financial incentives. Darnall has also discussed implementing some form of merit pay, spurred in part by the Obama administration’s support of the concept, but the school strongly believes that rewards would need to be based on student growth over time, and the data currently available would make that difficult to measure accurately. The school is therefore exploring the feasibility of developing its own internal standards, including year-end



assessments that could be used to gauge progress from one year to the next. Live Oak, as a Waldorf-inspired school, is not naturally inclined toward the competitive nature of merit pay; however, its Administrator believes that the school needs to hold itself and its teachers accountable, and that merit pay might be one way of working toward that end. Thus, the limited survey of schools included in this study demonstrates the extent to which internal factors, including the schools' educational philosophy and their approach to union relations, and external factors, including state and national policy and the development of tools for measuring student progress, will affect the implementation of merit pay in unionized charter schools.

#### *School Administrator Interviews*

This section will report the results of interviews with administrators from five of the charter schools whose collective bargaining agreements were analyzed above: Green Dot Public Schools, LA Leadership Academy, Choice 2000 Online School, Darnall Charter School, and Live Oak Charter School. I initially sought participation from each unionized charter school in California, but only these five schools agreed to participate in the interviews. The interviews were intended to include each question listed in Chapter 3; however, due to time constraints, I focused on those areas in which administrators reported that bargaining agreement provisions had a significant impact on their decision-making process, areas that had been the subject of notable collaboration or dispute between administrators and the Union, and areas in which the administrator

indicated an interest in seeking modification to the existing terms of the collective bargaining agreement.

*Green Dot interview*

Topic A: Union and Bargaining History (Interview Questions 1-5). I

interviewed a Green Dot administrator based at Green Dot's headquarters. Green Dot is a Charter Management Organization formed in 1999. It now operates 15 charter schools in the greater Los Angeles area, most of which fall within the LAUSD boundaries. Green Dot's founder, Steve Barr, had been a member of the Teamsters while working at UPS during college, and wanted to have a unionized teaching force from Green Dot's inception. His approach was partly driven by Green Dot's unique mission, which was not only to assist its own students and to serve as laboratories for the development of best practices that might be adopted by conventional district schools, but to change the educational landscape of Los Angeles by mounting a direct challenge to LAUSD. Barr believed that political power, including the support of non-educational unions like the SEIU, would be critical to this mission, and that the LAUSD Board would be more receptive to changes proposed by a unionized organization. Green Dot's teachers initially explored the possibility of organizing as a unit of the California Teachers' Association, but then decided to form their own union, the Asociacion de Maestros Unidos ("AMU").

Topics B and G: Union Relationship, Activity (Interview Questions 6-10,

34-35. Green Dot's Administrator describes the relationship with AMU as "pretty cooperative." The administration and Union leaders generally "try to talk through things." Green Dot understands that teachers are "here for kids" and that they seek good working conditions and the ability to teach well. From Green Dot's perspective, conflicts may arise when teachers are perceived as focusing on themselves rather than the interests of students.

One of the most interesting aspects of charter-union relations is the affiliation of the charter-based unions with the established union organizations such as the NEA and AFT or their state affiliates. The AMU is affiliated with the California Teachers' Association and the National Education Association. AMU negotiates with Green Dot on behalf of all California-based Green Dot schools, and the CTA is involved in all negotiations. All of AMU's negotiation committee members are also CTA members. However, teachers vary in the extent to which they identify and sympathize with the CTA. Green Dot's Administrator perceives AMU's leadership as generally more "progressive" than other union leaders, meaning that it is willing to compromise with the administration. On occasion, AMU leaders have expressed the belief that Green Dot does not dismiss poor teachers often enough.

Voting for AMU's officers --- President, Vice President, Treasurer and Secretary --- is conducted through an on-line survey, and AMU's officers usually run

unopposed. On a number of occasions, Union officers have sought support from their membership to press for measures that might have imposed additional restraint on Green Dot's management, but fellow teachers have rejected the proposals.

Green Dot's Administrator indicated that there are several provisions of the Agreement that can restrain administrators from making decisions they consider to be in the school's best interest. At a general level, Article 14 of the Agreement authorizes AMU to present a grievance not only for any decision made pursuant to any provision of the Agreement, but for any strategic or policy decision. In the past, CTA representatives have threatened to invoke this clause to file a grievance contesting Green Dot's conduct during collective bargaining. Normally, one party's challenge to the other party's conduct in bargaining must be brought as an Unfair Labor Practice charge, filed with the Public Employment Relations Board, and the challenging party must establish that the other party has not acted in good faith. Procedurally, Article 14 makes it easier to bring such a challenge, while potentially subjecting Green Dot to the expense and delay of a multiple-step grievance and arbitration process. Substantively, it could eliminate the ability of Green Dot to defeat a challenge by showing that it acted in good faith. It is unclear whether this provision, if invoked by AMU, would be upheld, as it might intrude on the jurisdiction of the Public Employees' Relations Board. Green Dot has presented a proposal to change this provision, but AMU rejected it.

Topic C: Compensation (Interview Questions 11-16). Green Dot's

Agreement currently does not include any form of "merit pay," but Green Dot has discussed the possibility of negotiating to add some form of merit pay to the Agreement. Green Dot believes it might be able to more effectively allocate and retain the best teachers if it implements performance pay. Green Dot also believes it may have been able to retain some teachers who have left for jobs outside education. Additionally, a number of Teach for America ("TFA") teachers have worked for Green Dot. TFA requires its teachers to spend two years teaching, after which they are free to pursue other careers. Green Dot believes that some TFA teachers who have left the teaching profession after two years might have stayed if the School could have competed with jobs outside the education sector by offering them more money. However, it is difficult to obtain data or other information confirming this assessment, or indicating how much additional pay would be required to keep such teachers. In order to gauge teacher interest and approval, Green Dot has discussed conducting a joint survey of all teachers with AMU.

Topics D and E: Assignment and Transfer (Interview Questions 17-26).

Although Green Dot's Agreement includes restrictions on administrators' ability to assign teachers, Green Dot's Administrator reported that a Principal has sufficient authority to make all necessary assignment decisions. The Agreement requires administrators to seek agreement on assigning teachers to open positions. If agreement cannot be reached, the decision must be based on teachers' legal requirements and

qualifications; whether teachers have satisfactory evaluations; and teachers' expertise and length of service. If there are no "substantial distinguishing differences," the teacher's length of service at the school site is the "determining factor." For teachers desiring reassignment outside their existing department, preference must be given to incumbent members with satisfactory performance and credentialing.

These requirements are the most restrictive of any school analyzed in this study, and appear to provide considerable opportunity to challenge an administrator's decision. However, the Administrator reported that this provision has never been grieved. Given the potential for more aggressive use of these provisions, this appears to confirm the Administrator's judgment that AMU's leadership takes a collaborative approach to school operation. The interaction between the AMU and the CTA, as described above, may have a significant effect on future Union activity, as will the relationship between Green Dot administrators and AMU leaders. If Green Dot's teachers perceive that the current, collaborative relationship between Green Dot and AMU is not serving their interests, they may become more inclined to identify with the more aggressive union elements, which could result in a more assertive approach to enforcement of the Agreement.

Topic F: Evaluation (Interview Questions 27-29). Green Dot spent two years working with AMU's leadership on a new evaluation process, which was approved and added to the 2006-2009 Agreement. The Agreement authorizes Administrators to

place a teacher on a “Development Plan” if the teacher is rated lower than “meeting” or “partially meeting” any CSTP standard. If sufficient improvement is not shown after 45 days, the teacher may be placed on an “Improvement Plan.” A teacher may also be placed on an Improvement Plan if he receives an overall “Practice Does Not Meet Standards” rating. A teacher on an Improvement Plan who does not make sufficient progress to meet the standard may be dismissed. The teacher may challenge the decision by requesting a conference with the Board, with a Union representative, present, and can also use the Agreement’s grievance process. Green Dot received one grievance under the former evaluation procedure. To date, no teacher has filed a grievance under the new procedure.

Topics G and H: Discipline and Dismissal (Interview Questions 30-33).

Article 18 of Green Dot’s Agreement requires “just cause” for discipline or dismissal of any teacher. However, the Agreement does not provide any definition of the “just cause” standard, or establish a process for discipline, making this provision subject to considerable dispute. Green Dot has proposed a probation period before a “just cause” requirement is imposed, and has proposed that the standard be defined, in order to provide practical guidance to Principals and reduce the threat of a grievance based on misunderstanding or misinterpretation, but has not been able to obtain such modifications.

Green Dot's Agreement authorizes either a teacher or the AMU to bring grievances. Green Dot's grievance process includes five steps: (1) presentation to the Principal, (2) presentation to the Board President, (3) presentation to the Board, (4) Mediation through the California Mediation and Conciliation Service, and (5) final Mediation. Because AMU is a CTA affiliate, it is empowered to handle the grievance on AMU's behalf. The Administrator reported that, to his knowledge, no grievances regarding dismissal have been pursued through the Board stage.

Green Dot's Administrator reported that terminations based on performance issues usually are not grieved, which the Administrator attributes to the successful training of administrators to follow the evaluation and dismissal procedures set forth in the Agreement. There were a total of approximately nine teacher dismissals between 2007 and 2009, of which four were based on poor performance. The CTA became involved in three cases, only one of which resulted in a grievance. In that case, the dismissed teacher's performance had been documented for three years. After the teacher filed a grievance, it was soon dropped, and the Administrator was informed that the Union had advised the teacher to abandon the grievance. Other dismissals have been based on misconduct, including teachers who have hit students. In such cases, the teacher is placed on administrative leave, during which the administrators investigate the alleged conduct and meet with the meet with teacher and the union representative. The Administrator reported that these issues are typically treated by AMU as matters of personnel relations, not as contract issues.



*LA Leadership interview*

Topic A: Union and Bargaining History (Interview Questions 1-5). LA

Leadership Academy was established in 2002 by Roger Lowenstein, a former attorney and law professor. The Academy operates a middle school and a high school, serving grades 6-12. At LA Leadership, I interviewed one of the school's organizational leaders. The School's charter was approved by LAUSD in 2002. In 2005, a group of teachers formed LA Leadership Academy Community United, as a CTA/NEA affiliate. In December of 2005, the Union filed a petition for representation with the PERB. In response, LA Leadership filed a Petition for a Representation Election with the National Labor Relations Board, which adjudicates labor disputes involving private employers, contending that the school was not a public entity and therefore fell under the jurisdiction of the NLRB rather than the PERB. The School's position was based in part on a number of prior decisions holding that charter schools were not public entities for certain purposes, including California's Tort Claims Act, access to records, and issues regarding the ability of employees to hold a financial interest on a charter school Board --- charter schools, which can qualify as non-profit organizations under Internal Revenue Code section 501(c)(3), may allow employees to have a 49% interest in the organization, while true "public" organizations cannot allow employees to do so, which would preclude teachers from being on board.

LA Leadership's action initiated an important legal dispute over the nature of charter schools in California. The PERB filed a motion to intervene and sought to dismiss the NLRB petition. The NLRB ultimately dismissed the Academy's petition in March of 2006, holding that a charter school is part of the state's public school system and a political subdivision of the state, and that the NLRB therefore lacked jurisdiction over the school. (*See Los Angeles Leadership Academy and Los Angeles Leadership Academy Community United*, Docket No. 06-0371, National Labor Relations Board, Case No. 31-RM-1281 (PERB Case No. LA-RR-1123-E)). The Union was then recognized by LA Leadership Academy, and has since represented the Academy's teachers at both schools. The Academy and Union negotiated their first collective bargaining agreement in 2006. One of the most significant elements of the new agreement was the elimination of "at-will" employment and the imposition of a "just cause" requirement for the discipline or dismissal of any teacher.

Topics B and G: Union Relationship, Activity (Interview Questions 6-10, 34-35). As a result of the concerns raised by the teachers during the drive for Union representation, LA Leadership recognized that while the Academy's leaders were good teachers, they might be less effective as instructional leaders. After the Union was recognized, the middle-school Principal was replaced by a new Principal with significantly stronger management skills. The administrator I interviewed reported that with good instructional leadership, the Union is not an impediment to administrators' ability to effectively manage a charter school. In general, the administrator considers

unions a “plus” in the charter world. By the same token, while the CTA is generally opposed to charter schools, he believes that the CTA should support charters. He also believes that while the CTA should support and protect teachers, it must also treat teachers as professionals by supporting self-policing practices like those that apply to doctors and lawyers, including self-discipline by a professional Board which could recommend dismissal of poor teachers.

The Academy’s Administrator reported that trust is a key to making the management-union relationship collaborative rather than contentious. As an example of the positive relationship between LA Leadership and the Union, the last bargaining session lasted only 45 minutes. While each side rejected some proposals made by the other, other proposals were accepted quickly, and the negotiations concluded with little dispute. Further evidence of the relationship is that no grievances have been filed at either LA Leadership school since the Union was established at the School.

Topic C: Compensation (Interview Questions 11-16). LA Leadership’s salary schedule follows LAUSD’s, and does not provide any form of “merit pay.” The Academy has considered implementing some form of merit pay, but currently feels that it is too small to introduce it successfully. With fourteen middle school teachers and fifteen high school teachers, the Academy believes that basing salaries on test scores or other measures could create significant stratification. Some teachers could become outliers, with very high or low salaries, which could suggest an element of arbitrariness.

Topics D and E: Assignment and Transfer (Interview Questions 17-26).

Consistent with the lack of any contractual criteria governing assignment or transfer decisions, the Administrator reports that the Academy has never considered seniority in assignment or transfer decisions. Teachers are hired for specific positions, as stated in individual employment contracts given to each teacher. Such contracts are rare among charters, including unionized charters. Accordingly, teachers also are rarely transferred from the position stated in their contract.

However, due to current financial difficulties, the Academy was facing the possibility of layoffs when my interview was conducted, which would also necessitate consolidation of positions and transferring of teachers. The Academy's general approach is to obtain consensus for any transfer, which it intends to follow in any transfers made as a result of layoffs. However, the Academy faced the prospect that following any layoffs, the Union would argue that remaining teachers whose classes have been eliminated or reduced should have "bumping" rights, allowing senior teachers to take their choice of remaining positions. LAUSD's Agreement provides senior teachers such rights, but LA Leadership's does not.

Thus, this potential conflict would not technically constitute a contractual dispute, but would take the form of a more generalized negotiation, in which the Union could threaten to more aggressively police and challenge dismissal decisions or push for expansion of the Agreement to include bumping rights, if the Academy does not

voluntarily agree to respect seniority in the realignment process. Given the Academy's interest in maintaining its cooperative relationship with the teachers and their Union leaders, the Academy faces pressure to accede to such demands despite the lack of any specific contractual obligation. In this way, the Academy's position is different from that of a non-unionized charter with identical provisions, as those provisions would not be backed by the threat of union activity, and the school would not face the need to engage in ongoing bargaining over the scope of its management prerogatives.

Topic F: Evaluation (Interview Questions 27-29). The Academy's Agreement does not specify any procedure or criteria that must be used for teacher evaluations. The Academy has developed its own criteria and forms, tied to the CST, including Star and CAHSEE standards. The standards were adapted from standards developed by PUC schools, a Los Angeles-based Charter Management Organization. The Academy's Teachers have not attempted to challenge the process or its application. The administrator reports that most poor evaluations are given for conduct problems, or for poor classroom management or laziness. To date, none of the Academy's teachers have challenged the Academy's evaluation process or its application.

Topics G and H: Discipline and Dismissal (Interview Questions 30-33). The most significant element of the LA Leadership Agreement is the requirement that after a two-year probationary period, discipline or dismissal can only be imposed for "just cause." The primary impetus for the Union's organizing drive was the perception that

management decisions were being made arbitrarily. Thus, after the Union was recognized and commenced negotiations, the Union indicated that its key demand was the elimination of at-will employment. The Academy agreed to incorporate a “just cause” standard, while insisting that it needed the Union’s understanding that teachers who treated students poorly, including inappropriate sarcasm or other abusive behavior, should be dismissed. According to the Administrator, the Union confirmed its willingness to support such decisions, but that was not incorporated in the Agreement. Thus, the Union maintains a latent ability to challenge any decision by the Academy. The Academy’s ability to exercise discretion in dismissing poor teachers rests to a significant degree on its ability to maintain a cooperative relationship, in which the Union feels that its needs are being met and that it does not need to aggressively challenge the Academy’s leadership.

The Academy and Union recently demonstrated this collaborative approach in the dismissal of four teachers at the Academy’s high school. The School’s math scores failed to meet the School’s Adequate Yearly Progress requirement for two years in a row, forcing the School into Program Improvement under the No Child Left Behind Act. Concluding that a significant shake-up was required, the School’s administrators decided to dismiss four of the school’s six math teachers. Only one of the teachers threatened to file a grievance over the decision, a teacher who held a Ph.D. in mathematics but was deemed to be ineffective in the classroom. However, after discussion with the Administration, the Union and teacher agreed that he would remain

with the School through summer school, but would then leave, and would not pursue any grievance.

*Choice 2000 Online School interview*

Topic A: Union and Bargaining History (Interview Questions 1-5). At Choice 2000, I interviewed a Site Administrator. Choice 2000 is part of a parent organization called Education Options, which also includes an Adult Education program and an Independent Study program. The school was granted its first charter in 1993, one of the 100 schools initially authorized by the California Charter Schools Act. Choice 2000 is chartered by the Perris Unified School District. Choice 2000 administrators consider the Perris District Union to be fairly strong, and the PUSD collective bargaining agreement to be relatively restrictive. Approximately fifteen years ago, the Perris Union, initially seeking higher pay through collective bargaining, negotiated instead for stronger job protection. In the view of some Choice 2000 administrators and teachers, the District's teachers then became somewhat complacent. This view has informed Choice 2000 administrators' approach to Union relations.

Choice 2000 was initially created as an Independent charter school in 1994. In 1997 it obtained a new Charter and became a Dependent charter. The School conducts classes primarily on-line, serving grades 9-12. When Choice 2000 was launched in 1993, California law did not require all charter school teachers to be credentialed – an exemption that was eliminated through a change in state law in 1999.

Because the school operates on a lean budget, many of the school's teachers are not credentialed. Accordingly, when the School sought to become a Dependent school affiliated with PUSD in 1997, the Union resisted. The School was able to obtain a Dependent Charter with PUSD, but the Union would not accept its teachers into the bargaining unit. The School's teachers therefore organized their own Union, the Online Teachers Association, affiliated with the CTA, and were recognized by the School after an election supervised by the Public Employee Relations Board. Unlike the PUSD contract, the teachers did not negotiate for tenure.

Topics B and G: Union Relationship, Activity (Interview Questions 6-10,34-35). The School has a total of 10 teachers, most of whom are not actively involved in the Union. The same teacher has been elected as Union President each year. Choice 2000 has never had a grievance filed on behalf of a teacher.

Topic C: Compensation (Interview Questions 11-16). Choice 2000's Principal did not report any discussion among school leadership or the Union about implementing any form of merit pay.

Topics D and E: Assignment and Transfer (Interview Questions 17-26). The Principal of Choice 2000 agreed with the statement: "The assignment process at my school allows me to select the best teachers for each classroom," while feeling that the question did not apply to transfer decisions, as the School has only one site. Most subjects at Choice 2000 are taught by only one teacher, with the exception of math. Most



teachers have four classes. Accordingly, there is little opportunity to reassign a teacher from one subject to another. When a math teacher left the School, administrators had a choice of two teachers to take her class --- a new math teacher and a veteran teacher supported by the Union. Under the PUSD Agreement, requests for a voluntary transfer must be considered on the basis of (1) appropriate credentials, (2) district-wide seniority with appropriate subject matter experience, and (3) recentness of a teacher's subject area preparation. The Choice 2000 Agreement does not specify any criteria that must be used in assignment or transfer decisions, requiring only that decisions cannot be made for arbitrary, capricious or punitive reasons. Due to the discretion provided by the Bargaining Agreement's assignment provision, the administrators were able to determine that the class would be given to the best teacher, without considering seniority. On another occasion, due to declining enrollment, an earth sciences teacher who had normally taught four classes had only enough students to fill three classes. Again, the administrators reported that they utilized the discretion provided by Choice 2000's Agreement to assign the teacher a general education class, which did not trigger any complaint from the teacher.

Choice 2000's administrators reported that the Union has not indicated any interest in altering the bargaining agreement to require consideration of seniority in making assignment decisions. Most teachers are willing to teach any assigned classes, in order to receive the benefits associated with being classified as full-time teachers.

Topic F: Evaluation (Interview Questions 27-29). Choice 2000's

evaluation procedure closely mirrors the procedure established by the PUSD contract. Like the PUSD contract, observations require notice. The Principal did not report feeling constrained in the ability to accurately evaluate teachers or use the evaluation procedure as a motivational or corrective tool.

Topics G and H: Discipline and Dismissal (Interview Questions 30-33).

As a "dependent" charter school, Choice 2000's disciplinary process is unique, in that it is actually conducted by PUSD. Essentially, as the Administrator put it, "Choice recommends and the District suspends." Even though Choice 2000 has a separate collective bargaining agreement, PUSD expects the school to treat teachers as if they are governed by the District's bargaining agreement, and Choice 2000 has not attempted to change this arrangement. The Administrator reported that school leaders are expected to write up teachers for performance or other problems, and to be diligent about following up. Choice 2000 follows the "FRISK" model, developed by a California law firm, which describes the model as a "communication framework for successfully remediating performance problems and developing legally defensible documentation when discipline is necessary." (Atkinson, Andelson, Loya, Ruud & Romo, retrieved 2010).

The School dismissed one teacher in 2008-2009. The School had previously provided a *Skelly*-type hearing, although Choice 2000's Agreement does not require the School to provide such hearing either for discipline or dismissal. The teacher

did not challenge the dismissal. The School believed that the teacher would have little chance of reversing the decision, given the discretion provided to the School by the Agreement. In fact, the School's non-certificated personnel, who are governed by a separate agreement negotiated by another union, have greater protection than its teachers, as demonstrated by the complicated procedure the School was required to follow when it dismissed a computer employee.

*Darnall Charter School interview*

Topic A: Union and Bargaining History (Interview Questions 1-5). At Darnall, I interviewed a site administrator. Darnall was one of the first charter schools authorized by the Charter School Act of 1992. The school's teachers wrote the initial Charter. Darnall functioned as a dependent charter for its first ten years, receiving its funding from the San Diego Unified School District and following its personnel policies. In 2003, it became an Independent charter. Because the change meant that teachers would no longer be governed by the District, teachers were concerned about giving up their membership in the Union. The Administration told them they could set up a Darnall union, and the teachers then organized the Darnall Charter Teachers Association ("DCTA"), as an affiliate of the California Teachers Association.

Topics B and G: School's Relationship with Union (Interview Questions 6-10). Darnall's administrator noted that unions are often viewed as representing the antithesis of the ethos of charter schools. The Administrator believes that unions serve a

legitimate purpose, but that they can create problems if they make members their primary focus rather than students. The Administrator described how the possibility for tension can be particularly acute in a small, “mom and pop” charter like Darnell. While a district can be compared to a cruise ship, large and hard to turn, a small charter school is like a speed boat – it can be very responsive and timely. If a union is able to negotiate restrictive and complex provisions protecting teachers, the charter’s ability to respond can be slowed down. Additionally, the administrator explained that small charters like Darnell have limited resources. Especially in a small charter school, the risk of having to allocate resources to legal process and defense against grievances or lawsuits can lead administrators to avoid making decisions they believe are necessary for the school.

Darnall’s Administrator believes that one of the primary reasons for support of teacher unions in conventional public school districts is to provide teachers a voice in management. In charter schools such as Darnall, this need is often fulfilled by having members on the board of the charter. Among unionized charters, such members may be Union members or officers. Article 34 of the Darnall Agreement provides that the DCTA will establish a “collaborative school environment,” where teachers will offer perspective in “administrative, curricular and extra-curricular decision making.” The DCTA must also have representation on all committees, and on the Darnall Board. The Board is required to have between 8 and 11 members; three of the voting members are teachers. At one time, a Union officer sat on the Board. Thus, teachers serve on all schools committees, including the budget, personnel, and curriculum committees. All

unit members also have access to the Darnall Board agendas and minutes. The Instructional Governance Council (“IGC”) is comprised of a majority of unit members, and is responsible for all curricular decisions. As set forth in Darnall’s by-laws, the IGC also has a designated role of advising the Board on all other non-curricular issues, and develops school instructional policies. On the personnel committee, teachers are involved in all but dismissal decisions. Teachers are also involved in hiring, transfer, and job description decisions.

Finally, the budget committee essentially acts as a subcommittee of the Board. Because the committee is responsible for understanding and analyzing budget cuts, the teachers and union officers understand the effect of any cuts on teacher compensation and other funding needs. The Administrator believes that this involvement and understanding diminishes the potential for misunderstanding and conflict. If the Union proposes changes requiring money, the teachers on the Budget committee or on the Board know whether money is available, and are able to discuss the School’s budgetary situation with the Union officers and other teachers. Essentially, the Administrator feels that Darnall’s teachers know they are “all in the same boat,” and that if they believe the Union’s proposed action would be counter-productive, they block it.

The Administrator explained that the teachers’ extensive participation in school governance helps to keep the relationship with the Union collaborative rather than confrontational, and decreases the need for formal grievances or other disputes. To date,

the DCTA has not filed a single grievance against the School. On several occasions, teachers have called for a meeting and asked for details regarding School decisions, but have then taken no action. The Administration also understands that the Union's leadership has pressed teachers to take action on certain issues, but the teachers apparently have not been persuaded that the issues needed to be addressed through the formal grievance process. The Administration believes that the internal collaboration process described above has kept teachers satisfied that their voice is heard. Because teachers are used to having input on all decisions through the School's committees, they have told the Union leadership that a formal grievance is not necessary. The Administrator describes the Board as "very functional," explaining that teachers on the Board are able to "put on a different hat" and put aside their individual interests when necessary.

One of the most interesting concerns raised by the Darnall Administrator, and mentioned by others, is the possible threat to teacher participation in governance created by a proposed change to California law. State law currently provides that the Board of a non-profit corporation cannot have a majority of voting members with a financial interest in the school, which includes teachers receiving salaries from the School. State law also prohibits any Board member from voting on any measure in which the member has a financial interest, which would include any teacher's own

salary.<sup>8</sup> A change proposed in a 2008 Assembly Bill, which was not passed but remains a topic of debate, could prohibit *any* members of the Board from having a financial interest. This reform, which was primarily prompted by concerns about Board members who used their position to contract with companies in which they had a financial interest, could also prevent teachers from serving on the Board. The Darnall Administrator believes that such a change could deny teachers an important means of participation in charter school governance. This could have a negative effect on the School's relationship with its teachers, and make teachers more likely to adopt a more confrontational approach to union-management relations, resulting in an increase in the filing of formal grievances to address issues that have typically been resolved through discussion and debate at the Board level. Moreover, under existing state law, Board members who also receive a salary from the school are required to recuse themselves from any vote regarding Union members' salaries, which necessarily includes their own salary. Another proposed change to state law would prohibit Board members from voting on any decision that could affect their own financial interest. The Darnall Administrator was concerned that if this change was implemented, teachers could be required to recuse themselves from *any* budget-related discussion, as any vote affecting the School's budget could have an effect on teachers' salaries, including their own.

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<sup>8</sup> See California Corporations Code § 5227 (only 49% of board of directors for nonprofit may be "interested person," including person receiving salary from nonprofit); California Government Code § 1090 (public school district trustee is prohibited from holding a financial interest in any contract the board votes on).

Topic C: Compensation (Interview Questions 11-16). Darnall's

Agreement does not provide any additional pay for performance. The only additional compensation currently available is for National Board certification. However, teachers and administrators at Darnall have discussed the possibility of adding merit pay in light of the Obama Administration's "Race to the Top" initiative. School leaders view merit pay as a potentially important tool to enable the School to measure progress and hold itself and its teachers accountable. However, the School's administrators feel strongly that any "merit pay" component would need to be based on student growth, rather than on a "snap-shot" assessment of student performance. The School feels that it could not base any merit-pay system solely on California's CST scores, as they do not currently track student growth from year to year. On a more general level, the School's administrators feel that criterion-referenced tests are inadequate for use in merit-pay decisions because the criteria are referenced by grade level. Some grade levels, such as third grade, are more challenging than others in the extent to which they introduce novel subjects and skills. The School would prefer to use or develop its own internal measures in cooperation with its committees, all of which include teachers. The School currently uses trimester assessments, but is working to develop a new system to track and evaluate student progress. In order to implement merit pay, the School would need to be able to post-assess students at the end of each year, in order to allow the School to track their progress during the next year. Moreover, individual teacher performance would only be one component of any merit pay system. The Administrators' assessment is that teachers



generally accept the concept of merit pay, partly due to the support provided by the Obama administration through the “Race to the Top” initiative.

Topics D and E: Assignment and Transfer (Interview Questions 17-26).

The Administrator at Darnall agreed with the statement: “The assignment process at my school allows me to select the best teachers for each classroom,” indicating that the Board has full authority to make such decisions. Likewise, the Administrator did not feel constrained in the ability to make decisions about transfers. Unlike assignment decisions, the Darnall Agreement does include restraints on voluntary and involuntary transfer decisions. For voluntary transfers, the School must make openings available to incumbents before open hiring, must give preference to incumbents with satisfactory performance and credentials, and must use seniority as the determining factor in the absence of “substantial distinguishing differences.” For involuntary transfers, the School must first ask for volunteers; teachers cannot be involuntarily transferred if they have taught three years or less or have accepted a “non-preferred” position, and if other factors are equal, the School must transfer the teacher with the least recent involuntary assignment, or, if two or more teachers have never received an involuntary assignment, the least senior teacher must be transferred. As explained in the document-analysis portion of this study, these provisions essentially treat involuntary transfers as a method of filling open positions, rather than as a tool for moving teachers from positions in which they are ineffective to positions in which the School believes they would be more effective.

The Darnall Administrator had not yet experienced any tension between these restraints and the School's interest in teacher effectiveness.

Topic F: Evaluation (Interview Questions 27-29). The Darnall administrator did not report any concerns regarding Darnall's evaluation procedure, and did not report any discussions about revising the process.

Topics G and H: Discipline and Dismissal (Interview Questions 30-35). As explained in the document analysis portion of this Study, Darnall's Agreement contains relatively complex provisions governing the dismissal process for poorly performing teachers. These include the use of an Improvement Plan, which authorizes the School to dismiss a teacher if sufficient improvement is not shown after 60 days, but requires the School to re-start the 60-day observation period if the dismissal is based on any "new" performance problem not addressed in the original Improvement Plan. Darnall has successfully dismissed at least two teachers for poor performance following this process, without prompting a grievance from the Union.

*Live Oak Charter School interview*

Topic A: Union and Bargaining History (Interview Questions 1-5). At Live Oak, I interviewed a site administrator. Live Oak was established in 2001, and serves Grades K-8. It is a school inspired by Waldorf education, based on principles expounded by Rudolph Steiner. The Administrator I interviewed explained that the

Waldorf philosophy influences every aspect of the School's operation, including its approach to personnel policy and union relations. Steiner's educational vision included a high level of faculty involvement. Live Oak's Administrator believes the School is only recently beginning to approach the implementation of that vision.

The teacher who organized Live Oak's union started organizing a union effort after she had received notice that she would not be invited back in the spring of her first year of teaching at the school. The teacher was one of only three employed by Live Oak at the time. The Administrator I interviewed then was a new administrator at Live Oak. The teacher approached other teachers about organizing a union, and petitioned the Public Employee Relations Board for a recognition election. The PERB held an election, in which the teachers voted in favor of the Union by a vote of two to one.

After the Union was recognized, it took approximately two years to negotiate the School's first collective bargaining agreement. The most significant element of the Agreement was a two-year tenure track. In 2007, the tenure track was extended tenure to three years. Formal Waldorf training was included as a necessary condition for receiving tenure.

Both of the teachers who originally voted for union representation have since left the School. The School currently has thirteen faculty members, only two of whom are dues-paying Union members. The School continues to operate under the

contract negotiated with the original organizing teacher, and has not attempted to decertify the Union. There is no formal Union representative or steward.

Topics B and G: Union Relationship, Activity (Interview Questions 6-10, 34-35. Live Oak's Administrator reported that the School's relationship with the Union is a mixture of collaboration and confrontation. By design, the union is confrontational, as it represents the interests of teachers only. Negotiation for the school's collective bargaining agreement is done by local teachers, not by CTA officials. In the most recent negotiations, discussions lapsed for approximately nine months, while the faculty attempted to formulate new proposals. The Administrator understood that the teachers had initially considered exiting the Agreement and requesting that teachers be added to the Board, but this position was never presented.

Live Oak's administrative team includes an Executive Director, Educational Director, and Development Director. As Live Oak has matured and grown, it has developed a strong committee structure. The School has a Compassionate Campus committee dedicated to fostering and promoting the School's cultural and behavioral values; a Parent Education committee; and a Development committee responsible for the school's financial development. The faculty as a body has recently taken on more responsibility for governance, such that proposals now grow out of the committees. The Administrator expects this process to accelerate over the next few years. Among other

issues, the School and its committees are exploring ways to maintain the School's identity as a Waldorf school while improving the School's STAR test scores.

To date, the Union has not submitted any formal grievances. Because Live Oak's union members do not belong to the Petaluma bargaining unit, the CTA's representative is on-call to talk to the teachers about the Union. However, the representative does not discuss specific issues with Live Oak's administrators. On one occasion a teacher's concern about possible nepotism in the hiring of a teacher, which also created difficulty for Live Oak's Board, was clarified by the outside CTA representative, who explained that the hiring followed normal procedures and was not improper, and that the hiring was addressed by a side letter incorporated into the collective bargaining agreement.

The Administrator sees value in a collective bargaining agreement, but believes that in a small school like Live Oak, the Union can on occasion come between the School and its teachers. Even when a Union representative is not present, the presence of the Union acts as another significant entity in the room during any interaction. The Live Oak Administrator feels that one of the most significant effects of the Union presence and the existence of the Agreement is that administrators must be more careful and formal in their discussions with teachers, especially about the benefits or negative effects of the Union. The Administrator also believes that the existence of the Agreement can exacerbate the process of sharing information. Administrators feel that

they cannot share information about benefits that might be provided to teachers if parts of the Agreement were removed, as sharing such information could be characterized as “union-busting.” Live Oak’s Administrator believes that one benefit of a collective bargaining agreement is that it is valuable to have an articulated understanding between faculty and administration regarding teachers’ working conditions, evaluations and other personnel policies. However, the Administrator believes that this would likely be easier to achieve in a personnel manual, which could remove some of the fear and trepidation from conversations between administrators and teachers.

Like the Darnall Administrator I interviewed, Live Oak’s Administrator was concerned about the prospect of changes to California law that could prevent teachers from serving on the Board of a non-profit charter school. The faculty recently considered the possibility of voting to eliminate the Union and instead requesting two seats on Live Oak’s Board. That process was then stalled while the teachers awaited the outcome of the proposed changes in California law.

Topic C: Compensation (Interview Questions 11-16). Live Oak does not currently provide any form of “merit pay,” but does provide incentives for teachers who obtain Waldorf training. Live Oak’s Administrator reported that the School has considered the concept of merit pay, but has not yet seriously addressed it. The School’s initial emphasis was on attempting to fully implement the Waldorf philosophy. Having recently determined that this is being accomplished, the School is turning more attention

to its performance on recognized tests and standards. Since the School is still in a developmental stage, it does not expect to perform highly on California's STAR testing in the early grades, but to achieve greater levels of overall student proficiency as the children progress through the grades. The administrator reported that this expected pattern has been borne out. The Administrator explained that, if the School believes in a developmental philosophy for its students, it should be able to evaluate itself using quantitative measures, which may eventually lead to consideration of merit pay.

Topics D and E: Assignment and Transfer (Interview Questions 17-26).

Live Oak's Administrator did not report that the School's Agreement restrained administrators in their ability to assign or transfer teachers in a manner that was in the best interest of the School. Accordingly, this topic was not explored in detail.

Topic F: Evaluation (Interview Questions 27-29). Live Oak's

Administrator reported that the School successfully modified its evaluation process, primarily with respect to the timeline for the process, since the 2008 Agreement was executed. The Educational Director proposed the changes, and the Union accepted them without dispute. The Administrator also reported that the School has been considering additional changes to its evaluation process, including implementation of peer evaluation, which is consistent with the Waldorf philosophy. However, this would present significant questions about how such a system would work in practice. The Administrator reported that the faculty plays a central role in the governance of private

Waldorf schools, and that while some elements of the Waldorf philosophy work well in practice, others present challenges. Specifically, while the Waldorf philosophy tends to favor a “horizontal structure,” a structure without any verticality can create problems. When teachers must work together as colleagues, it can be difficult to make hard decisions about other teachers. The Administrator is interested in learning from other Waldorf schools about their experience with peer review. However, other Waldorf schools’ experience may not be directly comparable or transferrable, because Live Oak is one of only two unionized Waldorf schools, and the other is part of a larger school district, and does not have a stand-alone Agreement like Live Oak’s.

The School recently supported eight teachers through a Masters training program. The Administrator reported that the School provides significant support to teachers, including an Education Director, remedial professionals focused on general rather than special education, and school mentors. The School also separates its mentoring process from the evaluation process. Some teachers have been recruited from the ranks of parents, some of whom obtained credentials before State law required all charter teachers to have credentials.

Topics G and H: Discipline and Dismissal (Interview Questions 30-33).

The Administrator believes that the requirement that teachers can only be dismissed “for cause,” which applies to Live Oak teachers beginning in their fourth year, can be a disservice to faculty members, and that it is inconsistent with the principles of a Waldorf



school. The Administrator explained that because a challenge to the dismissal of a permanent teacher through grievance and arbitration can cost as much as \$100,000, schools must make a determination very early on about the longevity of a teacher at the school. The Administrator believes that this forces schools that are in doubt about a teacher's ability to terminate the teacher's employment during probation, while the school's preference would be to attempt to help the teacher continue to grow for a longer period. Live Oak has dismissed at least one teacher during the probationary period whom the School would have retained if it could have done so without providing tenure protection, and almost dismissed another for the same reason. The Administrator also pointed out that, while teachers are protected from unforeseen dismissal, the School does not have reciprocal protection from teacher resignation. Thus, after the School has invested time and expense in teacher training, the teacher may walk away from the school at any time; during Live Oak's history, some teachers have voluntarily left the school and created difficulty in replacing them.

#### *Summary of Findings Regarding Administrator-Union Relations*

The purpose of this study was to explore the intersection of teachers' unions and charter schools, focusing on the provisions of collective bargaining agreements negotiated between these two significant and seemingly disparate forces in American education policy. The five charter school administrators interviewed in this study provide an interesting, although limited, glimpse into the spontaneous and

unstructured development of charter-union relations in California. The unions at the charter schools were created and recognized for a variety of reasons, ranging from a “hostile” organizing drive by a teacher who was not invited back to the school, to reaction by administrators to the district union’s refusal to accept the school’s teachers, to the creation and recognition of a union as part of the school’s core philosophy and political strategy. Each of the charters in the study has developed its own approach to union relations and collective bargaining, based on its educational philosophy and the circumstances in which the union relationship arose.

Despite their varying origins, some common themes emerged, some of which appear to suggest that some of the charter schools are accomplishing the goals of “reform bargaining” advocates described in Chapter 2. The schools generally indicated (1) that relations with the Union were cooperative, and (2) that no (or few) formal grievances had been filed. Given the combined number of years that the schools have been in operation, and the fact that some of the schools have fairly restrictive bargaining agreement provisions, the lack of grievance activity is significant. However, it is somewhat difficult to draw causal conclusions from these reports. The administrators reported that many of the charter school unions are still developing and “growing into” their function as teacher advocates. Moreover, some do not have the full or active support of their teachers; in smaller charter schools, the union’s activity may be driven by as few as one or two interested teachers. Additionally, the interviews suggested that teachers’ involvement in school governance, or other forms of teacher autonomy presented by charter schools, lessened the need for union activity, rather than a change in

the approach to bargaining, which appears to have produced provisions in many schools that are similar to conventional school districts' bargaining agreement provisions.

The interviews also suggest that there may be some validity to union critics' concern that unions' institutional function as advocates for teachers inherently brings them into tension with schools' educational objectives. The interviews generally indicated that (1) once established in an initial bargaining agreement, charter schools generally have not been able to modify provisions perceived to interfere with effective school leadership, and (2) either external or internal forces, or both, have the potential to make the relationship between the school and its union more adversarial in the future. Indeed, the study suggests that the nature of administrator-union relationships appears to be highly dependent on the personalities of the primary participants in the relationship, and the unique culture of each school. Several specific observations related to individual schools are set forth below.

#### *Green Dot*

Green Dot represents a fairly rare approach to union relations. Its founder supported the creation of a union --- not in response to specific teacher concerns, but as an intrinsic part of the school's philosophy of governance. Green Dot's Administrator reported that relations with the Union are generally cooperative. However, the Administrator noted a divergence of interest between some teachers who are perceived to be more confrontational in their positions, and others who have taken a collaborative

approach and rejected more restrictive teacher proposals. This variation among teachers' attitudes is common in most union settings, but it presents a unique dynamic in a charter school that deliberately supported the creation of the Union. While the School's vision of a friendly and cooperative relationship has largely been realized, neither the School nor the Union officers have the ability to control internal forces such as more aggressive teachers, or external forces such as the CTA, which has the potential to move the Union toward a more confrontational posture in bargaining and in enforcing the Agreement through its grievance and arbitration procedure.

Green Dot's Administrator reported that some provisions of the Agreement could be changed to better serve the interests of students and teachers, including the ability of the Union to bring a grievance not only for violation of specific provisions but also over strategic and policy decisions, which is unique among the schools analyzed in this study. However, the Agreement generally has been modified only in the direction of providing more protection for teachers, and imposing greater restraints on the decisions of administrators. It will be interesting to observe whether Green Dot's support for its union will enable it to obtain desired modifications of the Agreement as its schools continue to develop, or whether, once established, the bargaining relationship will essentially function in one direction (sometimes called the "ratchet effect"), in which the union obtains greater restriction on administrators' decision-making ability, while the administration is unable to obtain increased flexibility.

### *LA Leadership*

LA Leadership Academy's union history is different from some of the other schools interviewed for this study, in that the school was forced to recognize the union after a PERB election, over the school's objection. Both of the Academy's schools continue to be bound by the contract negotiated by those teachers, including the requirement of "just cause" for the discipline or dismissal of any teacher. In spite of the somewhat adversarial commencement of the relationship, the Academy's leaders have come to view the Union in a positive light and have developed a collaborative relationship. To date, no grievance has been filed against the Academy. The Academy has also taken steps to improve its instructional leadership in response to the concerns raised by the Union. However, the financial difficulties facing public education in California at the time of this study, and the resulting possibility of layoffs, threatened to induce a more aggressive posture by the union, which has the potential to enforce provisions that it had previously allowed to lie dormant while the administration and union resolved concerns cooperatively.

### *Choice 2000 Online Charter School*

Choice 2000 was one of the first 100 charters authorized after California approved the creation of charter schools in 1992. The school is unique in its operation as a fully on-line school, which presents a number of challenges, some of which are not addressed in this study. The school also demonstrates the ad-hoc nature of union

establishment. In Choice 2000's case, its on-line status and lack of funding led to the use of non-credentialed teachers, which was permissible for charter schools until a change was made to California law in 1999. After the school had operated for several years as a non-unionized "Independent" charter, it became a "Dependent" charter in 1997. But the District's union rejected the school's non-credentialed teachers, leading them to create their own Union and negotiate their own collective bargaining agreement. Like most other schools in the study, no grievances have yet been filed against the school. However, while the school's Agreement is less restrictive than the Perris District's Agreement --- most significantly by failing to provide tenure or a "good cause" or "just cause" standard for dismissal --- the District continues to exercise final control over the discipline and dismissal of teachers, which, the Administrator reported, introduces a degree of caution and restraint beyond that suggested by the terms of the Agreement itself.

#### *Darnall Charter School*

Like Choice 2000, Darnall was also one of the first 100 charters authorized under California law. Like many other charter schools, its teachers wrote its first charter, immediately becoming more intricately involved in school management than most district teachers. Darnall followed the opposite path of Choice 2000, beginning as a "Dependent" charter but becoming an "Independent" charter ten years later. Its route to unionization was also slightly different than the other schools in the study --- the

Administration encouraged its teachers to set up a union to address fear of losing membership. Darnall's Administration generally reported a collaborative relationship with its Union, including the lack of a single grievance against the School; although the Union has called for meetings and its officers have encouraged certain action, teachers have not chosen to proceed. However, the Administrator indicated that the Union's presence, if more aggressively asserted, can have the effect of slowing the school's ability to adapt and change. Comparing a small charter school to a speed boat, the Administrator indicated that an aggressive Union can make the school more like a conventional district, which functions more like a cruise ship. Darnall's Administrator expressed most strongly the view that teachers played a very constructive role in school governance by serving on every important committee and on the Board, thus fulfilling their need for a voice in school operation. But the Administrator expressed concern that this participation could be threatened by proposed changes in California's conflict-of-interest law, which could disqualify teachers from service on the boards of charter schools. If that participation was eliminated or limited, the Administrator felt that the current, cooperative relationship, could become more adversarial and counter-productive.

#### *Live Oak Charter School*

Finally, Live Oak is unique in its status as a Waldorf-inspired charter school. This philosophy includes a high level of faculty involvement, with or without the presence of a union. Live Oak's path to unionization demonstrates the effect that a few,

or even one, interested teacher can exert on a small charter school. The union was established by the vote of only two teachers in favor of the union, one of whom requested the vote after being notified that her employment would not be renewed, and both of whom later left the school. Live Oak continues to be bound by the contract negotiated by the original organizing teachers, including the establishment of tenure, after which teachers can only be dismissed “for cause.” However, Live Oak was successful in obtaining the Union’s agreement to lengthen the tenure track from two years to three. Live Oak reported that there is no formal representative or steward at the school, while the Union appears to be growing into maturity.

Like the Darnall Administrator I interviewed, Live Oak’s Administrator felt that teachers took a less aggressive approach toward union activity because they are deeply involved in school governance through the school’s committees. The Administrator was also concerned that proposed changes to California’s conflict-of-interest law might force teachers from the Board, and that they might be replaced by a non-teacher Union official who lacked understanding of the School’s unique Waldorf-based philosophy. The CTA has some involvement with Live Oak’s teachers, which, to date, has been perceived as non-intrusive and even helpful. However, the school’s Administrator reported that the Union’s presence makes administrators more formal and less candid in their discussions with teachers about the needs and direction of the school. Additionally, the perceived cost of defending a grievance or arbitration after dismissing a tenured teacher led the school to dismiss one teacher before she obtained tenure. The



Administrator would have preferred to continue to help her develop, if the school believed that it could have dismissed her later if she failed to show sufficient progress.

## Chapter V – Conclusions and Recommendations

As noted above, some common themes emerged from the schools in this study, while other observations were limited to the unique circumstances of individual schools. In combination, these findings may provide useful recommendations for at least three groups: charter schools considering voluntary recognition of a union, or negotiating their first agreement with a union; policy-makers considering changes to state charter school laws; and researchers exploring the interaction of charter schools and unions.

Charters considering the advantages or disadvantages of unionization might find instructive the experience of the schools in this study. These schools demonstrate that some of the promise of “reform bargaining” may be achieved in charter schools, as most administrators have established a cooperative relationship with their unions. However, comparison between the charter school bargaining agreements and district agreements revealed that, in some of the key areas for which district agreements have been criticized (notably classification and dismissal), unions have been able to impose restraints on administrator discretion to the same extent as in conventional districts. Some administrators reported that they now feel unduly restricted by certain bargaining agreement provisions. If schools wish to preserve school leaders’ ability to manage teachers through personnel decisions, they might take caution from the example of some of the schools in the study.

Charter schools negotiating their first bargaining agreement may find instructive examples among the schools in this study, and may wish to negotiate provisions similar to those negotiated by these schools, while avoiding others, depending on the school's management philosophy and the strength of the union. Possible recommendations are discussed below, in the following areas: (1) recommendations regarding advantages or disadvantages of unionization; (2) recommendations for establishing productive union relations; (3) recommendations for schools negotiating their first union contract; and (4) recommendations regarding specific bargaining agreement provisions (in each policy area addressed by this study).

#### *Recommendations Regarding Advantages or Disadvantages of Unionization*

Unionized charter schools are currently a rarity in California, but it is clear that unions will continue their efforts to represent charter school teachers. If the schools in this study are any guide, charter-union relationships will likely continue to develop in varying and unexpected ways: through targeted campaigns by the major teacher unions, through the efforts of small groups or even a single teacher; or by perhaps by the voluntary initiative of a school or CMO like Green Dot, or through a combination of factors. What is clear is that unions will usually target charter schools, rather than the other way around, and will often enter a school through a teacher or small group teachers who are dissatisfied with an administrator's leadership or a specific decision. Charter schools must be aware of the concerns and incentives of unions, attempt to understand

the likely effect of unionization on the operation of the school, determine whether and to what extent they want to prevent or welcome unionization, decide how they will respond to a unionization effort,<sup>9</sup> and, if the school's teachers become unionized, decide how to negotiate terms that are best calculated to achieve the school's educational objectives while satisfying the concerns that led teachers to unionize.

The schools in this study, while a small sample, provide useful and varied insights regarding the “pros” and “cons” of unionization. While Green Dot deliberately created a cooperative unionized environment, and has negotiated several innovative bargaining agreement provisions, other provisions are among the most restrictive in the study, in many cases comparable to the provisions of the district agreement. Moreover, Green Dot's cooperative relationship has not allowed it to negotiate any loosening of the restraints imposed by the original agreement. As expressed by Darnall's administrator, a union can slow down the school's ability to adapt and respond if the administration and union have a confrontational relationship. At Darnall, teachers have a significant decision-making role through committee participation, but that participation might be threatened by changes to state law, raising the prospect that the union may begin to enforce the agreement more vigorously. Additionally, the risk of having to allocate resources to legal process and to defending against grievances or lawsuits can lead administrators to avoid making decisions they believe are necessary for the school, as

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<sup>9</sup> Complicated rules limit the type of action schools may take in response to any effort to organize teachers, including communication with teachers and changes to the terms or conditions of teachers' employment. The bargaining process itself is also governed by detailed rules. Those rules are beyond the scope of this study.

reported by the administrator at Live Oak. That cost can disproportionately affect smaller charters like Darnall, Choice 2000, Ocean or Live Oak.

Charter schools should also understand the power that a single teacher, or a small group of teachers, can exert over a school by initiating a union recognition drive. The teacher who organized Live Oak's union was dismissed after the third year, just before she would have obtained permanent status. After the teacher requested an election, the teachers voted for the Union by a vote of only two to one. The Union then negotiated a bargaining agreement with a two-year tenure track, which was later extended to three years. Several years later, although teachers engage in little union activity, the School is still governed largely by the terms of the original contract. Given the increased focus by the national and state teachers unions on unionizing charter schools, even small schools should be aware of the possibility of unionization.

One conclusion from this study is that charter schools appear uniquely capable of satisfying one of the key demands that often leads teachers seek union recognition --- the ability to participate in establishing the school's educational philosophy and goals, and to play a role in implementing that philosophy by participating in school governance. As discussed in the study, Darnall appeared to provide such participation most thoroughly through its committee structure, but other schools also fostered teacher participation in management through less formal means. If schools do not satisfy these needs, however, unions may provide an ever more readily available means of establishing formal involvement in decision-making, but in a more adversarial

and reactive manner --- challenging and potentially reversing decisions, or affecting decisions through the threat of a challenge.

The schools in the study also demonstrate that union recognition creates or alters a number of relationships, beyond merely establishing a formal negotiating team for the administration and union. Most of the school administrators reported that they had established cooperative working relations with the union officers at their schools. However, the schools were aware that the union officers were involved in ongoing interactions with other stakeholders with an interest in shaping the union's approach to the administration. Most importantly, each union in the study, including Green Dot's AMU union, is affiliated with one of the large state teachers' unions, primarily the CTA. While the bargaining agreement negotiations at some schools are conducted by local officials, others are conducted by CTA representatives. Several administrators reported a perception that the CTA was interested in taking a more aggressive approach to bargaining and contract enforcement than the on-site teachers. One significant limitation of this study is that it did not include interviews with union officials, teachers or representatives of the CTA or CFT. Accordingly, it is difficult to draw conclusions about the relationships between local charter union officers and the state union organizations. However, charters evaluating the prospect of unionization should be aware that a collective bargaining agreement places a school within the purview of the CTA or CFT's operations, and that on-site officers will be influenced in varying degrees by state union representatives who are not directly involved in the operation of the school.

Additionally, the union officers may or may not hold views representative of other teachers. Several administrators reported that local union officers have often run unopposed, because a limited number of teachers were actually interested in union activity. Moreover, the teachers who are involved are not necessarily the best teachers. But the teachers who are involved have a disproportionate ability to affect administrators' decision-making, by negotiating bargaining agreements and deciding how aggressively to enforce the agreements. Schools should take this into account when evaluating the likely effect of being unionized.

Finally, schools should be aware that the presence of a union can restrain administrative decision-making beyond the formal restraints negotiated in a collective bargaining agreement. For example, LA Leadership Academy reported that it was considering layoffs. The school expected the Union to argue that remaining teachers should have "bumping" rights. Although the Agreement does not provide such rights, the Union has the ability to take a more aggressive posture toward contract enforcement as a means of exercising leverage, or to push for expansion of the Agreement to include bumping rights. The Academy faced pressure to comply with such demands in order to maintain amicable relations with the Union. A non-unionized charter school without a policy providing "bumping" rights would be able reassign teachers without regard to seniority, based on the administrators' judgment of the remaining teachers' effectiveness. Thus, charter schools should consider both the effect of a formal collective bargaining agreement on administrative decision-making, and the unofficial but direct impact that the union can have.

### *Recommendations for Establishing Productive Union Relations*

The schools in the study also provide insights for unionized charters seeking to establish a productive working relationship with the union. As LA Leadership's administrator explained, trust is a key to making the management-union relationship collaborative rather than contentious. LA Leadership is an example of responding to what was perceived as a negative development by taking positive steps to make the most of the new reality of a unionized workplace. After being involuntarily unionized, the school immediately addressed the concerns that led the teachers to unionize, including strengthening the school's instructional leadership. Subsequently, bargaining sessions were reported to be brief and cooperative, and no grievance has been filed since the Union was established.

Darnall demonstrated the importance of teacher participation in governance for schools hoping to construct positive union relations. Darnall's Board has three teachers on its Board of 8 to 12 members, and has even had a Union officer on the Board. Teachers serve on all school committees (including the personnel and budget committees), and hold a majority on the Instructional Governance Council, which makes all curricular decisions. The Administration believes that teachers involved in these committees have rejected suggestions that the Union take a more aggressive posture toward the administration, because teachers are satisfied that they are able to represent their own interests. Darnall's example could also be useful for charter schools that wish to avoid unionization, and seek to preserve the ability to work directly with all teachers



rather than through elected union officials. Although the study did not include schools where union drives were rejected or were not pursued by teachers, extensive participation in school governance appeared to be a key deterrent to union-management conflict, and therefore would also be a likely deterrent to unionization.

As explained by more than one administrator in this study, the ability of charter schools to provide full teacher participation in governance may be threatened by changes to state law governing conflicts of interest. If California law prohibits any members of a Board from having a financial interest in the organization, teachers could be precluded from serving on the Board, denying them an important means of participation in governance. This might lead teachers to rely more on unions to represent their interests, and might lead teachers who are already represented to take a more aggressive approach toward challenging administrators' decisions. Policy makers considering such a change should be aware not only of the possible detriment to school governance itself (which, the charter administrators in this study believed, is enhanced by teacher participation), but also of the possibility that such a change would make relations between administrators and teachers (and their unions) more adversarial.

#### *Recommendations for Schools Negotiating Their First Union Contract*

Next, the schools in this study have done something very few charter schools have done: negotiated their first collective bargaining agreement beginning from a blank slate. Although only a smaller subset of the unionized charters in California were

studied in detail, those schools provide a somewhat representative glimpse into the opportunities and challenges inherent in this process. While the detailed analysis of the schools' bargaining agreements and Administrator interviews highlighted a number of issues, some stand out for consideration by charters negotiating their first agreement.

Green Dot, the most pro-union charter in the study, negotiated a provision allowing its union, AMU, to present a grievance not only for any violation of the Agreement itself, but for any strategic or policy decision. Although the Union's ability to enforce this provision is unclear and has not been tested, it appears to expand AMU's influence beyond that normally enjoyed by unions, which is usually limited to challenging specific decisions related to specific teachers. Thus far, Green Dot has not been able to modify this provision. In light of Green Dot's union-friendly position, Schools negotiating their first agreement should be aware that, even if the school takes a favorable view of unions, concessions made during initial bargaining can be difficult to retract through subsequent bargaining.

### *Recommendations Regarding Specific Bargaining Agreement Provisions*

#### *Assignment and transfer*

Schools adopting their first collective bargaining agreement might find useful examples of provisions to negotiate, or to avoid, in the agreements examined in this study. With respect to assignment and transfer provisions, the schools in the study

generally negotiated more flexible terms than those found in the comparable district agreements, which often require schools to give priority to more senior teachers in making initial assignments, granting requests for voluntary transfers, involuntarily transferring teachers due to performance issues, or re-allocating teachers after positions are eliminated or become available through retirement. As explained above, the difference is partly explained by the fact that most charters are still single-campus operations, and even the larger CMOs and EMOs are usually much smaller than conventional school districts. Accordingly, transferring teachers is not as frequent an issue as it is in conventional districts, and unions do not appear to have made transfer provisions a central focus of bargaining.

Choice 2000 provided an example of the increased flexibility negotiated by many charters. The Choice 2000 Agreement does not require consideration of seniority (or any other specified criteria), but does require that decisions cannot be made for “arbitrary, capricious or punitive reasons.” This provision may or may not be a possible model for other charter schools. Although such terms are also found in conventional school district agreements, including LAUSD and Perris, those Agreements also require the district to take seniority into account. Choice 2000’s Agreement provides a teacher the opportunity to challenge a decision with no legitimate rationale, while shielding the school from grievances based solely on violation of seniority rules or disagreement with the wisdom of the decision. When a math teacher left that school, two teachers requested the open class: one was a veteran teacher supported by the Union, the other was a newer teacher favored by some in the administration. If the school had been

part of the Perris Unified School District, it would have been required to take into account the teachers' district-wide seniority and appropriate subject matter experience. Choice 2000's administrators were able to consider only the needs of the students in the class and the ability and personality of the two available teachers, and made the decision they believed to be in the best interest of the students without considering seniority. Although the Union could have claimed that the decision "arbitrary, capricious or punitive," it accepted the decision. However, other charter schools successfully negotiated full discretion in such decisions, suggesting that unions are willing to compromise in this area.

Charter schools negotiating transfer provisions might also consider the decision by two of the schools in the study --- Green Dot and Darnall --- to depart from their districts' agreements by reserving to administrators the ability to grant voluntary transfers to poorly performing teachers. The Agreements of LAUSD and San Diego Unified prevent teachers with poor evaluations from requesting voluntary transfers. Green Dot's Agreement gives preference to teachers with satisfactory performance, but allows administrators to transfer a poorly performing teacher upon request. Likewise, while San Diego's Agreement precludes poorly performing teachers from participation in the "bid and post" process through which new assignments are obtained, Darnall's Agreement allows administrators to consider such requests.

Although this study did not explore the possible reasons for preventing poorly performing teachers from voluntarily transferring, the restriction may provide an

incentive for such teachers to improve, and may prevent principals from transferring a problem teacher away from their school. Further research would also be required to determine the reasons for and results of allowing transfer of such teachers. In a one-campus charter organization, the concern for “exporting” a problem teacher would not be present, as the transferring principal would keep the teacher in the same school.

However, Green Dot, a multi-campus CMO, would confront that problem, but still chose not to negotiate this type of restriction. Additionally, while the provision adopted by LAUSD and San Diego Unified would impose a measure of accountability for poor performance, a principal may want to reserve the ability to give a teacher a “fresh start” in a different classroom. Charter schools considering whether to adopt a conventional district’s language on this subject might learn from schools such as Green Dot or Darnall regarding their reasons for preserving administrator discretion in this area, and their experience with any transfers granted to poorly-performing teachers.

Finally, while the charter schools in this study generally reserved more discretion than the conventional school districts, and avoided requirements that seniority be a factor (or the deciding factor) in the area of assignment and transfer, Green Dot is a notable exception. Its agreement provides that if there are no “substantial distinguishing differences” when considering teacher reassignment, the teacher’s length of service at the school site is the “determining factor.” For teachers desiring reassignment outside existing department, preference must be given to incumbent members with satisfactory performance and credentialing. Green Dot reported that these provisions have never been the subject of a grievance, which may be an indication that there have been no “close

calls” in which seniority should have been the determining factor. On the other hand, it might confirm Green Dot’s judgment that its Union’s (AMU) leadership takes a collaborative approach to school operation, and has refrained from filing grievances that might be brought in conventional school districts. Charter schools negotiating their first contract may conclude from Green Dot’s example that contractual restrictions do not necessarily have the same effect as they would in a conventional school district with a more aggressive union. However, they should also be aware that if their teachers perceive that a collaborative relationship between the school and the union, like that of Green Dot and AMU, is no longer serving their interests, they may become more inclined to encourage a more aggressive approach by their union to enforcement of the Agreement.

### *Teacher evaluation*

The schools in this study also provide valuable suggestions regarding the development of contract provisions regarding teacher evaluation. Several schools in the study have departed from the binary “yes” or “no” rating system used by many conventional school districts (including LAUSD), adopting instead a matrix requiring one of several ratings in a number of categories. The standards adopted were often tied to the California Standards for the Teaching Profession (“CSTP”).<sup>10</sup> However, some schools

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<sup>10</sup> There are Standards in six categories of teaching practice: (1) Engaging and Supporting All Students in Learning; (2) Creating and Maintaining Effective Environments; (3) Understanding and Organizing Subject Matter; (4) Planning Instruction and Designing Learning Experiences; (5) Assessing Student Learning; and (6) Developing as a Professional Educator.

chose to use the CSTPs selectively, modified the Standards, or added other standards to suit their own needs.

Charter schools considering the prospect of negotiating their first Agreement should consider adopting the CSTPs, while examining their own needs and the experience of other schools in order to adapt and develop evaluation standards that best meet their educational philosophy and goals. Charters dealing with unions for the first time might consider following LA Leadership's example by surveying the evaluation systems developed by existing charter schools and charter networks. Models such as LA Leadership itself could be especially useful, as they have been tested in a unionized charter environment.

Schools might also consider the two-track system negotiated by Green Dot, which allows administrators to help teachers develop their own goals and demonstrate performance through authentic assessment tools, and assigns teachers to a "Track" based on experience and performance, rather than simply their years of service. As outlined above, Green Dot's "Track I" is for new teachers, with a focus on the California Standards of Teaching Profession ("CSTP"), while Track II is for more experienced teachers who have received either "Meets Standards" or "Exemplifies Standards" on all elements of the CSTPs. Track I teachers develop a Unit Portfolio, which includes personal reflection, unit outlines, connection with the CSTPs, and a summary of professional development. Track II teachers adopt one of several Growth Plan options, each of which is product-based, involving a staff presentation, a portfolio,

or a report. Edison's Agreement also uses portfolios as part of a comprehensive approach to evaluation for all teachers, including observation, assistance by a lead teacher and peers, a professional growth plan, a professional portfolio, self-appraisal using Edison standards, and assessment by the principal or supervisor. These charters' adaptations, while not unique to charter schools or to schools with collective bargaining agreement, provide insight into the range of possibilities for unionized charters. Charters should consider whether these evaluation tools would give them a more complete view of their teachers' abilities than the forms typically negotiated by conventional, unionized school districts.

Some of the schools in the study also departed from the frequency of evaluation required by the Stull Act --- at least yearly for probationary employees, and every other year for permanent employees. Some schools require more frequent evaluation: Green Dot requires evaluation of Track I teachers twice each year, and Track II teachers once per year; Camino Nuevo requires all teachers to be observed and evaluated at least once each year. Edison requires evaluation each year during a teacher's first four years, and thereafter at least every other year, but teachers performing unsatisfactorily must be evaluated every year. Again, schools confronted by a union should be aware that they have the ability to negotiate terms that give them more latitude in assessing even long-term teachers.

Schools seeking to increase the use of evaluation, both as a tool for improvement and to determine whether teachers are not meeting the needs of the school,



should also consider negotiating the ability to use informal observations as part of the evaluation process. Such “drop-in” assessments are often prohibited by conventional school district agreements because they do not allow the teacher to plan ahead. But administrators have argued that they provide a more accurate picture of the teacher’s day-to-day performance, precisely because the teacher cannot plan ahead. Thus, Camino Nuevo and Edison are authorized to use informal observations in teachers’ final evaluations; Live Oak specifically authorizes observations on a “drop in” basis; and Darnall is authorized to use informal observations, but must afford teachers the same rights that apply to a formal observation. Schools have a number of available models, and should negotiate provisions that help them meet their educational objectives.

Several schools in the study also demonstrated flexibility in their use of the evaluation process to assist low-rated teachers. Under the Darnall Agreement, if a teacher receives a “Below” or “Far Below” rating, the School must notify the teacher by December 1, and the Administrator and teacher must meet to create an Improvement Plan, and meet again after thirty and then sixty days to decide whether sufficient progress has been made. If the teacher fails to demonstrate progress, the Director should recommend non-renewal to the Board, whose decision is final. Edison requires a yearly evaluation for teachers performing unsatisfactorily; additionally, following a negative observation a teacher must be observed a minimum of two additional times within two months, and the evaluator must conduct pre- and post- observation conferences and provide a written assessment. At Helix, a teacher receiving less than a “Satisfactory” rating is evaluated every year until the teacher receives a “Satisfactory” rating. While

conventional school districts often participate in a “Performance Assistance and Review” program, charter have more freedom to negotiate a continuation of the “probationary” reevaluation schedule, and should consider the remediation efforts adopted by these schools.

Finally, this study found few examples in which a school was able to renegotiate a bargaining agreement to obtain more latitude in personnel decisions than it had in the original agreement, but Green Dot successfully did so in the area of evaluation. Green Dot worked extensively with AMU’s leadership on a new evaluation process, which was approved and added to the 2006-2009 Agreement. The Agreement authorizes administrators to place a teacher on a Development Plan if the teacher is rated lower than “meeting” or “partially meeting” any CSTP standard, to place the teacher on an Improvement Plan if sufficient improvement is not shown after 45 days (or if a teacher receives an overall “Practice Does Not Meet Standards” rating), and to dismiss the teacher if sufficient progress is not made thereafter.

Green Dot reported that it had received one grievance under the former evaluation procedure, but that no teacher has filed a grievance under the new procedure. This is a significant development in the context of this study, as it represents a departure from what is sometimes called the “ratchet effect,” in which bargaining agreements tend to become more, not less, restrictive over time. The key to Green Dot’s success was its close and lengthy collaboration with its Union, demonstrating again that once a union is established at a charter school, the relationship between administrators and union leaders

is critical to the administration's ability to make personnel decisions without opposition by the Union. Further research should be able to track the extent to which various evaluation models are successfully negotiated with charter unions, and the extent to which the administration is able to make personnel decisions, following those provisions, that are accepted by the union.

### *Classification*

The study also suggests that unionized charter schools have not departed significantly from the Education Code's provision of "permanent" status after two complete years of service, which is one of the elements of state law most consistently criticized by charter proponents. These provisions suggest that unions place a high priority on obtaining some form of tenure protection when they approach charter schools. Schools concerned about the ability to decide the makeup of their teaching force, and to replace ineffective teachers, should review these agreements and seek to avoid them. Indeed, for schools seeking administrative flexibility, such provisions provide a strong incentive to avoid unionization by ensuring teacher empowerment in other ways.

### *Discipline*

Consistent with the retention of some form of tenure, the schools in this study generally did not negotiate away the "just cause" standard" applicable to conventional school districts such as LAUSD. As in the other policy areas in the study,

the schools demonstrated several possible ways to balance administrator discretion with teacher protection, while hewing more closely to provisions found in conventional school districts than in the other policy areas analyzed in the study. While Camino Nuevo's Agreement does not impose any "cause" or other specific standard for discipline, Green Dot's and Choice 2000's Agreements require "just cause" for any discipline. Other schools provide such protection only for more senior teachers: LA Leadership and Helix require a form of "just cause" after two years, Ocean for any "ongoing" teacher, and Live Oak for teachers with permanent status (in the teacher's fourth year). Darnall's Agreement, rather than using the "just cause" standard, which carries with it a body of interpretive case law and arbitration decisions, specifies that discipline is authorized for "unsatisfactory performance," unprofessional conduct, or violation of reasonable regulations, policies and procedures. Finally, Edison's Agreement imposes a lower standard, requiring only that discipline cannot be imposed for "arbitrary or capricious" reasons.

Choice 2000's disciplinary process demonstrates the influence that an authorizing district may exert over a "dependent" charter school. Although Choice 2000 negotiated a separate bargaining agreement, its parent district, Perris Unified, retains the authority to approve or reject proposed discipline of Choice 2000 teachers --- effectively eliminating one aspect of independence typically associated with charter schools. Accordingly, Choice 2000 follows the comprehensive "FRISK" model used by many conventional school districts. This arrangement may serve as a model for unions negotiating with other "dependent" charter schools. As unions and charter schools

continue to interact, a larger sample of such arrangements should allow more detailed study of the benefits and drawbacks of “dependent” status when the dependent charter negotiates its own agreement.

### *Dismissal*

As with disciplinary provisions, a number of charter schools in the study negotiated protections from dismissal that are fairly similar to the protection given to conventional schools by state law. Green Dot allows dismissal of any teacher only “for cause,” although the Agreement has been modified to specifically allow dismissal for any teacher on an Improvement Plan (as described above) who fails to show sufficient improvement. LA Leadership’s Agreement requires “just cause” for dismissal after two years. Ocean’s Agreement allows dismissal of “ongoing” (permanent) teachers only when “substantiated and for just cause.” Live Oak requires dismissal of teachers with permanent status only “for cause,” which includes unsatisfactory performance, neglect of duty, inefficiency, discourteous treatment, and unprofessional conduct. Choice 2000’s Agreement, on the other hand, authorizes discipline only for “just cause,” but does not specifically require “just cause” for dismissal.

Darnall, which does not have a “just cause” standard but has a complicated dismissal procedure (allowing dismissal after 60 days on an Improvement Plan, but requiring that the 60 days start over for any “new” performance issue), did not dismiss at least one teacher because the School was concerned that the teacher might file

a grievance. While this restraint is one reason unions negotiate such provisions, charter schools encountering union activity should understand that provisions that might appear to provide significant administrator discretion take on added strength when backed by the presence of a union with the ability to file a grievance.

Additionally, while a “just cause” standard is a high priority for unions seeking job protection for teachers, this protection has led at least one school, Live Oak, to dismiss a teacher before the fourth year (when “permanent” status is reached). Although the school would have preferred to continue to develop the teacher, it was concerned about the cost of having to defend a dismissal after the teacher became “permanent.” Thus, schools and teachers given the opportunity to develop their own dismissal standards should be aware that a “just cause” standard, supported by the right to grieve a dismissal, might actually hasten the dismissal of some teachers before they reach their potential. Schools seeking to take a case-by-case approach to teacher development and retention should be prepared to take a strong position regarding any “cause” standard. These schools might need to be prepared to compromise in other areas during the bargaining process in order to reserve discretion for dismissal decisions, and should consider other forms of protection that strike a more comprehensive balance between teachers’ and administrators’ needs.

Schools that do negotiate a “just cause” standard should also consider specifically defining the standard with concrete, but non-exclusive, examples. Green Dots agreement did not include any definition or examples, creating ambiguity that can

chill administrative decision-making (an example of the “psychological” contract described in Chapter 2), while other schools, including Live Oak and Ocean, provided administrators with a greater level of certainty by listing examples or categories of conduct or deficiency constituting “just cause.” LA Leadership Academy’s experience provides another note of caution. The school agreed to incorporate a “just cause” standard, while obtaining verbal agreement from the Union that certain conduct, such as inappropriate sarcasm or other abusive behavior, would constitute “just cause.” However, because this understanding was not incorporated in the Agreement, the school may at some point be challenged by teachers who do not recognize or respect the original understanding. As explained above, a consistent theme that emerged in the study is the degree to which amicable adjustment of disagreements depends on productive interpersonal relationships. While administrators will want to continually work to foster such relationships, given the possibility for turnover in administrative and union personnel, it would be safer to remove ambiguity where possible.

Next, despite Green Dot’s strict dismissal standard, the CMO’s administrator reported that terminations based on performance issues usually are not grieved, which was attributed to the successful training of administrators to follow the Agreement’s evaluation and dismissal procedures. Charters should learn from this experience that administrators in unionized charters with a “cause” standard must take the same care in compliance and documentation related to dismissal decisions as conventional public schools.

Finally, California law establishes a complicated notice and hearing procedure for dismissal, and conventional public schools are specifically prohibited from negotiating regarding this procedure. Charter schools, instead, are free to negotiate the terms and procedures for dismissal in lieu of following the Education Code. They are not required to negotiate any particular provisions or process. Accordingly, some charters have specifically removed dismissal from the scope of grievance and arbitration provisions in their Agreement. Camino Nuevo allows grievance of any termination of an individual contract, but not a decision not to renew a contract or a reduction in force. Green Dot and Choice 2000 authorize grievance and arbitration for any alleged violation of the agreement, including the dismissal provisions, while other agreements were silent, which generally has the effect of allowing the general grievance procedure to be used. Each of these schools made important decisions in negotiating the dismissal provisions of their first agreement. Given the scarcity of unionized charters, most did not have models of contractual provisions to consider, and could not review other schools' experience in applying the variety of possible contractual terms. As examples continue to multiply, schools should consider those examples in determining not only the strength of the standard required for dismissal, but also whether there is a more efficient method of allowing teachers to challenge decisions than the full grievance and arbitration process.

Overall, these schools' experiences suggest that charter-based unions are more concerned about restraining administrator discretion in discipline and dismissal than in other areas of personnel policy, in contrast with the charter schools' fairly consistent departure from their districts' assignment, transfer and evaluation provisions. This



contrast suggests that charter schools and unions are making an interesting trade-off when freed from established bargaining agreements in conventional public schools: unions achieve one of their key traditional objectives by protecting teachers from potentially arbitrary discipline or job loss (a core property right protected by law in standard public schools), while administrators obtain more leeway in areas of personnel policy that more directly relate to day-to-day student performance, such as assigning and transferring teachers to those classrooms in which they are best able to improve student performance, and using the evaluation process to obtain a thorough assessment of teachers' effectiveness and to guide the teacher's effort to improve. An interesting question for further research is whether the increased administrator discretion for placement and evaluation in unionized charters has decreased the need for discipline and dismissal.

*Alternative compensation / "merit pay"*

Given the significant recent focus on merit pay in conventional school districts, this study found surprisingly little activity among unionized charter schools. Although several schools in the study had begun to analyze and discuss alternative compensation arrangements, none had actually negotiated any element of a true "merit pay" system. The interviews with charter school administrators revealed that several schools, while interested in some of the potential advantages of merit pay, had not yet determined how it would be integrated into their operational model and educational

philosophy, and no school had yet obtained its union's approval for any form of merit pay.

Green Dot expressed interest in exploring the possibility of merit pay, partly in order to retain teachers who have left the teaching profession for jobs outside the education sector, and discussed conducting a survey to gauge teacher interest. The school favors providing merit pay on an individual basis, based on student outcomes, but not on test scores alone. LA Leadership Academy has considered merit pay, but feels that it is too small to introduce it successfully, and was concerned that basing salaries on test scores or other measures could create stratification and resentment. Teachers and administrators at Darnall have discussed merit pay, but administrators feel that any "merit pay" component would need to be based on student growth, rather than on a "snap-shot" assessment of student performance, and individual performance would only be one component. The School would likely develop its own internal performance measures in cooperation with its committees, all of which include teachers. Live Oak, a Waldorf school, has considered merit pay, but has not yet seriously addressed it. Although Waldorf schools are skeptical of testing and grading, Live Oak's administration believes that the school should be able to evaluate itself using quantitative measures, which may eventually lead to consideration of merit pay.

These widely varying perspectives on merit pay demonstrate that charter schools are far from uniform in their approach to compensation issues, and suggest that further developments will provide interesting ground for ongoing research. The study

also points to challenges and opportunities for unionized charters considering merit pay. It will be interesting to determine through further research whether administrators who negotiate a traditional compensation system in their first bargaining agreement, and then formulate an approach to merit pay that suits their school, will actually be able to obtain union cooperation to effectuate such a change through subsequent negotiations.

### *Recommendations for Further Research*

Finally, the study suggests avenues for future research. First, a primary limitation of the study is its size. Although there are relatively few unionized charter schools in California, a number were not included in this study, and analysis of those schools' agreements would help provide a more complete picture of the charter-union landscape. Additionally, the schools included in the study were those whose administrators chose to participate, among the total population of unionized charter schools in the state. Accordingly, there was no attempt to focus on different sizes or types of schools. The fact that the study included one large CMO (Green Dot), several smaller or "mom and pop" charters, and one for-profit Educational Management Organization was somewhat fortuitous. As there are a limited number of such schools in California in which unions have been recognized, it could be useful to compare comparable unionized charter schools outside of California.

A final limitation of the study is that it included only interviews with school administrators, excluding teachers and union officials. Interviewing union

officials would provide a more balanced and complete analysis of the topics addressed by the study. However, this approach provided insight regarding the effect of bargaining agreements and union activity on the decision-making process of administrators, which was a primary focus of the study.

## Conclusion

This study demonstrates that the charter school movement and teachers' unions, two significant forces in education policy and practice, will continue to interact not only in the policy-making arena, but also "in the trenches" of charter schools and charter management organizations across California. Charter schools, especially those with multiple sites, will continue to be targets for unionization, and should study carefully the experience of the small number of unionized charters now in operation. The outcome of this interaction, in charter schools of varying sizes and educational missions, will be shaped by the philosophical approach and institutional needs of the two forces, and by the personalities and relationships of individual charter leaders, union leaders and teachers. The results of this interaction could have a significant effect on the direction of the larger charter school movement, by demonstrating that charters and unions can work cooperatively to improve school performance, or by showing that the flexibility sought by charter schools is fundamentally incompatible with the teacher-protection mission of teachers' unions.

## BIBLIOGRAPHY

- A broader, bolder approach to education.* (2008). Retrieved January 12, 2009 from <http://www.boldapproach.org/>
- Atkinson, Andelson, Loya, Ruud and Romo. FRISK™ Leadership Training Series: Raising the Bar on Employee Accountability. Retrieved April 5, 2010 from <http://www.aalrr.com/files/Publication/c9bbcea8-0e41-41ed-b884-90e0689b1d3c/Presentation/PublicationAttachment/3b662f89-405f-4a4a-b7a0-163dd11154f6/FRISK%20Pamphlet.pdf>.
- Ballou, D. & Podgursky, M. (1993). Teachers' attitudes toward merit pay: Examining conventional wisdom. *Industrial Labor Relations Review* 47(1): 50-61.
- Ballou, D. (1999). *The New York City teachers' union contract: Shackling principals' leadership*. Manhattan Institute, Civic Report, No. 6, June 1999.
- Ballou, D. (2000). *Teacher contracts in Massachusetts*. Boston, MA: Pioneer Institute.
- Ballou, D., Sanders, W. & Wright, P. (2004). Controlling for student background in value-added assessments of teachers. *Journal of Educational and Behavioral Statistics* 29(1): 37-65.
- Brandt, C., Mathers, C., Oliva, M., Brown-Sims, M., & Hess, J. (2007). *Examining district guidance to schools on teacher evaluation policies in the Midwest Region* (Issues and Answers Report, REL 2007-No. 030. Wash., D.C.: U.S. Dept. of Education, Institute of Educational Sciences, National Center for Education Evaluation and Regional Assistance, Regional Educational Laboratory Midwest. Retrieved January 12, 2009 from <http://ies.ed.gov/ncee/edlabs>.
- California Commission on Teacher Credentialing. (1997) California Department of Education: "California Standards of Teaching Profession. Retrieved April 5, 2010 from <http://www.ctc.ca.gov/reports/cstpreport.pdf>
- Clark, R. & Estes, F. (2002). *Turning Research into Results*. Atlanta, GA: CEP Press.
- Chubb, J. & Moe, T. *Politics, Markets and America's Schools*. Washington, D.C.: Brookings Institution.

- Dawson, Thomas C. & Billingsley, K. Lloyd (2000). *Unsatisfactory Performance: How California's K-12 Education System Protects Mediocrity and How Teacher Quality Can Be Improved*. San Francisco, CA: Pacific Research Institute for Public Policy.
- DeArmond, M. and Goldhaber, D. (2008). *A Leap of Faith: Redesigning Teacher Compensation*. Center on Reinventing Public Education, University of Washington.
- Education Equality Project (2008). *A Statement of Principles*. Retrieved January 12, 2009 from <http://www.educationequalityproject.org/>
- Education Partnership (2005). *Teacher Contracts: Restoring the Balance*. Providence, R.I. Retrieved January 12, 2009 from <http://www.nctq.org/nctq/research/1111591589930.pdf>
- Farkas, S., Johnson, J., & Foleno, T. (2000). *A sense of calling: who teaches and why*. New York: Public Agenda.
- Farkas, S., Johnson, J., & Duffett, A. (2003). *Stand by me: What teachers really think about unions, merit pay, and other professional matters*. New York: Public Agenda.
- Gill, B., Timpane, P., Ross, K., Brewer, D., & Booker, K. (2007). *Rhetoric v. Reality: What we know and what we need to know about vouchers and charter schools*. Santa Monica, CA: RAND Corporation.
- Goldhaber, D., DeArmond, M., Choi, H. & Player, D. (2005). Why do so few public school districts use merit pay? *Journal of Education and Finance*. 33(3): 262-289.
- Goldhaber, D. (2006). Are Teachers Unions Good for Students? In Hannaway, J. & Rotherham, A. (Eds.), *Collective bargaining in education: Negotiating change in today's schools*. Cambridge, Mass.: Harvard Education Press.
- Goldhaber, D., DeArmond, M., & DeBurgomaster, S. (2007). *Teacher attitudes about compensation reform: Implications for reform implementation. (Working Paper 20)*. Seattle, WA: Center on Reinventing Public Education, University of Washington. Retrieved December 7, 2007, from [http://www.schoolfinanceredesign.org/pub/pdf/wp20\\_goldhaber.pdf](http://www.schoolfinanceredesign.org/pub/pdf/wp20_goldhaber.pdf)

- Gyurko, J. (2008). *The grinding battle with circumstance: Charter schools and the potential of school-based bargaining*. New York: Teachers College, Columbia University.
- Hannaway, J. & Rotherham, A. (2008). *Collective bargaining in education and pay for performance*. Vanderbilt, TN: National Center on Performance Incentives, Vanderbilt University. Retrieved January 12, 2009 from [http://www.performanceincentives.org/data/files/directory/ConferencePapersNews/Hannaway\\_et\\_al\\_2008.pdf](http://www.performanceincentives.org/data/files/directory/ConferencePapersNews/Hannaway_et_al_2008.pdf).
- Hanushek, E. (1992). The trade-off between child quantity and quality. *Journal of Political Economy* 100(1):84-117.
- Hanushek, E. (2004). *Are better teachers more likely to exit large urban districts?* Working paper, Stanford University.
- Helland, K. & White, C. (2000). *Collective bargaining and the public schools: turning the focus to students*. Olympia, WA: Evergreen Freedom Foundation.
- Hess, F. & Kelly, A. (2006). *Scapegoat, albatross or what?* In Hannaway, J. & Rotherham, A. (Eds.), *Collective bargaining in education: Negotiating change in today's schools*. Cambridge, Mass.: Harvard Education Press.
- Hess, F. (2006). *A better bargain: overhauling teacher collective bargaining for the 21<sup>st</sup> century*. Cambridge, MA: Harvard University Press.
- Hess, F. & Loup, C. (2007). *The leadership limbo: teacher labor agreements in America's fifty largest school districts*. Washington, D.C.: Fordham Foundation.
- Hill, P. (2006). The costs of collective bargaining agreements and related district policies. In Hannaway, J. & Rotherham, A. (Eds.), *Collective bargaining in education: Negotiating change in today's schools*. Cambridge, Mass.: Harvard Education Press.
- Hill, P., Rainey, L. & Rotherham, A. *The future of charter schools and teacher unions*. Symposium, Oct. 2006. Retrieved January 21, 2009 from [http://www.ncsrp.org/downloads/charter\\_unions.pdf](http://www.ncsrp.org/downloads/charter_unions.pdf)
- Hoxby, C. (1996). How teachers unions affect education production. *Quarterly Journal of Economics* 111 (1996), 671-718.

- Jackson Lewis, LLP (2005). *Leveling the playing field: what New York charter-school leaders need to know about union organizing*. New York: Atlantic Legal Foundation.
- Johnson, S. The effects of collective bargaining on teacher quality. In Hannaway, J. & Rotherham, A. (Eds.), *Collective bargaining in education: Negotiating change in today's schools*. Cambridge, Mass.: Harvard Education Press.
- Johnson, S. & Kardos, M. (2000). Reform bargaining and school improvement. In Loveless, Tom, ed., *conflicting missions: teachers unions and educational reform*. Washington, D.C.: Brookings Institution.
- Kahlenberg, R. (2006). The history of collective bargaining among teachers. In Hannaway, J. & Rotherham, A. (Eds.), *Collective bargaining in education: Negotiating change in today's schools*. Cambridge, Mass.: Harvard Education Press.
- Kahlenberg, R. (2007) *Tough liberal: Albert Shanker and the battles over schools, unions, race and democracy*. New York: Colombia University Press.
- Kane, T.J., Rockoff, J.E. & Staiger, D. (2006). *What does teacher certification tell us about teacher effectiveness? Evidence from New York City*. Working Paper. Retrieved January 25, 2009 from <http://gseweb.harvard.edu/news/features/kane/nycfellowsmarch2006.pdf>
- Kemerer, F. Sansom, P. & Kemerer, J. (2005). *California School Law*. Stanford, CA: Stanford University Press.
- Kerchner, C., Koppich, J. & Weeres, J. (1997). *United Mind Workers: Unions and teaching in the knowledge society*. New York: Jossey-Bass.
- Kerchner, C. & Koppich, J. (2007). Negotiating what matters most: collective bargaining and student achievement. *American Journal of Education*. May 2007, 349-365.
- Koppich, J. (2007). *Resource allocation in traditional and reform-oriented collective bargaining agreements*. Center on Reinventing Public Education, School Finance Redesign Project, Working Paper 18. Retrieved January 12, 2009 from [http://www.crpe.org/cs/crpe/download/csr\\_files/wp\\_sfrp18\\_koppich\\_may07.pdf](http://www.crpe.org/cs/crpe/download/csr_files/wp_sfrp18_koppich_may07.pdf)



- Koski, W. et al. (2007). *Curbing or facilitating inequality? Law, collective bargaining, and teacher assignment among schools in California*. Institute for Research on Education Policy and Practice, Getting Down to Facts.
- Kowal, Hassel and Hassel (2007). *Teacher Compensation in Charter and Private Schools*, Center for American Progress
- Levin, Jessica, Jennifer Mulhern, and Joan Schunck. *Unintended Consequences: The Case for reforming the Staffing Rules in Urban Teachers Union Contracts*. The New Teacher Project. <http://www.tntp.org/files/UnintendedConsequences.pdf>
- Lieberman, M. (2000). *The Teacher Unions: How They Sabotage Educational Reform and Why* New York: Encounter Books.
- Malin, Martin H. and Kerchner, Charles T. (2007). Charter Schools and Collective Bargaining: Compatible Marriage or Illegitimate Relationship? *Harvard Journal of Law and Public Policy* 30, No. 3, Summer 2007, 886-937.
- Munk, La Rae G. (1998) *Collective Bargaining: Bringing Education to the Table: Analysis of 583 Michigan School Labor Contracts and Recommended Improvements to Help Teachers, Schools and Students*. Mackinack Center for Public Policy.
- Moe, T. (2001). *Schools, Vouchers and the American Public*. Washington, D.C.: Brookings Institution.
- Moe, Terry, *Union Power and the Education of Children*. In Hannaway, J. & Rotherham, A. (Eds.), *Collective bargaining in education: Negotiating change in today's schools*. Cambridge, Mass.: Harvard Education Press.
- New Teacher Project (2007). *Teacher Hiring, Assignment and Transfer in Chicago Public Schools*. Retrieved January 12, 2009 from <http://www.tntp.org/files/TNTPAnalysis-Chicago.pdf>
- Odden, A. (2003). An Early Assessment of Comprehensive Teacher Compensation Change Plans. In David Monk and Margaret Plecki (Eds), *School Finance and Teacher Quality: Exploring the Connections*. 2003 Annual Yearbook of the American Education Finance Association (pp. 209-228). Philadelphia: Eye on Education.

- Olson, Lynn (2008). *Human Resources a Weak Spot*. Quality Counts, Education Week 27(19):14. Retrieved January 12, 2009 from <http://www.edweek.org/login.html?source=http://www.edweek.org/ew/articles/2008/01/10/18overview.h27.html&destination=http://www.edweek.org/ew/articles/2008/01/10/18overview.h27.html&levelId=2100>
- Podgursky, M. (2006). *Teams versus bureaucracies: personnel policy, wage-setting and teacher quality in traditional public, charter and private schools*. Prepared for the National Conference on Charter School Research, Vanderbilt University, September 28, 2006.
- Podgursky, M. & Ballou, D. (2001). *Personnel policy in charter schools*. Washington, D.C.: Fordham Institution.
- Public Agenda (2003). *Stand by me: What teachers really think about unions, merit pay and other professional matters*. New York: Public Agenda. Retrieved January 12, 2009 from [http://www.publicagenda.org/files/pdf/stand\\_by\\_me.pdf](http://www.publicagenda.org/files/pdf/stand_by_me.pdf)
- Public Agenda (2004). *An assessment of survey data on attitudes about teaching, including the views of parents, administrators, teachers, and the general public*. New York: Public Agenda. Retrieved December 7, 2007, from [http://www.publicagenda.com/research/pdfs/attitudes\\_about\\_teaching.pdf](http://www.publicagenda.com/research/pdfs/attitudes_about_teaching.pdf)
- Rand Corporation (2003), *Charter School Operations and Performance: Evidence from California* Santa Monica, CA: RAND Corp.
- Riley, P., Fusano, R., Munk, L & Peterson, R. (2002). *Contract for Failure: The Impact of Teacher Union Contracts on the Quality of California Schools*. San Francisco: Pacific Research Institute.
- Rivkin, S., Hanushek, E. & Kain, J. (2005). Teachers, Schools and Academic Achievement. *Econometrica*. 73(2): 417-458.
- Rockoff, J. (2004). The impact of individual teachers on student achievement; evidence from panel data. *American Economic Review*. 94(2):247-252.
- Sacramento Bee (March 10, 2010). Teachers' union leads list of biggest political spenders. Retrieved August 30, 2010, from <http://blogs.sacbee.com/capitolalert/latest/2010/03/teachers-union-2.html>
- Stuart, A. (1998). *Beyond the charter school reform : a study of ten California school districts*. Darby, PA: Diane Publishing Co.

Sanders, W. and Rivers, J. (1996). *Cumulative and residual effects of teachers on future academic achievement*. Nashville, Tn: University of Tennessee Value-Added Research and Assessment Center.

Taylor, W. & Rosario, C. (2007). *Fresh ideas in collective bargaining: how new agreements help kids*. Washington, D.C.: Citizens Commission on Civil Rights.

United Federation of Teachers (2008). UFT: DOE “misguided” to seek to use test scores to judge teachers. Press Release. Retrieved January 12, 2009 from [http://www.uft.org/news/issues/press/testscores\\_guide\\_teachers/](http://www.uft.org/news/issues/press/testscores_guide_teachers/)

## Appendix:

### Charter School and District Bargaining Agreement Provisions

This Appendix analyzes the provisions of the charter schools in this study in each policy area addressed by the Study, comparing them to the school districts whose bargaining agreements would apply to the schools if they were conventional district schools.

#### Assignment and Transfer

##### *Assignment: Procedure and Criteria*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. LAUSD's assignment provisions are complex, and highly protective of seniority. Although the CBA's management rights clause gives the District authority to assign teachers to any location, facility, classroom, duties, academic subject matter, grade level, or department, the District's authority is constrained by seniority-based preference rules. First, permanent teachers receive preference over non-permanent teachers. Permanent (tenured) teachers are allowed to apply for positions before non-permanent teachers, and non-permanent teachers are only given assignments after permanent teachers have been assigned. Moreover, when assigning non-permanent teachers, each school's administrator must ensure that the proportion of non-permanent

teachers in each grade and track level is approximately equal to the percentage of non-permanent teachers in the school as a whole.

Second, permanent teachers generally must be assigned on the basis of District seniority. The District may only depart from the seniority rule when “the site administrator reasonably determines that any specific assignment is not in the best interests of the educational program.” After initial assignments are made, subsequent assignment decisions must take into account seniority *and* the school’s educational needs. Thus, seniority is not automatically the determinative criterion.

Camino Nuevo. Camino Nuevo’s assignment provisions give complete discretion to school leaders, who are able to make decisions based solely on their assessment of the educational needs of the school.

Green Dot. Under the Green Dot Agreement, after the school provides a notice of intent to return, teachers who timely return the form (by February 14) may indicate their preferred assignment, which is assumed to be their current assignment unless the teacher indicates otherwise. Provided the teacher has satisfactory evaluations, the preferred assignment will be given. When teachers express competing preferences, the school and teacher are to attempt to reach mutual agreement. If agreement cannot be reached, the Board is authorized to make the final decision based on: (1) teachers’ legal requirements and qualifications; (2) whether the teachers have satisfactory evaluations; and (3) the teachers’ expertise and length of service. If no there are no “substantial distinguishing differences,” the teacher’s length of service at the school site is the

“determining factor.” When teachers request reassignment outside their existing department, the opening is posted and preference is given to incumbent members with satisfactory performance and credentialing.

LA Leadership. The LA Leadership Academy Agreement does not include any specific provisions governing assignment or transfer provisions. The Agreement’s management rights clause provides that the Academy retains all rights under Charter School Law and the regulations for 501(c)(3) corporations. The clause requires the school to include input from teachers in a collaborative process. It reserves to the school the right to “determine staffing patterns and designs,” and the “number of personnel and kinds of personnel required,” and provides that the school’s authority is limited only by the express terms of the Agreement.

Ocean. Ocean Charter School’s Agreement requires teachers to submit an “Intent to Return” form, and allows them to include a statement of preferred assignment, but the Agreement does not mandate any criteria that must be included in making assignment decisions.

*Perris Union High School District, Riverside, CA: Choice 2000 Online School*

Perris. The Management Rights clause in the Perris Union High School District’s Agreement reserves to the District authority over “assigning [and] transferring.” Assignment is the initial assignment into an instructional department or grade level at the same school site or facility. The District makes preliminary

assignments as soon as practicable, in no event later than last day of school. However, making initial assignments does not limit the District's right to make changes in assignments or programs provided the changes are consistent with the Agreement. Any such change can only be made with two weeks' notice to the teacher.

Choice 2000. Choice 2000's "Charter Rights" provision also reserves to the School the authority for "assigning [and] transferring." Choice 2000's assignment provision is procedurally similar to PUSD's; administrators are to make preliminary assignments as soon as practicable, but no later than the last day of school, while the making of preliminary assignment does not limit the ability to later change assignments. Like the Perris Agreement, a change in assignment can only be made after giving the teacher two weeks' notice.

Perris's Agreement requires that changes in assignment cannot be made for "arbitrary or capricious" reasons. This provision could apply either to initial assignment decisions that are changed before a teacher takes the assignment, or to "reassignment" decisions. Upon request, the District must provide written reasons for the change. Choice 2000's Agreement is similar to Perris' in this regard, requiring that reassignment decisions cannot be made in an "arbitrary, capricious or punitive" manner. Like the Perris Agreement, the Choice 2000 Agreement requires that the reason for any reassignment must be provided upon request, but it does not specify that the reasons be

provided in writing, which could create ambiguity if those reasons are challenged through a grievance.

*San Diego Unified School District, San Diego, CA: Darnall Charter School*

San Diego. The San Diego Agreement’s “Management Rights” clause provides that all rights not enumerated are reserved to the District, and may not be the subject of meeting and negotiating or grievance. The Board has rights to determine staffing patterns and structure.

Darnall. Under the Darnall Agreement, at the end of each year the next year’s classes are formed from “power cards” completed by teachers re students. The Agreement does not specify any criteria that must be used for assignment decisions.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. Ravenswood’s “Management Rights” clause reserves to the District the right to “hire, classify, assign, transfer, evaluate, promote, reprimand, and terminate employees.” Procedurally, the Agreement requires the Administrator to send “Intent to return” forms which teachers must return by the end of January, and to make preliminary assignments by February 6 (subject to change) for all teachers who returned forms. The School must then notify teachers of all known openings for the following school year. Prior to the first work day in April, only current teachers may be selected to fill preliminary openings. Thereafter, positions may be opened to external applicants,



who will be considered on the same basis as outside applicants. All postings must be sent to the Union president.

To be considered for an opening or vacancy, a teacher must meet the minimum requirements. If two or more teachers apply, the decision must be based on: (1) the certification, major and minor subject areas of the applicants; (2) the recent experience of the applicants; and (3) the program needs of the school. After application of above factors, if two or more teachers are equal, seniority must be the “deciding factor” for selection.

Edison. Under the Edison Agreement, an “Intent to return” form must be sent by February 15 to determine openings, vacancies, and assignment preferences. Teachers must return the forms by March 1, indicating their preliminary assignment, reassignment, and transfer requests. Decisions are to be made by the Principal, in consultation with the school leadership team, by March 15. Returning teachers must be given a contract offer by May 1, including a preliminary assignment, but the assignment may change. Teachers must return the contract by May 15. Unlike the Ravenswood Agreement, Edison’s Agreement does not restrict the School from seeking outside applicants at any point during the assignment process.

Edison’s Agreement requires the School to consider the following factors in making assignment decisions: (1) the certification, major and minor subject areas of the applicants; (2) the prior experience of the applicants; (3) the teachers’ performance and qualifications; and (4) the needs of the School’s educational program and students,

including the potential for disruption. If two or more teachers are equal in the application of these factors, seniority becomes a “major factor” in the decision.

Edison’s assignment criteria are similar to Ravenswood’s, with some significant differences. The second criterion refers to teachers’ “prior” experience, rather than only their “recent” experience. This change would allow a more thorough consideration of the teacher’s career, but might introduce consideration of experience with less indication of current skill levels. The third criterion is not present in the Ravenswood Agreement. Explicit consideration of the teacher’s performance and qualifications is the type of change that charter advocates see as integral to the purpose of charters. Finally, if teachers are equal in the application of the enumerated factors, the Edison Agreement requires only that seniority become a “major factor,” while Ravenswood Agreement requires that it become the “determinative” factor. The fourth criterion also differs from Ravenswood’s, in explicitly taking into account the possibility of disruption caused by the decision. The addition of performance and qualification is especially significant in light of the requirement to consider seniority a major factor if the applicants are equivalent with respect to the enumerated categories. The addition of this criterion formally allows the administrator to avoid any consideration of seniority when one teacher has demonstrated superior performance, while an administrator applying the Ravenswood Agreement would be largely precluded from making performance a significant element of his decision.

*Grossmont Union High School District: Helix Charter School*

Grossmont. The Grossmont Agreement's Management Rights clause reserves to the District the power to "hire, classify, assign and terminate." All teachers must be given written notice of the next year's tentative assignment prior to the end of the school year. Unassigned teachers are must in assignments meeting their qualifications before any vacancy is advertised.

Helix. The Helix Agreement, like the Grossmont Agreement, reserves to the District the right to "hire, classify, assign, and terminate employees," and contains no other provision governing teacher assignment. Both Agreements provide broad latitude to administrators, although the Grossmont Agreement gives significant protection to current teachers provided they are unassigned.

The Grossmont Agreement also addresses reassignment necessitated by overstaffing. Administrators are required to inform all teachers in an overstaffed department of projected District-wide vacancies, seek volunteers, and inform the Human Resources Department of the names of any interested teachers. Placement must then follow the Voluntary Transfer procedures outlined below. If no teacher volunteers, the administrator must attempt to reassign the teacher to another department or discipline for which the teacher is qualified. Such reassignments must also follow the Voluntary Transfer provisions. If a department remains overstaffed, the administrator must declare the teacher unassigned. The Administrator must then apply the Agreement's general

Transfer guidelines, considering whether the teacher has any special assignment that cannot be adequately performed by another teacher, and the district seniority of the teacher. If a position for which the teacher is qualified becomes available at the school within three years of the original transfer, the teacher has the option to return to the school.

Helix. Under the Helix Agreement, unassigned teachers --- those in an overstaffed school due to a decline in enrollment, programs or services --- must be placed in an assignment for which they are qualified before any vacancies are advertised. The Administrator in any overstaffed school must notify all teachers of any District vacancies and seek volunteers, following the Agreement's voluntary transfer rules. If there are no volunteers, the Administrator must attempt to reassign the teachers at his school. If the department still overstaffed, the teacher must be declared unassigned. As under the Grossmont Agreement, the Administrator must consider the Agreement's general guidelines, whether the teacher has any special assignments that others cannot fulfill, and the teacher's seniority. Like the Grossmont Agreement, the Helix Agreement gives an unassigned teacher the right to return to the school declaring him unassigned, if a position for which he is qualified becomes available within three years of his transfer from that school.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. Under the Petaluma agreement, school staff have the right to develop the criteria for choosing new staff members, and to interview with those criteria in mind. The Agreement provides every teacher the right to receive an interview, but the school staff have the right to recommend selection according to the criteria they develop.

Live Oak. Under the Live Oak Agreement, upon initial employment the Administrator is authorized to make initial assignments of classroom and grade level. The Administrator must notify teachers of their tentative grade level assignments by June 1. In the event of a vacancy, the Administrator must communicate the vacancy to existing teachers, and solicit requests from teachers prior to advertising the position.

*Assignment: Ability to Challenge or Grieve*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. In LAUSD, if a school fails to give priority to the most senior teacher in assigning secondary teachers, that teacher may grieve the decision under the CBAs standard grievance and arbitration provisions, where the decision can be reversed if it is found to be “arbitrary or capricious.” An elementary teacher may invoke an informal alternative grievance procedure involving an informal meeting between the grievant and administrator, a second meeting with the Chapter Chair, and submission to a

Joint Panel composed of a union and district representative, who alternate acting as tie-breaker in the event of deadlock. The Panel must determine whether it was proper to depart from seniority in making the assignment because “the site administrator reasonably determines that any specific assignment is not in the best interests of the educational program.”

Camino Nuevo. The Camino Nuevo Agreement specifically precludes teachers from challenging a school’s assignment decision through the Agreement’s grievance procedure.

Green Dot. At Green Dot, if a request for reassignment outside the teacher’s current department is denied, the teacher can demand written reasons for the denial. Additionally, any decision made pursuant to any provision of the Agreement may be grieved.

LA Leadership / Ocean. LA Leadership’s and Ocean’s Agreements do not specifically address grieving an assignment decision; accordingly, the Agreements’ general grievance provisions may be utilized.

*Perris Union High School District, Riverside, CA: Choice 2000 Online School*

Neither the Perris nor the Choice 2000 Agreement provides any specific mechanism for challenging an assignment decision. Accordingly, both Agreements’ general grievance provisions are available.

*San Diego Unified School District, San Diego, CA: Darnall Charter  
School*

Neither the San Diego or Darnall Agreement provides any mechanism for challenging an assignment decision. However, Darnall's grievance section authorizes a complaint for violation, misinterpretation or misapplication of any provision of the Agreement. Darnall's Agreement also allows a grievance for any violation of law or of the Charter.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. The Ravenswood Agreement requires that, upon request by a teacher not selected for a vacancy, the District must provide written reasons for the teacher's non-selection. The Agreement provides that the exercise of management rights is not be subject to the Agreement's grievance procedures, except where the exercise of those rights conflicts with the Agreement. In practice, any assignment decision could be challenged as failing to properly apply the procedures or criteria governing assignments.

Edison. Under the Edison Agreement, any applying, qualified member must be given an interview for an open position. If the request is denied, the School must provide a written explanation upon request by the teacher.

*Grossmont Union High School District: Helix Charter School*

Grossmont, Helix. Neither the Grossmont nor Helix Agreement specifically authorizes any method of challenging an assignment decision. Accordingly, the Agreements' general grievance provisions may be used. However, as the Helix Agreement provides administrators with complete discretion in such decisions, it would be difficult to base any grievance on the violation of any specific provision of the Agreement.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma, Live Oak. Neither the Petaluma nor Live Oak Agreement specifically authorizes any method of challenging an assignment decision. Accordingly, the Agreements' general grievance provisions may be used.

*Transfer Provisions*

Comparison of transfer provisions between LAUSD's bargaining agreement (and the other districts) and the charter schools addressed in the study is somewhat problematic. While the term "transfer" in LAUSD's Agreement refers to the movement of teachers between schools, most of the schools are single-campus entities. Some are part of a Charter Management Organization (including Camino Nuevo and Green Dot) or an Education Management Organization (such as Edison Schools), but



those organizations are dwarfed in size by LAUSD, and even the larger organizations have lesser need or opportunity to transfer teachers from one campus to another.

Several of the schools' definitions also demonstrate the difficulty of drawing meaningful comparisons in this area. Under the Perris agreement, "Reassignment" is the movement of a teacher from (a) one subject area to another, (b) one grade level to another, (c) one track to another at same facility. Reassignment can be voluntary or involuntary. The Agreement also contains provisions governing voluntary and involuntary transfers, which refers to movement between schools. The Choice 2000 Agreement does not distinguish between "reassignment" and "transfer." The San Diego Agreement defines a transfer as a change from one school site to another, or to a program with a different cost center. Transfers may be voluntary or involuntary. Under the Ravenswood Agreement, an "assignment change" is defined as movement from one grade level to another within the same school, while a "transfer" is defined as a change in work location from one school to another within the district. As both terms refer to a change in position for existing teachers, and both types of change present similar questions regarding procedural requirements and criteria for consideration, both can serve as comparators for Edison's provisions. However, as all transfer or "reassignment" decisions, whether between schools, classrooms or subject matter, can involve balancing the needs of the institution and the rights and interests of teachers, it is interesting to compare the degree of discretion given to administrators for the decisions made possible by the structure of each school.

*Voluntary Transfer: Procedure and Criteria*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. In LAUSD, teachers who receive a Notice of Unsatisfactory Service or “Below Standard” evaluation are ineligible for voluntary bargaining unit member-initiated transfers. Additionally, while any other credentialed teacher may apply to any school in the district for a voluntary transfer, a transfer cannot adversely affect teacher integration, Rodriguez compliance, the Bilingual Master Plan of the receiving or sending school, or the instructional program of the sending school. The District is also precluded by California law from giving priority to any teacher applying after April 15 if other qualified teachers have applied.

Seniority plays a role in voluntary “continuous service” transfers. A teacher who has served at a Title I or Urban Impact I school for eight consecutive years, or has served for four consecutive years at a non-Title I or Urban Impact I school, but is willing to transfer to such a school, may apply for transfer. Eligibility for transfer is ranked, based on years of continuous service, and district seniority is used to break ties.

Camino Nuevo. At Camino Nuevo, as the School has complete discretion in making transfer decisions, teachers with the equivalent of “Below Standard” evaluation are not eligible for transfer. LAUSD’s agreement excludes such teachers from voluntary transfer.

Green Dot. Under the Green Dot Agreement, a teacher may request a voluntary transfer at any time. When an opening is posted, preference must be given to teachers with satisfactory performance.

Ocean. The Ocean Agreement requires teachers to submit voluntary reassignment requests by February 15, and the school must inform the teacher of its decision by May 1. The administrator has discretion in making reassignment decision; must be based on: (1) the teacher's credentials; (2) whether the teacher has a satisfactory evaluation; (3) the teacher or teachers' years of service at the school; and (4) the teacher or teachers' total years of teaching.

*Perris Union High School District, Riverside, CA: Choice 2000 Online School*

Perris. Under the Perris Agreement, after preliminary assignments are made, the District must post all vacancies to provide an opportunity for transfer applications. Requests for voluntary transfer must be considered on the basis of (1) appropriate credentials, (2) district-wide seniority with appropriate subject matter experience, and (3) recentness of a teacher's subject area preparation. If a request is denied, the District shall, upon request, provide specific written reasons for the denial. Preference (defined as "special weight," but not a guarantee) for any vacant position must be given to a qualified unit members over non-unit applicants. However, the final selection is within the discretion of District management.

Choice 2000. Under the Choice 2000 Agreement, the School has authority to change a teacher's assignment after giving the teacher two weeks' notice. The school is not required to apply any specific criteria in making such decisions, provided the decision is not made for arbitrary, capricious, or punitive reasons.

*San Diego Unified School District, San Diego, CA: Darnall Charter School*

San Diego. Under the San Diego Agreement, transfers are accomplished primarily through a "post and bid" process, which takes place once in February and again in May. The Administrator responsible for job postings must allow the union representative to review the postings prior to sending them to the Human Resources Department for editing and posting. The District then posts a list of vacancies and provides the list to the Union, after which eligible teachers have ten days to bid for a transfer to those positions.

The San Diego Agreement gives preference to "priority employees" who have no present assignment because of declining enrollment or program elimination. Such employees are guaranteed an interview for any open position for which they are qualified, and must be selected for a vacancy, regardless of seniority, unless there is an overriding issue of qualification based on the criteria required for the posted position. Otherwise, transfers are awarded based on the criteria in the job posting. However, if the site administrator cannot make a selection within thirty days after receiving the names of

eligible bidders, the District's Human Resources Division is required to assign qualified members to positions according to seniority. The District may interview and select a teacher to fill each vacancy from the five bidding teachers with the greatest seniority, provided they meet the basic credentialing requirements. A teacher with an applicable minor may be considered for vacancies receiving less than five qualified bidders with the appropriate required major, but the District is not required to accept such an applicant. A teacher who is awarded and accepts a bid may not participate again until the following February posting period. Positions made available after May are required to be offered in seniority order to qualified unit members in priority consideration status; such teachers must accept any position for which they are qualified.

The San Diego Agreement also gives priority to existing personnel when filling postings in priority-staffing schools, which is done in February; positions not filled within the district may be filled by non-district personnel only if does not cause layoff or "excessing" of a bargaining unit teacher. Transfer decisions made after the formal bidding process in May must be based on the educational needs of the District, the teacher's request, and the qualifications of the teacher. If all other things are equal, one of five teachers with the greatest seniority who request the position and are deemed qualified by the Human Resources Department will receive the transfer, except that teacher in excess at the site must be given priority within the school.

Under the San Diego Agreement, when multiple assignment positions are reduced or consolidated, the affected teachers must request transfer to other school or multiple type assignment within the District, bid on any vacancy for which they are qualified, or be transferred under provisions governing reduction of staff. Priority is given to qualified teachers in affected multiple assignments, and teachers whose recent assignment included all or part of a multiple assignment. If no teacher has a claim to priority, the teacher with the greatest district seniority will be awarded the position. Special provisions apply to the opening of a new school, a school reorganization, or a school's change to a magnet focus, all of which are beyond the scope of this study.

Darnall. Under the Darnall Agreement, “reassignment” is movement from one program or grade level to another, which is roughly equivalent to transfer decisions under the San Diego agreement. The Agreement provides that after openings must be made available to incumbents prior to open hiring. Once openings are announced, preference must be given to incumbents with satisfactory performance and credentials. In the absence of “substantial distinguishing differences,” seniority at the school site is the determining factor.

Under the San Diego Agreement, teachers with evaluation ratings other than “effective” cannot participate in the “post and bid” procedure. There is no comparable restriction in the Darnall Agreement. In this sense, the San Diego Agreement could be seen as imposing a greater degree of restraint on administrator discretion.

However, rather than protecting less effective teachers, a criticism often expressed regarding District bargaining agreements, this provision essentially punishes them, by excluding them from a voluntary, Union-negotiated process available to other teachers.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. Under the Ravenswood Agreement, transfers may be voluntary or involuntary. Each teacher applying to transfer to an open position must be interviewed if the teacher meets the basic requirements for the position, is not a candidate for the District's Peer Assistance and Review program (addressed in the Evaluation section of this study), and agrees to the interview schedule. No teacher can be pressured, threatened, coerced or intimidated to seek transfer. The same provisions that govern assignment decisions apply to voluntary transfers. Thus, when two or more teachers are equal after the application of the enumerated factors above, seniority must be the "determinative factor."

The Principal of each school is also authorized to determine assignment changes, but he must take the following steps before making such a change: (1) discuss with the teacher the necessity for the change prior to finalizing the decision, (2) consult with other teachers who will be affected by the change, and (3) upon request from the teacher assigned contrary to the teacher's wishes, provide reasons for the change in writing. Involuntary assignment changes cannot exceed two grade levels from grade presently taught.

The Principal must consider the same criteria in making assignment changes as in making initial assignment decisions: (1) the certification, major and minor subject areas of the applicants; (2) the recent experience of the applicants; and (3) the program needs of the school. However, if two or more teachers are equal after the application of these factors, seniority will become a “major factor” for selection, but not the “determinative factor” as it is for initial assignment decisions.

Edison. Under the Edison Agreement, an assignment change is a movement from one grade level or subject to another within same school, or to a combination class. Teachers given assignment changes after the start of the start of school year must be given two days release time to prepare for the new assignment.

Under the Edison Agreement, a voluntary transfer is a request to transfer from one work site to another. Any teacher may submit a request, and must be interviewed. Teachers cannot request more than one transfer per year. Decisions must be based on the same criteria that apply to assignment decisions: (1) the certification, major and minor subject areas of the applicants; (2) the prior experience of the applicants; (3) the teachers’ performance and qualifications; and (4) the needs of the School’s educational program and students, including the potential for disruption. As with assignment decisions, if two or more teachers are equal in the application of these factors, seniority becomes a “major factor” in the decision.



*Grossmont Union High School District: Helix Charter School*

Grossmont. The Grossmont Agreement addresses both reassignment (within a school) and transfer (between schools). A teacher seeking reassignment must submit a written request to the site administrator before April 15. The school must send a list of all vacancies to the Union, and post it in a conspicuous place at each teacher location, after which the list must be updated every two weeks. Unit members must be given first consideration in filling any vacancy.

Under the Grossmont Agreement, a teacher seeking a transfer must submit a request to the Assistant Superintendent or Associate Administrator for Human Resources at any time before May 1. District officers are required to be actively involved in matching requests with school needs and promoting transfers with school principals. Specifically, district officials must: (A) guarantee that permanent teachers receive interviews for requested positions; (B) reduce the stigma of transfer by supporting teachers desirous of transferring; (C) make sure the concept of transfer is recognized as healthy and rejuvenating; (D) develop a mentor program at school sites to facilitate successful transfer; and (E) promote transfers with the understanding that transfers are based on interest of teachers and school. The Helix Agreement mirrors the Grossmont Agreement in requiring that all requests for transfer be submitted by May 1, and in requiring Administrators to take the steps outlined above (A-E) to facilitate transfers.

Transfer decisions must be based primarily on the needs and interests of the District, and cannot be made for arbitrary or capricious reasons. The following factors must be considered in any transfer decision: (A) ensuring a well-balanced staff relative to program, staff, and student needs; (B) teacher training, recent experience, and credentials; (C) implementation of the District's affirmative action objectives; (D) placement of unassigned teachers; (E) teacher preference. District seniority (F) must be used as the deciding factor when all other qualifications are equal.

Helix. Under the Helix Agreement, a written request for voluntary reassignment must be submitted by April 15; unlike the Grossmont Agreement, the Agreement does not specify the process or criteria used in responding to such requests.

The Helix Agreement's voluntary transfer provisions, like the Grossmont Agreement's, requires that the School prepare a list of vacancies, send the list to the Union, post it, and update it every two weeks. Existing teachers must be given first consideration. Transfer decisions must be based on the needs and interests of school, and cannot be for arbitrary, capricious, or vindictive reasons. The Agreement mirrors the Grossmont Agreement in requiring consideration of the following factors in any transfer decision: (A) ensuring a well-balanced staff relative to program, staff, and student needs; (B) teacher training, recent experience, and credentials; (C) implementation of the District's affirmative action objectives; (D) placement of unassigned teachers; (E) teacher

preference. District seniority (F) must be used as the deciding factor when all other qualifications are equal.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. Petaluma's Agreement indicates that transfers should be made available "to encourage renewal and growth." School staff have the right to develop criteria for choosing new staff members, and to interview with those criteria in mind. The Agreement provides every teacher the right to receive an interview, but the school staff have the right to recommend selection according to the criteria they develop. The Agreement makes clear that teachers are personnel of the District, not of a particular school. Transfer is defined as a move from one school to another, from a special education position to another, or from a regular position to a special education position. A voluntary transfer is initiated by the teacher; involuntary is initiated by district.

Transfers within the District must be consistent with equal opportunity policy. Vacancies must be identified in staffing meetings involving site administrators, which the Union President and designee must be invited to attend. Transfer decisions must be made through the following steps: (a) retirees are identified; (b) leaves are granted for the following year; (c) teachers returning from leave are identified and placed; (d) administrative transfers are made at the first staffing meeting; (e) vacancies are identified at first staff meeting; (f) a vacancy notice is developed and posted; and (g) interviews for transfer applicants and outside applicants are held.

When a teacher with continuing employment or reemployment rights is displaced, he is not required to go through more than three interviews before being placed, and the District must consult with Union representatives regarding the placement. If excess teachers are employed for a given year, classroom or other positions will be assigned, including resource teachers, team teaching positions.

The District must post all vacancies as soon as they are identified. Interested teachers must notify the District Human Resources Office and the principal using the appropriate form. Teachers applying during the spring are guaranteed an interview following the “District Hiring Protocol.” The vacancy notice must include the required skills, specialty areas, and competencies. Teachers may attach supporting documents to their application. Vacancies not filled through individually – initiated transfers are then subject to “outside” vacancy notice. Vacancies resulting from individually-initiated transfers are also subject to “outside” vacancy notice procedure. Unit members may also apply for these positions, but must compete with outside applicants. Teachers wishing to be notified of a specific vacancy must submit a written request to the District Human Resources office on the appropriate form. A request for a transfer must include information as to the school, position, and grade level desired. A transfer request will be considered for any vacancy identified during the year in which the request is filed.

Live Oak. Live Oak's Agreement provides only that reassignment is change of classroom or grade-level assignment.

*Voluntary Transfer: Ability to Challenge or Grieve*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. The LAUSD Agreement does not specifically address the proper avenue for challenging voluntary transfer decisions; accordingly, the Agreement's general grievance procedure is available. Camino Nuevo's Agreement specifically exempts all transfer decisions from the grievance process. The Green Dot Agreement includes no specific provision for challenging a voluntary transfer decision, but the agreement allows a teacher to challenge through the grievance process any decision made pursuant to any provision in the Agreement. The Ocean Agreement is silent on the ability to challenge or grieve a voluntary transfer decision; accordingly, the general grievance procedure is available.

*Perris Union High School District, Riverside, CA: Choice 2000 Online School*

The Perris Agreement and the Choice 2000 Agreement both provide that if a transfer request is denied, the District or School shall, upon request, provide specific reasons for the denial, although the Perris Agreement requires such decisions to be provided in writing. Neither Agreement specifically provides any other way to challenge

or grieve a voluntary transfer decision; accordingly, the Agreements' general grievance procedure may be utilized.

*San Diego Unified School District, San Diego, CA: Darnall Charter School*

Under the San Diego Agreement, any provision may be challenged through the Agreement's grievance procedure. Under the Darnall Agreement, if a request for reassignment is denied, a teacher may request a meeting with the Director, who must provide written reasons for the denial. Additionally, Darnall's grievance section authorizes a complaint for violation, misinterpretation or misapplication of any provision of the Agreement, or violation of law or Charter regulation.

*Ravenswood City School District: Edison McNair / Brentwood*

The Ravenswood and Edison Agreements are silent regarding the ability of teacher to grieve the denial of a voluntary transfer; accordingly, the general grievance procedures of the Agreements may be used.

*Grossmont Union High School District: Helix Charter School*

Under the Grossmont Agreement, if a voluntary transfer request is denied, upon request by the teacher the District must provide a written rationale for the rejection, and grant a meeting with the responsible administrator and department chair to discuss

the rejection. The Agreement's general grievance provision is also available. The Helix Agreement allows a teacher to demand a written rationale for the rejection, but does not require the School to arrange a meeting with the responsible administrator.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. The Petaluma Agreement requires the Union and District to notify in writing any teacher not transferred to a requested position when the position has been filled. The teacher has the right to confer with the Superintendent or designee.

*Involuntary Transfer: Procedure and Criteria*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. Under the LAUSD Agreement, teachers may be transferred involuntarily when it is in the interest of the District's educational program. The District maintains a pool of teachers available for transfer, including those necessary to comply with the Teacher Integration Program.

Detailed "Displacement" provisions apply when a transfer is made necessary by an "over-teachered" condition, caused by declining enrollment. In that event, the teacher with the least district seniority in the affected group (which is an entire elementary school, or the over-teachered program or subject for a secondary school) is displaced, unless the school administrator determines teacher has special instructional

skills or qualifications not possessed by another available teacher. In a secondary school, if the least senior teacher has at least ten years of district seniority, the teacher may change subject fields, and displace another teacher with at least five years less seniority, if the senior teacher has taught in the second subject at least six periods in the previous six semesters with satisfactory evaluations, has a subject credential or secondary credential with a major, minor or advanced degree in the subject, and passes a district examination in the second subject field if requested.

Some teachers are made exempt from displacement by their involvement in the Teacher Integration Program, which ensures that school faculties are integrated so the ratio of minority to non-minority teaching staff in each school is substantially same as the district-wide ratio. In the event that all teachers in an over-teachered school are exempt, the teacher with the least district seniority must be reassigned to a school in the same geographic area. A displaced teacher may have return rights, if the teacher is the most senior in the subject and the school determines the teacher's return is in the best interest of the school.

Camino Nuevo. The Camino Nuevo Agreement gives the School complete discretion to make transfer decisions, imposing neither procedural nor substantive restraints on administrators.

Green Dot. The Green Dot Agreement does not include procedural rules for involuntary transfers, but allows such transfers only for "just cause," and only when there is no qualified voluntary applicant.



Ocean. Under the Ocean Agreement, the school must notify a teacher that he is being considered for involuntary reassignment by April 1, and must notify the teacher of any decision by May 1. The Agreement includes a significant procedural protection against involuntary transfer: the school must use due diligence to attempt to hire a qualified teacher in order to avoid involuntary reassignment. This provision is a significant restraint on the school's discretion, while appearing to support the Union's interest in expanding employment opportunities for its members or potential members. The Agreement does not explain what constitutes "due diligence," nor the extent to which budgetary constraints would excuse the school from conducting a search for a new teacher. If the school has complied with the due diligence provision, it may reassign a teacher involuntarily only where the decision is for the "good of the institution." When selecting a teacher for involuntary reassignment, the school must consider the same factors that apply to voluntary reassignment decisions, except that priority is given to teachers with the least, rather than greatest, amount of seniority. The factors are: (1) the teachers' credentials; (2) whether the teachers have satisfactory evaluation; (3) the least years at school; and (4) teachers' total years of teaching.

*Perris Union High School District, Riverside, CA: Choice 2000 Online School*

Perris. The Perris Agreement authorizes the District to make involuntary transfers to fill vacancies. The District must first seek voluntary applicants, but it is not required to grant a request by a voluntary applicant. The District must notify the Union

in writing when considering any involuntary transfer. Upon request by the union, the District must consult with the union prior to making any transfer decision final.

Specified criteria must be followed when making any involuntary transfer decision: (1) seniority (teachers with the least seniority must be considered first); (2) the teacher's recentness of subject area evaluation; (3) whether the teacher's credential matches the new assignment; and (4) the selection must be based on best interests of educational program. The District must provide explicit written reasons for its decision. Involuntary transfer decisions cannot be "arbitrary or capricious," and cannot be made for punitive or disciplinary reasons.

Choice 2000. The Choice 2000 agreement does not specifically authorize involuntary transfers, but does not preclude such transfers. Similar to the Perris Agreement, the School cannot make any transfer decision for "arbitrary, capricious, or punitive reasons." However, the Choice 2000 Agreement does not require that any specific criteria, including seniority, be applied to such decisions.

*San Diego Unified School District, San Diego, CA: Darnall Charter School*

San Diego. The San Diego Agreement includes original provisions regarding administrative transfers, and an amendment to the Agreement resulting from the settlement of a dispute between the union and the District. The original Agreement

provides that when a Supervisor believes the interests of the District, pupils, and teacher will be served by an administrative or “voluntary” transfer, the administrator will file a request for a transfer with the division head. Any involuntary transfer decision must include due process. Before any transfer recommendation is acted upon, the supervisor must advise the teacher through a personal interview, and in writing, of the recommendation and reasons for the transfer. Upon request, the administrator must meet with the teacher to discuss the proposed transfer. Ultimately, the District has authority to determine whether the transfer should be made. However, the decision cannot be made for “arbitrary or capricious” reasons.

Under the San Diego Agreement, involuntary transfers to reduce staff levels may be made at the end of the school year based on enrollment estimates, and may be made during the year based on actual enrollment. Administrators must poll all teachers regarding their interest in transfers. Volunteers may be transferred to achieve the necessary reduction. However, if no teacher volunteers, the teacher with the least amount of seniority at his level or subject area or in the affected program may be transferred. Any teacher who has taught in the District for two years, in a different subject or different level within last 9 years, or for at least one year within the last five years, and is deemed qualified by the Human Resources Department, may exercise seniority rights within that other level, subject or program. A teacher involuntarily transferred after October 15 cannot be transferred against during the same year for the same purpose.

In the San Diego District, teachers in enumerated key positions may be protected from involuntary transfers, including teachers in positions where no qualified teacher is available to fill the position, and positions requiring special credentials, including gifted programs, special education, bilingual and ESL, Opportunity School positions; district reading teachers; in-school counselors; senior high school positions involving extended-day pay; and itinerant teachers budgeted to divisions other than Office of Instructional. Teachers cannot be reassigned due to declining enrollment after October 31, other than for severe declining enrollment caused by circumstances beyond district control.

After a dispute arose regarding the San Diego Agreement's involuntary transfer provisions, the District and Union negotiated a pre-arbitration settlement significantly expanding those provisions. The settlement agreement provides that administrative transfers cannot be based on activities protected by labor law, such as Union meetings, or "working to rule," which generally involves performing the minimal required amount of work. When an administrator considers an administrative transfer based on the teacher's behavior, and the teacher's activity is not protected, the Site Administrator must determine whether the behavior action can be addressed the evaluation process, or through a letter of reprimand or suspension. If it cannot, the site administrator has discretion to consider recommending transfer, but the decision must be based on the negative impact of the teacher's behavior or action, and the best interests of the district, school, pupils and teacher. The administrator must have a factual basis for

the transfer, supported by documentation. He must meet with the teacher to discuss the action, any negative impact, and any possible consequences of the transfer. He must also notify the teacher of the school's expectation for future conduct, and of the forms of support provided to mitigate the behavior or action, and must create a written record of any conferences or interventions, which must be given to the teacher with the right to respond, but cannot be placed in the teacher's file.

Darnall. Darnall's Agreement is in some ways more restrictive than the original provisions in San Diego's Agreement, but it provides administrators with significantly more discretion than the provisions added to the San Diego Agreement through the settlement agreement explained above. Unlike the San Diego Agreement, under the Darnall Agreement the School *must* first take volunteers before initiating an involuntary transfer. Moreover, teachers are exempt from involuntary reassignment if they are new (defined as having taught three years or less), or if they have accepted a "non-preferred" position (defined as teaching out of their preferred level, a combination class, etc). If all other factors are equal, and all teachers have previously accepted an involuntary assignment, the teacher with the least recent involuntary assignment must be considered first. Finally, if two or more teachers have never received involuntary assignment, and all other factors are equal, the least senior teacher will be transferred. This provision actually gives more weight to seniority than the San Diego Agreement.

The comparison between Darnall's and San Diego's involuntary transfer provisions is interesting because they approach the issue from different perspectives. Darnall's agreement is focused primarily on the need to fill open positions. The agreement's restraints on administrator discretion are designed to equalize the use of administrative transfers among teachers. Protection against transfer is based on teachers' previous transfers, their current position, and their seniority --- all factors unrelated to the teacher's performance or activity. The San Diego Agreement appears to assume that such decisions are used as tools of administrators for moving teachers with performance or behavior problems that cannot be remedied through the evaluation or discipline process. Thus, the restrictions on administrator discretion are focused on the particular teacher under consideration, including whether the activity for which the teacher is criticized was related to his rights under labor law, whether the Administrator has considered alternative means of addressing the teacher's activity, and whether the administrator has provided the teacher sufficient notice and opportunity to correct his behavior.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. The Ravenswood Agreement provides that involuntary transfers may be necessary to equalize a school's teaching load, compensate for enrollment changes, meet instructional requirements, or to meet other educationally related needs. Only the Superintendent or his designee is authorized to initiate such changes. The teacher must be notified before any involuntary transfer is made, and the

District must discuss alternatives and attempt to obtain the teacher's mutual consent. Specific reasons for the transfer must be given in writing. A teacher cannot be involuntarily transferred without a "rational basis in fact," and cannot be transferred involuntarily for disciplinary reasons. Any teacher subject to involuntary transfer must be given the opportunity to visit schools with openings. Teachers transferred after the school year begins must be given five days' notice, and five days' released time to transfer. Teachers involuntarily transferred cannot be given a similar transfer for at least two years, except for loss of enrollment, program size reduction, or loss of funds.

Edison. The Edison Agreement is similar to the Ravenswood Agreement with respect to the permitted reasons for involuntary transfer: to equalize the school's teaching load, compensate for changes in enrollment, meet instructional requirements, or for other educational reasons. As in the Ravenswood Agreement, the teacher must be consulted before an involuntary transfer is made, and the school must discuss alternatives and attempt to obtain the teacher's consent. The Agreement also mirrors the Ravenswood Agreement in requiring that the Decision cannot be made without a rational basis in fact, or for a disciplinary purpose. Likewise, a teacher subjected to involuntary transfer cannot receive another involuntary transfer for at least two years, except for loss of enrollment, program size reduction, or loss of funds. Finally, any teacher involuntarily transferred must receive five days notice; the Agreement differs only slightly in providing three days Released Time rather than five days.

*Helix Charter School - Grossmont Union High School District*

Grossmont. Under the Grossmont Agreement, involuntary or “Administrative” transfers are authorized in the event of staff imbalances, reduction in enrollment, or reduction in programs and services. Any such transfer must involve discussion and input from the teacher and department chair. The teacher must be given written notice of any District-initiated transfer as soon as possible. Any teacher who is administratively transferred must, upon request, be given three release days to prepare.

Helix. The Helix Agreement also authorizes administrative or “District initiated” transfers to address staff imbalances, or reductions in enrollment, programs or services. The School must first discuss the possible transfer with the teacher and Department chair. If the teacher objects, the School must make a good faith effort to find an acceptable solution. If a teacher is involuntarily transferred during the school year, he must be given three release days to prepare for the transfer. Teachers must also be given notice of any anticipated administrative transfer as soon as the transfer decision is known.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. Under the Petaluma Agreement, Involuntary Transfer decisions cannot be made for “arbitrary or capricious” reasons. The Petaluma Agreement authorizes the District to initiate involuntary transfers when made necessary by enrollment, or when it is otherwise in the best interest of the school or the District. No



such transfer may take place without prior consultation with the Union, the school Administrators, and the teacher. All affected teachers must be notified by letter. Transferred teachers will be given first consideration to apply for return to their original assignment if appropriate vacancy occurs.

When declining enrollment makes staff reductions necessary, the District must select teachers for involuntary transfer using the following criteria: (1) least amount of district seniority, (2) least amount of seniority at the school site, and (3) grade level experience. If consensus cannot be reached, the final decision must be made by the principal and Assistant Superintendent. Any teacher involuntarily transferred or reassigned must be informally notified in advance of the formal notice, and must be given the opportunity to apply on voluntary basis for another position. The District should attempt to give notification by June 1 where possible, but in any event must give notification as soon as the determination is made.

A reassigned teacher must be informed of the assignment at least one month prior to the assignment. When the decision is made by the District, the teacher must be paid for the time spent moving at the substitute rate, and the District must provide physical assistance with the move. The Agreement provides that teachers should not be subject to an excessive number of transfers. If a teacher is transferred two or more times in four years, weight must be given to seniority in any transfer decision considered by the District.

Live Oak. The Live Oak Agreement provides that where a reassignment decision is made for reasons other than filling a vacancy, the Educational Director must consult with the affected employees as early as reasonable. No reassignment decision is permitted without including the affected parties. Reassignment during summer may be necessary, in which case the teacher must be notified within five days. The Live Oak Agreement does not impose any restriction against “arbitrary or capricious” decisions, as Petaluma’s does.

*Involuntary Transfer: Ability to Challenge or Grieve*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. In LASUD, when possible, a teacher must be notified and counseled regarding an involuntary transfer, and upon request, written reasons for the transfer must be provided. A teacher transferred involuntarily may request, within five days of notice, a 30-day mediation period. The mediation proceeds upon mutual agreement, except that mediation is mandatory if requested by the Union within ten days of the notice of transfer. The District must respond within five days of the request. If the District refuses to mediate, the teacher or Union may proceed under to Step One of the Agreement’s standard grievance procedure (presenting the matter to the Administrator) within fifteen days. If mediation is attempted, but fails, the teacher or Union may proceed under Step Two of the grievance procedure (to the Superintendent or designee) within fifteen days.

Camino Nuevo. Under the Camino Nuevo Agreement, as with voluntary transfer decisions, involuntary transfer decisions are specifically exempt from the grievance process, and no other process is provided for challenging such decisions.

Green Dot. The Green Dot Agreement includes no specific provision for challenging an involuntary transfer decision, but the agreement allows a teacher to challenge through the grievance process any decision made pursuant to any provision in the Agreement. Because involuntary transfers may only be made “for just cause,” and only when there is no other qualified voluntary applicant, such decisions are highly susceptible to challenge.

Ocean. The Ocean Agreement is silent as to the ability to challenge or grieve an involuntary transfer decision. Accordingly, the Agreement’s standard grievance procedure may be used.

*Perris Union High School District, Riverside, CA: Choice 2000 Online School*

Perris. Under the Perris Agreement, prior to any involuntary transfer the District must inform the teacher of its intent in writing, whereupon the teacher has five days to accept the transfer or request a meeting with the Superintendent or his designee. Upon request by the teacher, the District must provide specific reasons for the involuntary transfer within five days. Any dispute over a decision regarding a transfer to a new site is referred to a conflict resolution panel within five days of a request. The

dispute must be resolved within five days of an initial meeting. The panel hearing the dispute includes three teachers selected by the Union, and two selected by the Superintendent or designee, giving a potentially dispositive advantage to the Union.

Choice 2000. The Choice 2000 Agreement requires the School to provide specific reasons for any change upon request, but provides no other method of challenging or grieving an involuntary transfer decision. Accordingly, the Agreement's general grievance procedure can be utilized.

*San Diego Unified School District, San Diego, CA: Darnall Charter School*

San Diego. Under the San Diego Agreement, any involuntary (“administrative”) transfer decision may be appealed through the Agreement's grievance procedure. Darnall's Agreement does not specifically provide authorize any grievance or other form of challenge to an involuntary transfer decision. However, Darnall's grievance section authorizes a complaint for violation, misinterpretation or misapplication of any provision of the Agreement, or violation of law or Charter regulation.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood, Edison. These schools' provisions are silent on this subject; accordingly, the Agreements' general grievance and arbitration provisions may be used.

*Helix Charter School - Grossmont Union High School District*

Grossmont. Under the Grossmont Agreement, if a teacher objects to an administrative transfer, the Administrator must make a good faith effort to find an acceptable solution. The Agreement's general grievance procedure is also available to challenge such decisions.

Helix. The Helix Agreement does not include any specific provision for challenging involuntary transfer decisions. Accordingly, the Agreement's general grievance procedure can be used.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. The Petaluma Agreement provides any transferred teacher the right to confer with the Superintendent or designee about the reason for the transfer. The Agreement's general grievance procedure may be used to challenge any decision made pursuant to the Agreement, including involuntary transfer decisions.

Live Oak. Live Oak's Agreement does not specifically address this issue.

Accordingly, the Agreement's general grievance procedure can be used.

## Teacher Evaluation

### *Frequency of Evaluation*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. Consistent with the Stull Act, evaluations in LAUSD must be made at least yearly for probationary employees, and every other year for permanent employees. As authorized by the Education Code section 44664, "highly-qualified teachers" (as defined by the No Child Left Behind Act) employed by the District for at least 10 years may be evaluated every three, four or five years, if jointly agreed by the evaluator and teacher. Such consent may be withdrawn at any time, upon written notice not later than the end of the school year before the next evaluation. Such withdrawal may not be grieved, but failure to provide proper notice may be grieved.

Camino Nuevo. Under Camino Nuevo's Agreement, each teacher must be formally observed at least one during each year. A mid-year evaluation must be completed by the end of the first semester, and a comprehensive evaluation must be completed at the end of each year.

Green Dot. Green Dot’s Agreement establishes a two-track evaluation system. Track I is for new teachers, with a focus on the California Standards of Teaching Profession (“CSTP”). Track II is for more experienced teachers (defined as having taught for three years at Green Dot or four years overall, with at least one year at Green Dot), and focuses on professional development. Entry into Track II requires that a teacher receives either “Meets Standards” or “Exemplifies Standards” on all elements of the CSTPs. Track I teachers are formally evaluated twice each school year – the first time prior to the end of the first semester, and the second fifteen days before the end of the school year. Track II teachers are evaluated once per year prior to end of school year.

LA Leadership. LA Leadership’s Agreement does not specify the frequency with which teachers must be evaluated.

Ocean. Like LA Leadership, Ocean’s Agreement is silent regarding the frequency of evaluation.

*Perris Union High School District: Choice 2000 Online School*

Perris. Permanent teachers are evaluated every two years. Teachers receiving an unsatisfactory rating must be evaluated annually until the teacher receives a positive evaluation or is separated from the District. As allowed by Education Code section 44664, evaluation may be done every five years for teachers who have been employed for at least ten years, are “highly qualified” as defined by the No Child Left

Behind Act, and whose previous evaluation was rated as meeting standards. Requests to be evaluated only every five years must be made on the Summative Evaluation Form; if the request is rejected, the teacher will be evaluated at least every other year.

Choice 2000. Under the Choice 2000 Agreement, all teachers are evaluated every two years. The Agreement does not allow five-year evaluation gaps like the Perris Agreement.

*San Diego Unified School District: Darnall Charter School*

San Diego. Probationary teachers are evaluated at least every year. Permanent teachers are evaluated every other year if their recent performance evaluation is “effective.” Teachers in alternative evaluation process may deviate from this schedule. Teachers in the National Board Certification Program are exempt from routine evaluations while participating in program.

Darnall. Under the Darnall Agreement, new teachers have a two-year probationary period, in which they are evaluated both years. After the probationary period, teachers are evaluated every other year.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. Under the Ravenswood Agreement, evaluation must be conducted in accordance with the Stull Act. Probationary teachers must receive one



formal observation with a written evaluation each school year. Permanent employees must receive one formal observation with a written evaluation summary at least every other school year.

Edison. Under the Edison Agreement, a formal evaluation must be conducted each year during a teacher's first four years. Thereafter, teachers must be evaluated at least every other year, except that teachers performing unsatisfactorily must be evaluated every year.

*Grossmont Union High School District: Helix Charter School*

Grossmont. Under the Grossmont Agreement, Permanent teachers must be evaluated at least every two years, and probationary teachers every year.

Helix. Helix's Agreement provides that permanent teachers must be evaluated every two years, and probationary teachers are evaluated every year.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. Under the Petaluma Agreement, probationary teachers are evaluated at least twice each year, following a schedule to be adopted by the District. Permanent teachers receiving "satisfactory" evaluations are formally evaluated once every four years (contingent upon State Board of Education approving the evaluation model), unless there is a significant change in the teacher's performance. If a teacher

receives a rating of “Unsatisfactory” or “Does Not Meet District Standards,” an additional evaluation is required in the following year. The teacher must also participate in an improvement plan, and must receive intensive supervision from school leaders.

Live Oak. Live Oak’s Agreement is silent regarding the frequency of teacher evaluations.

### *Evaluation Planning / Objectives*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. Under the LAUSD Agreement, the evaluator and employee must meet soon after commencement of the academic year and “work cooperatively” to establish the teacher’s objectives. The objectives must relate to standards of expected student progress and achievement based on District, special program and local school determinations, including appropriate instructional objectives, strategy-planning methods, instructional materials, and methods of assessing student progress and achievement. They should also address expected employee competence, including subject matter knowledge, adherence to curricular objectives, use of effective teaching and supervision techniques, effective use of time, maintenance of appropriate professional relationships, communication with students, parents, and staff, and compliance with District and school rules, policies and standards. Finally, objectives should include the teacher’s performance of duties set forth in the Agreement (including hours of work); and

maintenance of proper student control and a suitable learning environment, with proper sensitivity to race, sex, ethnicity, handicapped and socioeconomic differences. If the evaluator and employee cannot reach agreement, the employee can appeal to the next higher administrator, and may ultimately note on the evaluation form that the objectives were not mutually agreed upon. The objectives may be modified during the year.

Camino Nuevo. The Camino Nuevo Agreement requires the School to provide a copy of the school's evaluation checklist to each teacher once per academic semester, with the understanding that all standards will not necessarily be addressed in each semester. Unlike the LAUSD Agreement, Camino Nuevo's Agreement does not require that the teacher be involved in establishing the objectives for evaluation.

Green Dot. For all teachers (in Tracks I and II), the Principal must hold a conference with each teacher by September 30 to discuss the teacher's goals and benchmarks. Prior to the meeting, the Principal must give the teacher the documents that will be used for evaluation, and the expectations for the meeting. The focus areas for each teacher's evaluation may be changed during school year based on the "mutual discretion" of the Principal and teacher. For teachers qualified to be evaluated through the Track II process, by September 30 the School's administrator must also present each teacher with the options for that year's evaluation: (1) continue with Track I, (2) collaborate with other Track I teachers to create an Action Research Group, (3) develop an individual research project, (4) assist an intervention team or other project for

improving student achievement, (5) develop a Student Study Portfolio focusing on a specific student or sub-group, or (6) assist in professional development programs.

Teachers must submit their proposal by October 31.

Ocean. Ocean's Agreement requires a pre-observation conference, discussed below, but does not otherwise require any evaluation planning process.

Perris Union High School District: Choice 2000 Online School

Perris. The teacher must be notified of the need for evaluation and the identity of the primary evaluator within fifteen days of the start of school. Within six weeks of the start of school, the evaluator and teacher must meet and mutually agree on the standards by which the teacher will be evaluated.

Choice 2000. The Choice 2000 Agreement does not require any particular form of planning meeting, or discussion and collaboration regarding the standards by which the teacher will be evaluated.

*San Diego Unified School District, San Diego, CA: Darnall Charter School*

San Diego. The evaluator is required to hold a staff meeting during the first four weeks of school, review evaluation procedures, distribute forms, make job descriptions available, and review the evaluation calendar. Within 35 days, each teacher

must meet with the Principal or designated evaluator, and reach agreement on the objectives and criteria for evaluation, and on the assessment techniques. Within ten days of the conference, the teacher must prepare a written copy of the objectives, criteria and assessment techniques (Part A, B, C of an evaluation worksheet), and submit them to the supervisor. Within ten days of receipt of this material, the supervisor must approve or disapprove of the teacher's objectives. If they are not approved, the supervisor must schedule a conference with the teacher.

Darnall. This Agreement is silent on this subject.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. By the first work day in October, each teacher to be evaluated during that school year must be notified of the evaluation, receive a copy of the evaluation procedures, and be advised of the criteria for evaluation. New teachers must receive this information within ten days of the execution of an employment contract.

The School must hold a planning meeting by the last day of the first academic quarter (45 working days from the start of the school year). This meeting must cover the objectives and standards to be achieved, a timeline of observations, and schedule conference and final evaluation dates. In the event of disagreement, the teacher and evaluator must attempt to resolve the disagreement, and invite an Associate or Assistant Superintendent or their designee to resolve the dispute; that individual must

prepare a written statement that is attached to the teacher's evaluation form. During the evaluation period, the teacher may initiate a change in the objectives by which the teacher will be evaluated.

Edison. Like the Ravenswood Agreement, the Edison Agreement requires that teachers must be given a copy of the evaluation procedures, and advised of the criteria by which they will be evaluated, by October 1. New teachers must receive this information within ten days of the execution of an employment contract.

The Edison Agreement is also similar to Ravenswood's in requiring the evaluator and teacher to hold a planning meeting by the end of the first reporting period, to discuss the objectives and standards by which the teacher will be evaluated. The Pre-Evaluation conference form attached to the Agreement requires that the evaluator and teacher choose three of the six CSTP standards as the focus of evaluation; the teacher may select one standard, and the evaluator chooses the other two. Reflecting one of the most significant differences with the Ravenswood Agreement, the evaluator and teacher must also discuss the teacher's Professional Growth Plan ("PGP"). If the evaluator and teacher cannot reach agreement regarding the objectives and standards, or the focus of the PGP, another Edison Principal must be involved.

The original objectives and standards may be changed for changed circumstances, and the professional growth plan changed by mutual agreement.

*Grossmont Union High School District: Helix Charter School*

Grossmont. Under Grossmont's Agreement, a pre-evaluation conference between the evaluator and teacher must be held at the beginning of the school year for each teacher to be evaluated. The teacher may apprise the evaluator of the teacher's objectives for the year, and the methods and materials planned for the lesson to be evaluated.

Permanent teachers must be notified that they will be evaluated by September 15 in their evaluation year. The teacher and evaluator must determine a mutually-agreeable date for a conference to be held during September. The first conference must include a review of the evaluation instrument and the CSTP standards, but the teacher can provide material that the teacher deems pertinent to the evaluation process. A second conference must be held by April 15, at which the results from the implementation process are reviewed, and suggestions for improvement are discussed.

Probationary teachers must be notified by September 15 who their evaluator will be. The evaluator and teacher must also determine a mutually acceptable date for the first evaluation conference to be held in September. The teacher must submit goals and objectives, and any other material the teacher deems pertinent, two weeks prior to the conference. The first evaluation and observation must be submitted to the Human Resources office by December 1, describing the implementation of the recommendations decided upon in the first evaluation. A copy must be provided to the teacher.

Helix. Teachers in their evaluation year must be notified of their evaluation by September 20. Teachers must be given a copy of their evaluation form, the California Standards by which they will be evaluated, and the dates of their observation. Permanent teachers must agree on observation dates by October. The teacher may give relevant material regarding evaluation to the evaluator. The evaluator and teacher must hold a second meeting by April 1 to review the evaluation results. For probationary teachers, the school must follow the same process, but teachers must submit their goals two weeks prior to the meeting.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. The Petaluma Agreement requires that “early in the school year,” the School’s Management Team Member must hold a conference with each teacher to be evaluated, regarding the criteria set forth in the District’s Guidelines for Evaluation of Certificated Personnel. Each teacher must write an annual Professional Development Plan, which is designed to stretch the teacher’s professional expertise, take professional risks, and be professionally innovative. The format must be agreed upon by the teacher and site administrator. The Plan must be submitted within forty-five days of the start of the school year. If it is not submitted on time, a Career Enhancement Plan must be developed by the principal and teacher. The teacher must use the Plan as a self-evaluation tool at the beginning of the year, and share it with the Management Team Member. The Agreement indicates that because the District and Union agree on the importance of the relationship between the administrator, teacher and students, one goal



for each teacher will be drawn from the “body of awareness and skills commonly referred to as the affective domain.”

Each teacher must also form a Professional Development Team, and meet periodically during year to discuss the Professional Development Plan. The list of team members must be submitted within forty-five days of the beginning of the school year. Within ten days of the end of school, the teacher must present a year-end report to the site administrator detailing meetings held with Professional Development Team, the progress made on the teacher’s Career Enhancement Plan. The Report and Career Enhancement Plan are placed in the teacher’s personnel file.

Live Oak. Teachers must be given the criteria by which they will be evaluated by October 1. The Agreement does not include any of the Petaluma Agreement’s provisions regarding a Professional Development Plan or Team. The teacher’s performance goals must be aligned with the School’s mission and charter, and must be submitted to and approved by the Educational Director by October 15 of each year.

*Type, Frequency, Notice of Observation*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. All observations should be followed by conferences to discuss the teacher’s performance. The evaluator is required to make “specific recommendations

for improvement, and offer appropriate counseling and assistance.” Within four working days of the conference, a copy of all written records related to the observations, advisory conference, or assistance offered, must be given to the teacher “for the employee’s information, guidance, and as a warning to improve performance.”

Camino Nuevo. The Camino Nuevo Agreement requires that each teacher must be formally observed at least one during the year. A teacher may request additional observations to collect evidence of proficiency in any standard. The teacher is required to provide a lesson plan two days in advance of the observation, and to attend pre- and post-evaluation meetings. The School must schedule a conference within ten days of any formal evaluation to review the findings with the teacher. Informal observations may be ongoing throughout the school year, and such observations can be used in the teacher’s mid-year and comprehensive evaluations. The mid-year evaluation must be completed by the end of first semester using a standards-based evaluation checklist, and a comprehensive evaluation must be completed by the end of the year using the same checklist.

Green Dot. For teachers on Tracks I and II, two informal evaluations must be held prior to each formal evaluation. The school must provide ten days notice for any formal evaluation. The School and teacher must have a pre-observation conference three working days before the observation, and a post-observation conference within ten working days to review and sign the observation form. For Track I (beginning) teachers,

the pre-observation conference must determine the areas of focus for the Formal Evaluation, which should be drawn from the California Standards for the Teaching Profession, depending on the teacher's years of experience: in year one, CSTP Standards 1,2,4, and 6; in Year 2, CSTP Standards 3,4,5, and 6; in Year 3 and beyond, the conference should review goals set by the teacher and administrator. For Track I teachers, a formal written evaluation must be issued, and must include one artifact from the lesson demonstrating or highlighting the teacher's achievement in the relevant CSTPs. The evaluation must be given 15 days before the end of the academic school year.

Ocean. Under Ocean's Agreement, the teacher and administrator must agree on the date of observation. The teacher must provide his lesson form in advance of the observation, and the School and the Union must agree on the form. The administrator and teacher must then meet prior to the observation to discuss the lesson plan, using the pre-observation questions as a guide, and the teacher and administrator must sign the plan. After observing the teacher, the administrator must prepare a report using the agreed-upon form. If the teacher receives a "Requires Strengthening" or "Below Standard" rating, the teacher or the administrator can request a second observation, for which the same procedure applies.

*Perris Union High School District: Choice 2000 Online School*

Perris. Under the Perris Agreement, for permanent teachers a pre-conference must be held prior to each formal evaluation, to agree upon the lesson plan, the data required on the pre-observation form, the class period, and the date of the evaluation. The teacher and evaluator must also complete a pre-observation form explaining how the teacher will be evaluated. Permanent teachers must receive at least one formal evaluation by March 1 in the year of evaluation. Formal observations must last an entire class period. The evaluator must give prior notice of all formal evaluations. The teacher may request an additional evaluation by administrator of teacher's choice, provided the chosen administrator agrees. Each formal evaluation must be followed by a post-evaluation conference within ten school days, in which the evaluator and teacher discuss the evaluation and jointly make specific recommendations for improvement. If additional observations are deemed necessary, the teacher must be notified in advance. At the teacher's request, the reasons for additional observations will be given in writing.

Probationary teachers must receive at least three formal evaluations within their first eighteen weeks of service. As with permanent teachers, a pre-conference must be held prior to each formal evaluation to agree upon lesson plan, data required on pre-observation form, class period and date of evaluation, complete pre-observation form. Formal observations must last the entire class period. The Agreement recommends, but does not require, that observations be three-four weeks apart to allow for growth. As with permanent teachers, the evaluator must give prior notice of all formal evaluations.

The teacher may request an additional evaluation by an administrator of the teacher's choice, provided the chosen administrator agrees. As with permanent teachers, each formal evaluation must be followed by a post-evaluation conference within ten school days – evaluator and teacher discuss evaluation, specific recommendations for improvement. If additional observations are deemed necessary, the teacher must be notified in advance, and, on request, reasons for additional observations will be given in writing.

Choice 2000. The Choice 2000 Agreement mirrors some elements of the Perris Agreement. The School must give prior notice of each formal evaluation, and must conduct a post-observation conference within ten days, in which the evaluator and teacher discuss the observation and plan for improvement.

*San Diego Unified School District, San Diego, CA: Darnall Charter School*

San Diego. When classroom observations are used, the evaluator should notify the teacher when the observation is to be conducted, the method of observation, and who will do observation. The teacher must provide the evaluator with a brief outline of the lesson being observed and the assessment or observation method used to measure student achievement. The observer must prepare a written statement concerning each observation being used as an assessment technique within a reasonable time (which should be approximately 10 days) and attach it to the evaluation worksheet. The teacher

may attach a written response. No electronic recording device may be used to record any classroom instruction or conference unless agreed by teacher. The Agreement does not prevent evaluators from observing a teacher's job performance at any time, independent of the formal observation process.

Darnall. Under the Darnall Agreement, teacher evaluation includes two formal observations. Unscheduled evaluations are also permitted, for which the same rights apply.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. Probationary teachers must receive one formal observation with a written evaluation each school year. Permanent employees must receive one formal observation with a written evaluation summary at least every other school year. Each formal observation must be preceded by pre-observation conference at least two days prior to the observation, in which the evaluator and teacher discuss the date and time of the observation, and the objective of the lesson. Pre-observation conferences and formal observations must be completed by the last work day January for probationary teachers, and by the last work day of March for permanent teachers.

Formal observations must last at least 45 minutes, or one full period.  
Formal observation must normally take place within 15 days after pre-observation

conference, unless rescheduled due to illness. A post-observation conference must be held within five days of the observation.

Any teacher who receives negative observation must have a minimum of two additional formal observations, with pre- and post-observation conferences and a written assessment.

Edison. Edison's Agreement requires three formal observations, while Ravenswood's requires only one. Additionally, Edison's Agreement specifically authorizes informal observations. As with Ravenswood's Agreement, prior to each observation the evaluator and teacher must hold a Pre-Observation Conference. However, the Edison Agreement requires the use of the Agenda form attached to the Agreement.

Like Ravenswood's Agreement, Edison's provides that formal classroom observations must last 45 minutes. The teacher must be notified two work days in advance, but the observation can then take place any time within the 15-day period after notification. The observation must be followed by a post-observation conference within five days. Each of these provisions is essentially identical to Ravenswood's provisions.

Finally, as in Ravenswood's Agreement, any teacher receiving a negative observation must have a minimum of two additional observations with pre- and post-observation conferences and a written assessment. However, Edison's Agreement

requires that the additional observations must be conducted within two months of the original observation. It is not clear whether the two additional observations required after a negative observation fulfill Edison's requirement of three formal observations each year, or whether two additional observations must then be conducted.

*Grossmont Union High School District: Helix Charter School*

Grossmont. Each observation must be preceded by a conference between the teacher and evaluator to clarify the objectives of the observation, and must be followed by a post-observation conference, for which the evaluator must prepare a written evaluation report. All observations must be conducted openly. All evaluations must be in writing, and a copy must be given to the teacher within ten days after the post-observation conference. Any teacher who disagrees with the post-observation evaluation may attach a written response, which must be placed in the teacher's file. Each observation of a teacher must be for the "appropriate amount of time," which is not specified. However, if deficiencies are noted, the observations must be for at least one full period or an equivalent period.

The Agreement specifically provides that the observation provisions shall not be construed to preclude classroom visits where alleged deficiencies found during evaluation process, or reasonably suspected.



Helix. All observations must be conducted openly. The school must give a copy of the observation to the teacher within 7 days, and the teacher may submit a written response. Any student involvement must be done during an appropriate time. Each observation requires a pre- conference and a post-conference. The evaluation must be given to the teacher within seven days. Any deficiencies must be stated in writing, with specific ways to improve. The teacher may then provide a written response. For probationary teachers, the first evaluation must be completed by November 1, and the second by April 1.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. The Petaluma Agreement requires that, as part of the visitation and evaluation process, a teacher may request that a specific class be observed. Additionally, no electronic devices may used to record a teacher during an observation without the teacher's consent.

Live Oak. Under the Live Oak Agreement, Probationary teachers must receive at least two formal observations and evaluations each year. For one of the observations, the teacher must be given twenty-four hours notice. The first observation must be conducted by November 15, and the second must be conducted by March 19. Permanent teachers must receive at least one formal observation. Observations can also be done on a drop-in basis. The teacher must be given feedback at mentoring sessions with the Educational Director.

*Individuals Involved in Evaluation*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. LAUSD requires that the teacher's supervisor evaluate the employee, but may delegate evaluation functions.

Camino Nuevo, Green Dot and LA Leadership. These Agreements do not specify the person who must conduct observations or evaluations. The Camino Nuevo Agreement addresses the subject, requiring that the Administrator must notify the teacher by September 15 if the evaluator is to be anyone other than the site principal.

*Perris Union High School District: Choice 2000 Online School*

Perris. The primary evaluator must be the site level certificated administrator, who signs each teacher's evaluation. The secondary evaluator, if any, is a current District certificated administrator, who may provide direct input. Each administrator involved in the evaluation must sign the evaluation report. Non-administrators cannot be involved in the evaluation process unless agreed upon by all parties.

Choice 2000. This Agreement is silent on this subject.

*San Diego Unified School District, San Diego, CA: Darnall Charter School*

San Diego. The Teacher's supervisor as designated in the teacher's job description must be the teacher's evaluator. However, the Supervisor may delegate to other credentialed supervisory personnel; such delegation must be explained to teacher. Any special evaluation must be conducted by the supervisor, or it may be delegated with division head's approval. Teachers cannot evaluate other teachers.

Darnall. This Agreement is silent on this subject.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. Under the Ravenswood Agreement, immediate supervisors must evaluate probationary and permanent teachers.

Edison. The Edison Agreement provides that teachers shall not evaluate or conduct formal evaluations of other teachers. Lead teachers may observe and assist others only for the purpose of supporting the teacher's professional development. However, teacher involvement in Edison's PAR program does not violate the agreement.

*Grossmont Union High School District: Helix Charter School*

Grossmont. Probationary teachers must be notified by September 15 who their evaluator will be. For all teachers, prior to the beginning of any evaluation, the teacher may put in writing any concerns about the evaluator. Additionally, the teacher has the right to request that another teacher be made part of the evaluation team.

Helix. A teacher may object to the choice of evaluator, but is not authorized to request that another teacher be assigned as part of the evaluation team.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. The Petaluma Agreement requires that teachers must be evaluated by a Management team member assigned by the Superintendent or the Superintendent's designee.

Live Oak. Under the Live Oak Agreement, classroom observations are generally conducted by the Education Director, but can also be conducted by an outside Waldorf teacher. The Education Director can ask the Executive Director to conduct a second observation.

*Evaluation Instrument and Criteria*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. LAUSD's Observation Conference Sheet includes notes, commendations and recommendations on Communication, Decision-Making, Management, Interpersonal, and Personal dimensions. LAUSD's Stull Evaluation Form includes "yes" or "no" ratings on 25 categories in five Areas (Instructional Objectives, Preparation and Planning, Classroom Performance, General Professional Skills, and Punctuality and Attendance), and requires an overall rating of "Meets Standard Performance" or "Below Standard Performance."

Camino Nuevo. Camino Nuevo uses a detailed rubric for evaluation, based on the California Standards for Teaching Profession ("CSTP"): (1) Engaging and Supporting All Students in Learning; (2) Assessing Student Learning; (3) Creating and Maintaining Effective Environments; (4) Understanding and Organizing Subject Matter; (5) Planning Instruction and Designing Learning Experiences; and (6) Developing as a Professional Educator. The Evaluation requires the evaluator to rate the degree to which the teacher demonstrates evidence of mastery of the CSTP: 4 = clear, consistent, convincing evidence; 3 = clear evidence; 2 = limited evidence; and 1 = no evidence. The Evaluation also requires the evaluator to report: (1) next steps for the teacher; (2) support to be provided to the teacher; and (3) the next meeting and review date. If the teacher provides a responsive statement, the Teacher Statement must be attached.

Green Dot. Green Dot's Agreement includes a flowchart for teachers on Track I and on Track II. For Track I teachers in the first year, the goals measured in the evaluation process must be based on Standards 1, 2, 4, and 6 of the California Standards for the Teaching Profession. The required elements of evaluation are two Formal Observations; Informal Observations; and a Unit Portfolio in Quarter 2 or Quarter 3. In the second year, the goals must be based on CSTP Standards 3, 4, 5 and 6, and must include two Formal Observations; Informal Observations; and a Unit Portfolio in Quarter 2 or Quarter 3. In year three and beyond, the goals should be determined by teacher choice, but the evaluation must still include two Formal Observations, Informal Observations; and a Unit Portfolio in Quarter 2 or 3. For Track II teachers, the School must present the options to experienced teachers, but teachers develop their own Professional Growth Plan based on the goals agreed upon with the administrator. The teachers should then continue to meet with the administrator about their progress, and the Administration should conduct at least one informal evaluation. Track II Teachers present the findings from their Professional Growth Plan to the teaching staff.

Track I teachers also develop a Unit Portfolio, designed to help showcase the teacher's best unit. The portfolio includes: (1) a description or timeline; (2) a reflection prior to the teaching unit (explaining why the teacher chose the project, the goal of the project, the connection to the next unit, and the place of the project in the larger picture); (3) an outline of the unit (including essential questions, standards to be met, measurable outcomes, bibliography of resources, copies of student assignments with

applicable rubrics, and student work samples); (4) a Reflection after teaching the Unit (including whether goals have been met, and suggestions for others); (5) connection to the CSTPs (those which were the appropriate focus for that year); and (6) a summary of professional development (including a list or chart of development completed during the year).

For Track II teachers, the Agreement includes a chart describing the Professional Growth Plan options available, with details for each: (1) Action research, (2) Curriculum Development, (3) Instructional Strategies Implementation, (4) Peer Consultation / Coaching, (5) Professional Growth Portfolios, and (6) Structured Professional Dialogue – Study Groups – Support Teams. The Agreement explains that growth tasks are product-based, involving a staff presentation, a portfolio, or a report. Each Track II teacher is required to complete Project Components and Timeline Sheet prior to Oct. 31. Administrators must meet with the teacher once each quarter to discuss the teacher’s standing and progress. Finally, the school must issue a Culminating Assessment. The Administrator must meet with the teacher fifteen days prior to the end of the school year to share feedback from formal observation, and discuss possibilities for the next year. After a teacher has received a “series” of below standard informal observations, the teacher can return to Track I if any CSTP ratings do not meet the required standard. Likewise, the School may move a teacher back to Track I at any time at the administrator’s discretion.

Track II teachers are provided with questions to ask in formulating their Professional Growth Plan form: What is the goal? What essential questions will guide? How will the Plan impact or improve student learning? What format or approach will be used? What is the timeline for the plan? What methods or strategies will be used? What are the indicators of progress? What resources or support are needed? The Professional Growth Plan must be signed by the teacher and the administrator. The Agreement also includes guidelines for development of the Professional Growth Plan, with suggestions for each aspect of plan.

Ocean. Ocean's Agreement specifies the following criteria for evaluations: curriculum planning and development, pedagogy, student motivation, classroom management and student assessment, teacher-parent relationships, collegueship, self-improvement, and professionalism. One of four ratings must be give for each criterion: (1) Above Standard; (2) At Standard; (3) Needs Strengthening; or (4) Below Standard. The Agreement incorporates a form for use in rating teachers, but it consists of a series of questions, rather than specific standards or a rubric.

*Perris Union High School District: Choice 2000 Online School*

Perris. Under the Perris Agreement, probationary (non-permanent) level-one teachers are evaluated on the California Standards for Teaching Profession, Standards 2 and 4. Level-two teachers are evaluated on Standards 1, 3 and 5, and on any CSTP Standard for which the teacher received an "unsatisfactory" or "needs



improvement” rating the previous year. Teachers are given one of four ratings: Meets Standard, Needs Improvement, Unsatisfactory, or Not Applicable.

Choice 2000. This Agreement is silent on this subject.

*San Diego Unified School District, San Diego, CA: Darnall Charter School*

San Diego. Teachers’ competency must be evaluated as it relates to: (a) progress of pupils toward established standards; (b) instructional techniques and strategies; (c) adherence to curricular objectives; (d) establishment and maintenance of suitable learning environment; and (e) performance of non-instructional duties including supervisory responsibilities. The evaluator and teacher are required to mutually determine the teacher’s objectives, and the assessment techniques to be utilized. A minimum of three objectives must be selected. Elementary teachers must select at least one objective in an academic area (language arts, reading or mathematics), and one in another areas; at least one shall reflect district / site goals. Secondary teachers must select at least one objective reflecting district and site goals in a subject area within the teacher’s major or minor teaching assignment.

If the evaluator and teacher disagree as to the areas of evaluation, objectives and standards, evaluation elements, support requirements, or the teacher’s ongoing plans, they must solicit a recommendation from a third party. The evaluator and

teacher must attempt to agree on the third party, and if they cannot, they must refer to the evaluator's supervisor for the selection of the third party, who may be a teacher, specialist, consultant, coordinator, director or assistant director. If the third party's recommendation does not resolve the dispute, the evaluator's supervisor is authorized to make the final decision after considering the third party's recommendation. The goals and objectives selected must take into account the characteristics of the teacher's students, class size, availability of resources, equipment and materials, and board-established goals.

While each year's evaluation concentrates on the selected areas, the teacher is expected to maintain effective performance in all areas. The evaluator and teacher must also identify any constraints which would hinder or limit the teacher's achievement of the objectives they have agreed upon. If such constraints cannot be overcome or become inappropriate, the evaluator and teacher may modify the objectives. Finally, teachers cannot be evaluated based on publisher's norms established by standardized tests.

Darnall. Darnall's evaluations use the California Standards for the Teaching Profession. Each teacher is assigned one of five ratings on each Standard.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. Ravenswood's evaluation process assesses competency using the CSTP standards: (1) engaging and supporting all students in learning, (2) creating and maintaining effective environments, (3) understanding and organizing matter for student learning, (4) planning instruction and designing learning experiences for all students, (5) assessing student learning, (6) developing as professional educator, while adding a seventh criteria: (7) the District's professional requirements.

The School's formal observation form must use four ratings: (1) Exceeds Standards / Integrated Mature Practice; (2) Satisfactory / Consistent Application of Standards; (3) Needs Improvement / Developing Beginning Standards; and (4) Unsatisfactory / Not Consistent with Standard Expectations. The Agreement incorporates District evaluation forms in the Appendix.

Edison. Like the Ravenswood Agreement, Edison uses the six CSTP standards (listed above), while adding its own seventh standard: (7) Edison professional requirements.

However, Edison's Agreement is broader than Ravenswood's in describing a comprehensive approach to evaluation for all teachers (not only those on an improvement plan or in PAR), explaining that the components of evaluation are: observation; assistance by a lead teacher and peers; a professional growth plan; a

professional portfolio; self-appraisal using Edison standards; and assessment by the principal or supervisor. Edison's Agreement outlines seven elements of the Evaluation process, and includes forms for use by the evaluator.

1. A Professional Growth Plan must be developed each year, including specific professional development goals from the school's performance standards, a plan for achieving specific goals, a self-appraisal with evidence and the teacher's reflections. At least one goal must be developed in cooperation with the teacher's "house team." The goals must address both short-term and long-term goals identified by the teacher's house team and supervisor.

2. The evaluation includes three formal observations in professional settings, and informal observations.

3. Formal classroom observations must last 45 minutes. Observations must be made known to the teacher two work days in advance, but can take place any time within the 15-day period after notification. Prior to the observation, the evaluator and teacher must have a Pre-Observation Conference using the Agenda form attached to the Agreement. The observation must be followed by a conference within five days.

4. The evaluator must provide direct assistance in correcting deficiencies; resources for such assistance include a lead teacher, coach, and Edison's in-service training.

5. The teacher must produce a Professional Portfolio, by agreement between the teacher and principal, which can include individual or team work. The Portfolio must be submitted by May 1. It should include observation reports, lesson plans, the teacher's self-appraisal, the teacher's Professional Growth Plan, evidence of student achievement, and peer observations.

6. Each teacher creates a Self-Appraisal twice yearly, identifying goals for the teacher's Professional Growth Plan. The teacher must self-assess progress in achieving the seven Edison standards described above. The initial appraisal must be completed by the end of the first quarter, and the final appraisal by May 1. This assessment must be used in the teacher's summative evaluation, and in the Professional Growth Plan.

7. A Final Formal Evaluation must be produced by the Administrator each year. The Final Evaluation *must* be based on formal and informal observations, conferences, student performance data, and the teacher's Professional Growth Plan, and, *may* include the teacher's Professional Portfolio. The Evaluation must include a summary performance rating as part of a the official record of the teacher's performance. The evaluation of any lead teacher must include any supplemental evaluation. The Final Evaluation cannot include any Publisher's norms established by standardized tests or test result or program excluded by law.

A final evaluation conference must be conducted at least thirty days prior to the end of the school year. The teacher may attach a written statement of disagreement. The final evaluation form must use the following ratings: Exceeds (integrated mature practice); Satisfactory (consistent application of standards); Needs Improvement (developing beginning practice); and Unsatisfactory (not consistent with standard expectations).

The Agreement incorporates forms to be used in the evaluation, including a Pre-Evaluation Conference Form, describing the School's assessment methods, which is to be given to the teacher by the end of the first reporting period; an Evaluation Worksheet, to be completed during or after the observation, and reviewed in a post-observation conference within five days; and an Evaluation Form on which the teacher must be rated on the standards described above.

*Grossmont Union High School District: Helix Charter School*

Grossmont. Grossmont's Agreement includes a Certificated Evaluation Form. The form requires evaluation according to the CSTP Standards, and includes recorded observations and dates. The evaluator is required to assign one of the following ratings as an Overall Evaluation: "Meets Standards"; "Meets Standards with Growth Recommended"; "Does Not Meet Standards." Copies of the CSTP Standards are included.

Helix. Helix’s evaluation form uses the five standard CSTPs, but adds “related duties and responsibilities,” which include seeking out opportunities for improvement, demonstrating willingness to accept suggestions for change, working constructively with colleagues, and being prompt in attendance. Teachers are given a rating of “Does Not Meet Standards”; “Meets Standard with Growth Recommended”; or “Meets Standard.”

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. As explained above, based on the District and Union’s agreement on the importance of interpersonal relationships, one goal for each teacher must be drawn from the “body of awareness and skills commonly referred to as the affective domain.” Otherwise, the Agreement affords significant discretion to the administrator and teacher to develop goals and criteria. However, each teacher must be given an overall rating of “Satisfactory,” meaning the teacher meets or exceeds district standards; “Provisional,” meaning the teacher continues to work toward meeting district standards; or “Unsatisfactory,” meaning the teacher does not meet district standards. The evaluation must include recommendations for improvement as necessary; negative comments shall not be included unless discussed with teacher during year.

Live Oak. Live Oak’s evaluation process includes performance goals; class observation; self-evaluation; and a summative evaluation. Summative Evaluations include a conference with the Education Director or Executive Director. Probationary

teachers must have this conference by March 24, and permanent teachers by May 15.

The evaluator must assign the teacher one of four ratings: Exemplary, Competent, Needs Attention, or Not Satisfactory. The criteria specified for evaluation are: Classroom Management, Rapport, and Learning Environment (11 elements); Curriculum & Instruction – Day to Day Lessons (9 elements); Yearly Curriculum Planning (5 elements); Incorporation of the Arts in Teaching (12 elements); Parent & Organization Responsibilities (9 elements); and Professional Development (4 elements). The evaluator must assign one of three possible overall recommendations: Recommended for continued employment without conditions, Recommended with conditions (which must be attached), or Not Recommended.

Teachers must also complete a Self-evaluation, guided by the District's goals as stated in an Appendix to the Agreement. Probationary teachers must submit this by March 1, tenured teachers by May 1. The Self-evaluation form must include the teacher's reflections regarding: Curriculum, Teaching Methods, Assessment / Recordkeeping, Work with Parents, Work with Colleagues, Work with Students, and Individual Characteristics or Qualities.

*Delivery of Evaluation Report*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. No later than 30 days before the last day of school, the evaluator must issue a Final Evaluation Report indicating the teacher's overall performance and



progress toward the objectives previously decided upon. Prior to the end of the school year, the evaluator must hold a conference with the teacher. The teacher may attach a written response to the Report within 10 days of receipt, which becomes a permanent part of the teacher's record. A teacher must be given a copy of the Final Evaluation Report at the conference, and a copy must be placed in the teacher's file. Such forms are not considered public records. The administrator or teacher may also request an evaluation upon the teacher's termination of employment, which shall be performed and sent to the employee.

If the school receives any written material from the public that is critical of a teacher's performance or character, it must be investigated, and the teacher normally must be given a copy within 30 days. The document will only be placed in the teacher's file if it is reasonably determined to have some substance or plausibility, and the teacher must be given the opportunity to attach a reply. If the document comes from District personnel, investigation is not necessary, but the same protections apply. These provisions do not apply to references obtained from outside the District prior to employment, or documents prepared as part of the examination procedure during the hiring or promotion process.

Camino Nuevo, Green Dot, LA Leadership. These Agreements are silent on this subject.

Ocean. Ocean's Agreement provides that the School cannot base a teacher's evaluation on information not actually observed, unless it has been fully investigated and discussed with the teacher. Hearsay evidence cannot be included as a basis for any evaluation.

*Perris Union High School District: Choice 2000 Online School*

Perris. Under the Perris Agreement, for permanent teachers, a Summary evaluation must be given to the teacher on a Certificated Evaluation Form at least thirty days prior to the end of the school year. The Summative Evaluation may include informal observations and other factors in addition to the reports of formal observation. The Evaluator must discuss the Evaluation with the teacher prior to the end of the year. The teacher must sign only to confirm reading the Evaluation, and may attach a written reaction or response. A copy must be given to the teacher. A copy of the Certificated Evaluation Form and any adverse data, and any other information used in the evaluation, must be placed in the teacher's personnel file as required by the Education Code.

For Probationary Teachers, the Summary Evaluation must be given to teacher on the Certificated Evaluation Form by the eighteenth week after the start of school. As with permanent teachers, the Summative Evaluation may include informal observations, and other factors in addition to formal observation. The Evaluator must discuss with the teacher prior to the end of the year. The teacher must sign the Evaluation only to confirm reading it, and may attach a written reaction or response. As

copy must be given to the teacher. A copy of the Certificated Evaluation Form and any adverse data, or other information used in the evaluation, must be placed in the teacher's personnel file as required by the Education Code.

Choice 2000. This Agreement is silent on this subject.

*San Diego Unified School District, San Diego, CA: Darnall Charter School*

San Diego. The evaluator and teacher must complete and sign the designated portion of the evaluation worksheet and addendum. Before doing so, the evaluator must first prepare a draft copy to discuss with the teacher. This must be done by the third Friday in February for second year probationary teachers, and by the last workday in April for permanent teachers and first year probationary teachers. By thirty days before the end of school, the teacher must sign and receive a copy of the evaluation. The teacher may attach a written response within thirty days.

If a teacher is evaluated as "Requires Improvement" or "Unsatisfactory" in any area of evaluation, the evaluator may continue the evaluation process for the balance of the year. The evaluator may attach an addendum explaining the reasons for continuation related to areas identified as "Requires Improvement" or "Unsatisfactory." If the teacher's performance fails to improve, the teacher will be scheduled for a special evaluation during the next school year. If "Requires Improvement" or "Unsatisfactory"

ratings are changed to “Satisfactory,” a Summary Evaluation reflecting the teacher’s improved performance will be prepared, and signed by both parties. The teacher must also sign any addendum, and may attach a written response within thirty days. Final responsibility for evaluation rests with the evaluator, who must sign the evaluation upon request of the teacher. The Division Head must review all evaluations reflecting less-than-effective performance.

Darnall. This Agreement is silent on this subject.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. By the first work day April, all documents for initial satisfactory evaluations must be completed. All teachers evaluated in any given year must receive a formal summative evaluation at least thirty days prior to the end of the school year. A formal summative conference must be held at least thirty days prior to the end of the school year to discuss the summative form. The teacher may prepare a written statement of disagreement with the evaluation. The evaluator must rely on data collected through classroom observations and conferences. Any deficiencies corrected by the teacher cannot be included in the evaluation. The teacher has the right to identify any constraints inhibiting the teacher’s ability to meet the objectives. The evaluation cannot be based on publisher’s norms established by standardized tests, or any test result/program excluded by law.

Edison. The Agreement requires that the school must prepare a formal observation adhering to contractual guidelines, which are explained herein. The teacher's final Formal Evaluation, which is produced by the Administrator each year (as explained above) must be given to the teacher at a final evaluation conference at least thirty days prior to the end of the school year. The teacher may attach a written statement of disagreement.

*Grossmont Union High School District: Helix Charter School*

Grossmont. Grossmont's Agreement requires that a signed final report be given to the teacher, the evaluator, and the supervising administrator, and placed in the teacher's personnel file. Any complaint against any teacher used in the teacher's evaluation must be called to the teacher's attention if it is placed in the teacher's file.

Helix. Any teacher evaluation must be written, and a copy must be given to the teacher.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. The evaluation described above must be provided to the teacher, the teacher's file, and the Division of Human Resources file. Any teacher may attach written comments to the evaluation.

Live Oak. Summative Evaluations include a conference with the Education Director or Executive Director. Probationary teachers must have this conference by March 24, and tenured teachers by May 15.

*Alternative Evaluation / PAR*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. LAUSD participates in and adopts the PAR program designed by the State of California. The Agreement specifies that it is to be interpreted in conformity with the State program, but that the District retains the ability to develop additional evaluation and assessment guidelines. The PAR program is intended to supplement, but not replace, the Evaluation provisions in Article X of the Agreement. The PAR program does not create an entitlement for any teacher, and is not a precondition for any evaluation, disciplinary action, non-reelection, contract non-renewal, or dismissal. The program is governed by a PAR panel, whose decision may not be the subject of any grievance or arbitration.

The PAR program has three components: (1) review, assistance and guidance to permanent teachers who have received an overall Below-Standard Stull Evaluation or a Notice of Unsatisfactory Service due to below-standard teaching skills, which is mandatory; (2) assistance and guidance to non-permanent teachers, with priority assigned to teachers in schools of greatest need; and (3) a voluntary program for

permanent and non-permanent teachers who have been positively evaluated but seek to improve their performance.

Technically, only Component 1 relates to the Agreement's evaluation procedure, and the other components therefore fall outside the scope of this study. Where Component 1 applies, teachers receive assistance from a Consulting Teacher, who is either a current or retired teacher meeting the Agreements requirements for experience and exemplary performance. The Consulting Teacher is responsible to (1) conduct initial assessments of Participating Teachers, (2) establish individualized performance goals, based on the California Standards for the Teaching Profession, which must be set forth in writing in a written plan and calendar, while the teacher's School remains responsible for the teacher's regular evaluations, (3) meet regularly with the Participating Teacher, and conduct classroom visitations and observations, (4) assist the Participating Teacher in obtaining Professional Development Activities, and (5) prepare periodic reports to the PAR Panel on the progress of each teacher, informing the Panel of any Participating Teacher who was not able to demonstrate satisfactory improvement.

The PAR Panel consists of nine members --- five appointed by UTLA and four by the District. The District and UTLA may establish their own criteria for selection, but each member must have had satisfactory evaluations and service for the previous five years. The Panel must seek to act through consensus, but may act by majority vote where consensus cannot be reached, which ultimately gives the Union

members the ability to make final decisions if all Union members agree. The Panel establishes its own guidelines, selects a PAR coordinator, and determines the coordinator's duties. It also selects, assigns, evaluates and renews or releases Consulting Teachers, and reviews reports submitted by Consulting Teachers regarding the performance and progress of Participating Teachers (those receiving an overall Below-Standard Stull Evaluation or a Notice of Unsatisfactory Service). Finally, the Panel is authorized to make recommendations to the LAUSD Board of Education regarding the ability of each Participating Teacher to demonstrate satisfactory performance, and regarding the retention of Participating Teachers.

Camino Nuevo. After three years with satisfactory evaluations, a teacher can request an optional method of evaluation.

Green Dot. This Agreement is silent on this subject.

LA Leadership. This Agreement is silent on this subject.

*Perris Union High School District: Choice 2000 Online School*

Neither the Perris nor the Choice 2000 Agreement provides any alternative evaluation or peer review process.



*San Diego Unified School District, San Diego, CA: Darnall Charter School*

San Diego. The San Diego Agreement allows an alternative form of evaluation for teachers who have consistently demonstrated effective performance. Teachers with minimum of five years of effective certificated experience in the District may elect to participate, if they obtain the agreement of their supervisor. The alternative evaluation is flexible, in order to allow growth in the teacher's self-chosen areas of interest related to student learning and instructional leadership. The goals, objectives, projects and criteria established under the alternative assessment serve as the teacher's certificated performance evaluation in lieu of regular evaluation. Teachers and evaluators must hold a pre-evaluation conference similar to that for all other teachers, in which they agree on an evaluation plan, including possible constraints on the teacher's ability to follow the plan. The evaluator and teacher are encouraged to be creative and take risks. They are not required to follow the requirements for selecting performance criteria under the standard evaluation procedure. However, they are required to schedule evaluation updates throughout the assessment period. Unlike the regular evaluation process, the plan may transcend the traditional school year, and the final evaluation conference may be extended.

While in the alternative evaluation process, the Agreement provides that teachers are still responsible for their basic job responsibilities and Education Code requirements regarding (a) progress of pupils toward established standards; (b)

instructional techniques and strategies; (c) adherence to curricular objectives; (d) establishment and maintenance of a suitable learning environment; (e) and performance of non-instructional duties including supervisory responsibilities. The Agreement specifies that participation assumes compliance with the Education Code.

At the conclusion of the evaluation period, the teacher presents to the evaluator the results of the agreed-upon evaluation plan. The evaluator must then review the results, and complete a summary evaluation form to include in the teacher's file. Upon mutual agreement, the plan may be modified. Additionally, the teacher may choose to revert to the regular evaluation process. If the teacher does make such a change, appropriate timelines and objectives must be mutually established.

*Peer Coaching / Assistance Program.* The San Diego Agreement also establishes a Peer Coaching and Assistance Program, part of which relates to teachers' evaluations. The District and Union are required to establish a joint committee consisting of equal numbers of representatives, who develop guidelines and models for peer coaching and assistance, designed to assist teachers in the alignment of curriculum, teaching, methodology, classroom management skills, and program specific responsibilities. Part of the Program is a voluntary Peer Enrichment Program, which is beyond the scope of this study as it does not directly relate to teacher evaluation. The other component is a mandatory Peer Assistance and Review program ("PAR") in which Consulting Teachers assist Participating Teachers, defined as teachers who have received

an unsatisfactory evaluation, based on a combination of ratings on the first four elements of their evaluation, or an overall evaluation of less effective.

The PAR is administered by a joint panel of three permanent teachers chosen by Union, and two administrators chosen by the District. The Panel is expected to attempt to make decisions by consensus, but may rule by majority vote. The Panel is required to submit to the Board the names of teachers who, after sustained assistance, are unable to demonstrate satisfactory improvement. The Panel also selects Consulting Teachers to assist Participating Teachers. Consulting Teachers must be credentialed, have a minimum of five years teaching experience, and must have demonstrated exemplary teaching ability, as shown by effective communication skills, subject matter knowledge, knowledge and support of District curricular goals and standards, mastery of a range of teaching strategies, ability to work cooperatively, and effective leadership skills. Consulting Teachers serve for terms of four years.

Assistance provided by consulting teachers includes: consultative assistance in specific areas targeted by evaluating Principals; meeting and consulting with the Principal; observing the teacher in classroom instruction, providing recommendations; allowing teacher to observe the Consulting teacher or others; attending specific training in techniques or subject matter, and maintaining appropriate records. The Consulting teacher's records are not subject to disclosure except as required by law. The Consulting Teacher's assistance and review must focus on the areas rated less than

effective in a remediation plan developed after receiving an unsatisfactory rating. Recommendations must be written, aligned with student learning, clearly stated, and consistent with the Education Code. Recommendation shall be considered performance goals as defined by Education Code sections 44664(a) and 44500.

The Consulting Teacher and participating teacher must meet to discuss the teacher's plan, and the Consulting teacher will provide assistance throughout the year, including multiple observations. Before April 1, the Consulting Teacher completes a written report consisting solely of (1) summary of areas targeted for improvement, (2) a description of the assistance provided to the teacher, and (3) sufficient information to enable the Joint Panel to make recommendations to Governing Board. The Report is issued to the Joint Panel, the teacher, and the Principal, and shall be included as part of the teacher's annual evaluation. The evaluating Principal has discretion regarding the use of the report, and the teacher has discretion regarding its use in response to the teacher's evaluation. After a year of assistance, the Joint Panel must report (1) that the teacher is now effective, or (2) that further assistance and review will not be successful. The Panel must include the reasons for its conclusion; if the Panel concludes that further assistance will not be successful, the teacher's name will be forwarded to the Governing Board, which may use the Report as a basis for dismissal. Intervention may be extended to a second year if the Joint Panel believes that sufficient progress is being made to justify additional assistance.

San Diego's Agreement incorporates the voluntary component of the California Peer Assistance and Review Program described by Education Code section § 44500(b)(1). This program is completely separate from the evaluation and Peer Assistance and Review process, and no information developed through the voluntary program shall be used in a teacher's evaluation or placed in the teacher's file unless requested by the teacher.

Darnall. The Darnall Agreement allows a teacher to request a "process based approach," in which the School will conduct a project and case study evaluation based on the California Standards for the Teaching Profession.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. Ravenswood's Agreement establishes a Peer Assistance and Review program, which must be conducted consistent with the Education Code. Permanent teachers receiving unsatisfactory ratings in "subject matter knowledge," "teaching strategies," or "teaching skills" in any evaluation must participate in the program. Likewise, any teacher receiving unsatisfactory ratings in two key elements of the CSTP must participate in the PAR. Program. Temporary, new, or experienced teachers in need of development in "subject matter knowledge," "teaching strategies," or "teaching skills" may volunteer to participate. Because such participation cannot be used in the teacher's evaluation, it is beyond the scope of this study.

The Agreement establishes a Joint Teacher Administrator Peer Review Panel, composed of four certificated teachers chosen in a District-wide secret ballot conducted by the Union; three District Administrators chosen by the District; and one alternate each selected by the District and Union. Action can only be taken by majority vote. The Panel elects “Consulting Teachers” by observation in classroom settings. The Panel decides the number of consulting teachers available, and recommends mandatory participants to the Board. The Panel also submits recommendations regarding assistance to be provided, assesses the teacher’s participation, makes recommendations about whether further assistance should be provided, and identifies teachers who, after sustained assistance, have not demonstrated satisfactory improvement.

For mandatory PAR participants (teachers receiving unsatisfactory ratings), the evaluator’s recommendations regarding the need for improvement in “subject matter knowledge,” “teaching strategies,” or “teaching skills” are considered the performance goals for the teacher while participating in the program. The goals must be stated in writing, and must be clearly stated, aligned with pupil learning, and consistent with the Stull Act, which requires that schools evaluate teachers based on (1) progress of students toward meeting state standards, (2) instructional techniques and strategies, (3) adherence to curricular objectives, and (4) establishment and maintenance of a suitable learning environment (Cal. Educ. Code § 44662).

The evaluator must discuss the goals with the teacher within ten days of the teacher's final evaluation, and develop a plan for assistance. The Plan must commence by the third week of school, and must be completed by the last week of February. The evaluator and teacher are expected to establish a cooperative relationship, and must meet to discuss the plan for assistance within the first week of school.

Once a Consulting Teacher is assigned, the Consulting Teacher's assistance may include (a) consulting with the teacher, (b) meeting and consulting with the evaluator, principal or their designee (c), observing the teacher in classroom instruction, (d) allowing the teacher to observe the consulting teacher or other teachers, (e) allowing the teacher to receive training in specified techniques or subject matters, (f) demonstrating good practices to the teacher, (g) maintaining appropriate records of activities and progress, and (h) discussing activities and progress. The District must also provide sufficient development activities to help the teacher to improve.

While providing assistance, the Consulting teacher must monitor the teacher, report on the teacher's participation, and submit periodic status reports to the Peer Review Panel, including a description of the assistance provided and the teacher's participation. The Consulting teacher must prepare a final status report at the completion of the assistance plan, including a description of the assistance provided, the teacher's participation, the outcome of the teacher's participation, and a recommendation for whether further assistance should be provided. Copies must be submitted the evaluator

and teacher. The Panel must then review the Report, and make recommendation for whether further assistance should be provided. The Panel must make its final report available for placement in the teacher's personnel file by the last work day of the school year. The results must be made available as part of the teacher's evaluation, consistent with Education Code section 44664. The evaluator has discretion as to whether and how to use the teacher's PAR results in the teacher's evaluation.

Edison. Edison's Agreement does not establish any formal alternative evaluation process or any Peer Assistance and Review program.

*Grossmont Union High School District: Helix Charter School*

Grossmont. Grossmont's Agreement establishes an Alternative Evaluation Program, which is intended to allow teachers to establish criteria for the evaluation of their professional growth. The Program applies to teachers with a minimum of five years of teaching, whose most recent evaluation is at least "Meets Standards." Teachers in the program set goals that serve as the basis for their professional growth and evaluation. The teacher and administrator must hold a conference early in the fall, at which they discuss and agree upon goals, establish criteria and options to be used for evaluation, and schedule approximate dates for two short evaluation conferences during the year to discuss the teacher's progress toward the agreed-upon goals.



Grossmont's Program is designed to transition from teacher-centered evaluation to student-centered evaluation. The Agreement provides that goals of teachers in the program should include: Student Progress (e.g., classroom action research, pre and post testing, and portfolios); Meeting Needs of Diverse Populations (e.g., addressing learning modalities, and instructional strategies from World of Difference (anti-bias education), and Crosscultural Language and Academic Development (CLAD), and Bilingual Crosscultural Language and Academic Development certification); Integration of Curriculum Framework (e.g. relating coursework to program majors, authentic assessment); Student and Parent Feedback (e.g. phone logs, personal communication tools regarding student success); and Peer Coaching (e.g. collaborative lesson planning, modeling, reflective feedback).

An Alternative Evaluation Goals Form is attached to the Agreement, on which the teacher and evaluator must list Goals; Plans for Implementation; Evaluation Criteria; and Approximate Dates of Evaluation Conferences. The Agreement also includes an Alternative Evaluation Final Form, on which the evaluator and teacher must list Evaluation of Goals and Objectives; Reflection of Teaching; Plans for Subsequent Growth; and Review and Reaction of Administrator.

The program provides significant discretion to the evaluator and teacher, but includes guidelines for Program Elements to be completed throughout the year. In September, teachers must receive information regarding the two evaluation procedures

(the standard and alternative method), and Principals must discuss the two programs at a staff meeting. In October, teachers must select the method of evaluation; meet with Principal if they are interested in the Alternative Evaluation; and complete the appropriate goals form. Principals must also conduct goal conferences, establish the appropriate form of evaluation; and work with teacher to ensure that their plan includes key elements of the program, and complete the goals form by October 30. Between November and April, teachers work on completion of their goals. Principals must make informal visits to classrooms, conduct two site meetings for participating teachers, and support and assist teachers. During May, teachers must complete final evaluation forms, and hold an evaluation conference with the Principal. Principals must conduct evaluation conferences, and complete final evaluation forms by May 1.

Grossmont's Agreement also requires that any teacher receiving "Does Not Meet Standards" ratings in any three of the first five CSTP standards must participate in the Peer Assistance and Review Program in order to improve the teacher's performance. (*Appendix F: Peer Assistance and Review Program.*)

Helix. Helix's Agreement establishes a Peer Assistance and Review Program administered by a Joint Committee consisting of seven members, five of whom are chosen by the Union. The Committee is responsible for choosing Consulting Teachers and evaluating them. Any teacher who receives a "Does Not Meet Standards" rating on an Overall Evaluation must become a Participating Teacher in the program.

After notice of such an evaluation, the panel must choose a Consulting Teacher for the Participating Teacher within twenty days.

The Consulting Teacher must meet with the teacher to develop a plan, conduct multiple observations, conduct pre- and post-observation conferences, and keep monthly logs. The Consulting Teacher must monitor the teacher until the plan is complete, or the Consulting Teacher determines that further assistance will not be productive. The Consulting Teacher must issues a final report to the Joint Committee.

Any teacher with five years of experience may participate in the PAR on a voluntary basis if the teacher obtained a Satisfactory or Meets Standards rating on the teacher's most recent evaluation, as an alternative to the biannual evaluation process. However, such participation is intended only to help the teacher and make the evaluation process more collegial, and cannot be considered part of the teacher's performance review.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. This Agreement is silent on this subject.

Live Oak. This Agreement is silent on this subject.

*Follow-up for Low-Rated Teachers*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. If a teacher's Final Evaluation Report is rated "Below Standard Performance," the evaluator must specifically describe in writing the areas of below standard performance, with "recommendations for improvement, and the assistance to be given." Additionally, such teachers must participate in the Peer Assistance and Review program described above.

Camino Nuevo. If a teacher's evaluation is low (rated 1 or 2), the School must give notice and offer guidance and support to correct any deficiency. The School must make available a guidance plan, which may include coaching, released time, classroom observations, or other resources as identified in a plan for growth identified on the teacher's classroom evaluation.

Green Dot. If teacher is not "meeting" or "partially meeting" any CSTP standard in observation, a Development Plan "may" be created to foster growth. The Plan must include: (1) areas of growth, identifying improvement needed and supporting evidence; (2) specific suggestions for improvement; (3) resources to be utilized to assist; and (4) means for measuring improvement. If there is insufficient evidence of progress after forty-five days, a forty-five day Improvement Plan is implemented. Any teacher receiving a "Practice Does Not Meet Standards" rating must receive an Improvement Plan. The Plan must include: (1) areas of growth, where improvement needed and

supporting evidence; (2) specific suggestions for improvement; (3) resources to be utilized to assist; (4) means for measuring improvement; (5) reasonable date for achieving specified improvement. The Principal must also take affirmative action to help, including (1) providing specific suggestions, (2) offering direct assistance in implementing the suggestions, and (3) giving adequate released time to visit and observe teachers in other Green Dot schools.

If a teacher on an Improvement Plan does not improve sufficiently to meet the School's standards, Green Dot may terminate or not re-hire the teacher for the following year. The Plan must follow a designated procedure: (1) written notice must be given to the teacher by April 15 of that year; (2) the notice must include the reason for the school's action, and an opportunity to appeal; (3) the teacher may request a conference in writing within ten days; (4) if no request is made, the conference is waived; (5) if requested, the conference must be held before the Board in a closed session, unless the teacher requests an open session; (6) the teacher may have a Union representative present; and (7) the teacher may use the School's grievance process.

LA Leadership. This Agreement is silent on this subject.

Ocean. If a teacher receives a "Requires Strengthening" or "Below Standard" rating, either the teacher or administrator can request a second observation, for which the same procedure applies. The School must then take affirmative action to

correct the teacher's deficiencies, including providing released time and allowing time for the teacher to visit other classes.

*Perris Union High School District: Choice 2000 Online School*

Perris. Under the Perris Agreement, for permanent teachers, if the evaluation includes an “unsatisfactory” or “needs improvement” rating, the District must require an Improvement Plan for each such rating, which must be in effect for four weeks before notice of unsatisfactory performance can be given. The evaluation must include the requirement that the teacher participate in a program to improve, and the teacher must be given specific recommendations and assistance for improvement. The Improvement Plans must be completed fifteen days prior to the end of the school year, and any post-evaluation conferences must be held five days prior to the end of the school year. For probationary teachers, if the evaluation includes an “unsatisfactory” or “needs improvement” rating, the District may suggest an Improvement Plan for each such rating.

Choice 2000. Under the Choice 2000 Agreement, if the evaluation is “Unsatisfactory,” the teacher must be evaluated every year until the teacher achieves a “Satisfactory” rating, or is separated from the School.

*San Diego Unified School District, San Diego, CA: Darnall Charter School*

San Diego. When any aspect of a teacher's evaluation is less than satisfactory, the evaluator shall schedule a conference to discuss the teacher's progress, and must notify the teacher verbally and in writing of the specific objectives and criteria in which sufficient progress is not being made. The evaluator shall then develop a remediation plan, which must describe: (a) specific areas where improved performance is necessary, (b) resources to be made available to assist the teacher, including peer coaching, a mentor teacher or release time to observe others; (c) the evaluator's role in assisting to achieve improvement; (d) a timeline for monitoring performance; and (e) consultation with the department head to develop a progress check. A conference must occur sufficiently before the teacher's final evaluation to allow sufficient opportunity to improve, and generally must occur at least fifty days before the evaluation. The evaluator's failure to comply with these requirements may preclude the evaluator from rating the teacher as less than satisfactory on the evaluation.

*Special Evaluations* are conducted when a teacher's job performance is less than effective: (1) to follow upon on teacher designated as less than effective (14.8.1.1); (2) any time supervisor determines any aspect of performance is less than effective (14.8.1.2). When a teacher is evaluated as less than effective in any year, the teacher must be evaluated each year until the evaluation is effective or other appropriate

action is taken. The evaluation must be conducted by the supervisor or as delegated at the supervisor's discretion, with the division head's approval.

If an evaluation contains less-than-effective rating in area of teaching methods, instruction, or control of classroom environment, the evaluator may require the teacher to participate in an improvement program. Development of detailed lesson plans may be required. With the teacher and district personnel, the evaluator must develop a written plan, which includes: (1) areas in which improved performance is necessary, limited to areas of "less than effective" performance; (2) resources to be made available, including peer coaching, a consulting teacher (as described in the "PAR" section above), released time to observe others, printed materials, attendance at in-service training, and central office assistance; (3) a timeline for monitoring, (4) the evaluator's role in assisting; (5) constraints on the teacher's ability to improve, if any, to be included in an Evaluation Worksheet; (6) regular updates of the teacher's progress; (7) and consultation with the appropriate department head in the development of special evaluation objectives.

For teachers on an improvement plan, during the first four weeks of pupil attendance, the evaluator must initiate a pre-evaluation conference with the teacher, and attempt to reach mutual agreement on the issues described above. The evaluator must inform the teacher of the exact areas of performance requiring improvement, and consult with the teacher regarding objectives and standards for effective performance, assessment techniques, timelines, support requirements, and constraints on the teacher's ability to



improve. If mutual agreement is not reached, the evaluator will establish the objectives and inform the teacher. Such objectives must be related to areas marked “less than effective. An Evaluation worksheet must be completed and signed within fifteen days of the conference. By the third Friday in December, the supervisor initiates a Progress Check Conference, at which the supervisor (1) reviews teacher’s performance, (2) provides the teacher with a copy of the mid-year evaluation report; (3) if progress is satisfactory, terminates special evaluation; if progress is not satisfactory, the special evaluation is continued until February 15 for probationary teachers, or to a date within thirty days before the last school day for permanent teachers; and (4) if performance is not improved, the supervisor may proceed with appropriate action as necessary.

By February 15 for probationary teachers, and before the last school day for permanent teachers, the evaluator must initiate a Summary Evaluation Conference, at which the evaluator completes and signs the District’s evaluation worksheet, and prepares and signs a Summary Evaluation Report and addenda. The teacher also signs and receives the Report, and may submit written comments to attach to the report. If performance is satisfactory, the evaluation is complete; if performance continues to be less than effective, the supervisor schedules a special evaluation for the next school year, and proceeds with appropriate disciplinary action. The Summary Evaluation report is then forwarded to the District’s Human Resources Department.

The District is also authorized to give an Expedited Special Evaluation during a non-evaluation year for demonstrable deficiency. The teacher must be notified through a conference and a written memorandum that an expedited special evaluation is possible if performance has not improved within a reasonable period of time. A conference not required in cases of severe misconduct. Expedited Special Evaluations require a minimum of fifty work days, in which the pre-evaluation conference, progress check, and summary evaluation conference must occur.

Darnall. Under the Darnall Agreement, if a teacher receives a “Below” or “Far Below” rating, the School must notify the teacher by December 1, and the Administrator and teacher must meet to create an Improvement Plan. The teacher is authorized to bring an advocate, including a Union representative, to the meeting. The Director and teacher must then meet after thirty days to review the teacher’s progress, and meet again after sixty days to decide whether sufficient progress has been made. The teacher cannot be judged on any issues not in the Plan. If any new issues are raised, a new sixty-day period is commenced, during which the same procedure must be followed. If the teacher fails to demonstrate progress, the Director should recommend non-renewal to the Board. The Board’s decision is final.

During a non-evaluation year, the Director can initiate an improvement plan any time prior to the second trimester in evaluating year. The same procedure described above must then be followed.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. After a negative observation, the evaluator must take positive action to assist the teacher, including specific recommendations for improvement, direct assistance to implement the recommendations, additional resources including Peer Assistance and Review or other District training; techniques to measure improvement; and time scheduled to monitor the teacher's progress.

A teacher must participate in an Improvement Program after receiving an unsatisfactory rating in any key element of the CSTP, defined as Standards 1 through 4.<sup>11</sup> No teacher may be required to participate in an improvement program unless (1) the teacher was observed as unsatisfactory during school year, the principal has provided reasonable assistance, and the teacher has not improved; (2) after the first year's unsatisfactory performance, the teacher was given notice of the requirement to participate in an improvement program.

Participation in an Improvement Program is voluntary, but refusal may result in termination, as authorized by the Education Code. The nature of the improvement program must be mutually agreed upon. Release time shall be provided

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<sup>11</sup> Those standards are: (1) Engaging and Supporting All Students in Learning; (2) Standard Two: Creating and Maintaining Effective Environments for Student Learning; (3) Understanding and Organizing Subject matter for Student Learning; and (4) Planning Instruction and Designing Learning Experience for All Students.

when required. The plan must be related to the causes of the teacher's unsatisfactory evaluation. If the plan includes peer participation, the relationship between the teacher and peer shall be confidential. Upon completion, the teacher must be reevaluated; the overall evaluations shall be held in abeyance, and must be purged from the teacher's files after two years of satisfactory evaluation.

Any teacher receiving unsatisfactory ratings in two key elements of CSTP must participate in the District's PAR, which is explained above.

Edison. Edison's provisions regarding assistance and follow-up for low-rated teachers are very similar to Ravenswood's, although they are more specific in some respects, while omitting other elements of Ravenswood's program for teacher improvement. Unlike the Ravenswood Agreement, a yearly evaluation is required for teachers performing unsatisfactorily or who are intern-credentialed. Additionally, following a negative observation a teacher must be observed a minimum of two additional times within two months, and the evaluator must conduct pre- and post-observation conferences and provide a written assessment. The Ravenswood Agreement does not specifically require additional observations.

Any teacher rated as Unsatisfactory or In Need of Improvement in a formal observation or a final formal evaluation must participate in an Instructional Improvement Program. As in the Ravenswood Agreement, a teacher must also participate after receiving an unsatisfactory rating in any key element of the CSTP,

defined as Standards 1 through 4. Teachers must be given notice that they need to participate in the program, and refusal to participate may result in termination. As in the Ravenswood program, the nature of the program must be mutually agreed upon; the school must provide release time when necessary; and the Improvement Plan must relate to the cause of the teacher's Unsatisfactory evaluation. If the plan includes peer participation, such participation must be confidential. Upon completion of the plan, the teacher must be reevaluated.

*Grossmont Union High School District: Helix Charter School*

Grossmont. If the evaluator finds a teacher deficient, the evaluator must set forth the reasons in writing, identify specific ways to improve, and describe specific assistance that will be provided from the administrator and staff. When a permanent teacher receives an unsatisfactory evaluation, the evaluator must evaluate the teacher annually until the teacher receives a positive evaluation or is separated. Any teacher receiving "Does Not Meet Standards" ratings on any three of the first five CSTP standards must participate in the Peer Assistance and Review Program, described above, in order to improve.

Helix. As described above, Helix's PAR program is designed to provide assistance to low-rated teachers. If teacher receives three "Does not Meet Standards" rating, must enter PAR. Similar to Grossmont's Agreement, if a teacher's evaluation is

Unsatisfactory, the teacher must be evaluated annually until a Satisfactory rating is achieved or the teacher is separated.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. If a teacher receives an overall rating of “Needs Improvement” or “Not Satisfactory,” the evaluator must recommend positive action to correct any deficiencies. An additional evaluation is required for the next year, as well as an improvement plan and intensive supervision. The teacher cannot be evaluated on any aspect of teaching for which the teacher has no control.

Live Oak. This Agreement is silent on this subject.

*Ability to Challenge or Grieve*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. After receiving a Final Evaluation Report, a teacher may appeal the matter to the next higher administrative level. Evaluations are not subject to LAUSD’s grievance procedure (Article V), except when the overall evaluation is “Below Standard.” If the overall evaluation is “Meets Standard,” but there is a “significant disparity” between the rating and the comments on the form, the evaluation is also subject to the grievance procedures.

Pre-disciplinary actions such as warnings, conference memos and reprimands are not subject to the grievance procedures, except when placed in the teacher's official District file, or used as the basis of formal disciplinary action (a "U-Notice" or suspension), or an overall "Below-Standard" Evaluation. If the document is later used as the basis of formal disciplinary action, the document cannot be considered valid unless the school proves that it meets the "for cause" standard. Such documents may be "worked off" by completing four years without a recurrence of the same or similar conduct. The document must then be kept in a separate "expired" file. Finally, no decision by the PAR may be the subject of a grievance or arbitration.

Camino Nuevo. The judgment of an evaluator is not subject to the Agreement's grievance procedure. A teacher may attach a responding statement to any performance review. The teacher must be notified of any parent complaint and have the opportunity to respond in writing before the complaint is referenced in any evaluation or formal reprimand, or is used in a hearing under Article 19 (Evaluation).

Green Dot. The Green Dot CBA allows grievance of any provision of the Agreement.

LA Leadership This Agreement is silent on this subject. Accordingly, the Agreement's general grievance procedure may be used.

Ocean. This Agreement is silent on this subject.

*Perris Union High School District: Choice 2000 Online School*

Perris, Choice 2000. These Agreements are silent on this subject.

Accordingly, the Agreements' general grievance procedures may be used.

*San Diego Unified School District, San Diego, CA: Darnall Charter School*

San Diego. Under the San Diego Agreement, evaluation is subject to grievance if the specified guidelines and procedures are not followed.

The Agreement also provides protection regarding derogatory material about the teacher. Such material may not be placed in the teacher's file unless the teacher is notified and given an opportunity to review and comment. The teacher must be given a copy of the material, during normal business hours, and acknowledge by signature that it has been received and read. The teacher may also submit comments, which must be attached to the derogatory materials.

Darnall. The Darnall Agreement provides that the Board's decision regarding teacher evaluation is final. However, evaluation decisions are not specifically exempted from the Agreement's grievance procedure.



*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. The Ravenswood Agreement provides that any materials serving as the basis for any decision affecting a teacher's employment status must be made available to the teacher, except those excluded by Education Code § 44031 (ratings, reports, or records that were obtained prior to the employment of the person involved, were prepared by identifiable examination committee members, or were obtained in connection with a promotional examination). If an evaluation is based on derogatory material, including complaints by a student, parent or other employees, such material must be put in writing, and teacher has the right to (1) receive a copy of the complaint within five days of its receipt; (2) to confront the person making the charge, (3) to respond to any accusation, and attach the teacher's own responsive comments, (4) and appeal the decision to the Superintendent or a designee other than the site administrator within five days of the disposition of the complaint by the evaluator. The Superintendent's decision regarding the use of such material shall be final.

No aspect of the District's PAR program may be the subject of complaint under the Agreement's grievance and arbitration procedure. However, as the Agreement is otherwise silent on the subject, any other element of the evaluation procedure may be the subject of a grievance.

Edison. Under the Edison Agreement, materials affecting a teacher's employment status must be available for inspection, and a copy must be provided upon

request. Derogatory information shall not be entered in an employee's file except as allowed by law, after review by the teacher. The teacher has the right to enter a responsive comment. If an evaluation is based in part on derogatory information submitted by a parent, student, or teacher, such information must be included in writing. The teacher may include a response, and may appeal the decision regarding the use of the complaint to Edison's Vice President within five working days of receiving notice. The Vice President's decision is final.

As Edison's Agreement does not exclude evaluation decisions from the Agreement's grievance procedure, such decisions may be the subject of a grievance.

*Grossmont Union High School District: Helix Charter School*

Grossmont. As Grossmont's Agreement does not exclude evaluation decisions from the Agreement's grievance and arbitration process, such decisions may be grieved.

Helix. Like the Grossmont Agreement, Helix's agreement does not address whether evaluation decisions may be grieved. The Agreement does provide that a Participating Teacher has the right to have a union representative present throughout the evaluation process.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. The teacher's personnel file containing any materials affecting the status of the teacher's employment must be kept at the district office. Derogatory information or statements cannot be entered unless the teacher given notice and an opportunity to comment within ten days. Positive material from any responsible outside source may be entered, and shall be given to teacher. The teacher may review the file, with a representative if requested, in the presence of administrator. No anonymous materials may be included.

Public Charges should be made directly to the teacher. If they are not resolved, they must be presented to the principal in writing. The Principal shall then hold a conference; if it still is not resolved, it must be referred to the Superintendent, who will issue a decision within 10 days. It may then be appealed to the Board, where it must be addressed in a closed session unless the teacher requests an open session.

Live Oak. This Agreement is silent on this subject. Accordingly, the Agreement's general grievance procedure may be used.

## Teacher Classification, Discipline and Dismissal

### *Classification / Security*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. LAUSD is subject to the Education Code, which provides that any teacher in a district with more than 250 average daily attendance who serves two complete, consecutive years and is not dismissed becomes a permanent employee. Cal. Educ. Code § 44929.21(b).

Camino Nuevo. Camino Nuevo's Agreement provides that after three consecutive years of employment, the School may, in its discretion, offer a teacher an individual employment contract for a two-year term, or choose not to extend a contract offer. Additionally, the School may, in its discretion, offer a teacher on an improvement plan a one-year contract.

Green Dot. Green Dot's teachers do not have any form of tenure; however, as addressed below, no teacher can be disciplined or dismissed except for "good cause," which essentially provides tenure-type protection to all teachers, regardless of their seniority.

LA Leadership. LA Leadership's Agreement requires "good cause" for discipline or dismissal of any teacher after two years.

Ocean. Under the Ocean Agreement, teachers serve as probationary employees for two years, which is defined as working at least 75% of a full-time load. On the first day of their third year, teachers become “ongoing” employees.

*Perris Union High School District: Choice 2000 Online School*

Perris. Like LAUSD, Perris is subject to the Education Code provisions regarding classification and security, which are explained above.

Choice 2000. This Agreement is silent on this subject.

*San Diego Unified School District: Darnall Charter School*

San Diego. Like LAUSD, San Diego is subject to the Education Code provisions regarding dismissal, which are explained above.

Darnall. Under the Darnall Agreement, teachers have a two-year probationary period. After the second year, teachers are provided a written contract. A teacher’s contract is renewed automatically if the teacher receives a Developing Standard, Meets Standard, or Exemplifies Standard rating, or if the teacher is not in an evaluation year.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. Like LAUSD, Ravenswood is subject to the Education Code provisions regarding teacher classification, which are explained above.

Edison. This Agreement is silent on this subject.

*Grossmont Union High School District: Helix Charter School*

Grossmont. Like LAUSD, Grossmont is subject to the Education Code provisions regarding classification, which are explained above.

Helix. The Helix Agreement requires “just cause” for discipline of any teachers after two years, and classifies such employees as “permanent” for evaluation purposes.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. Like LAUSD, Petaluma is subject to the Education Code provisions regarding classification and security, which are explained above.

Live Oak. After a teacher’s third year, if the teacher is invited back for a fourth year, the teacher becomes “permanent” and receives tenure.

*Standard / Grounds for Discipline*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. LAUSD’s teachers may only be disciplined “for cause.”

Camino Nuevo. Camino Nuevo’s Agreement does not impose any “cause” or other specific standard for discipline. The Agreement’s “management rights” clause reserves to the School authority over “selection, classification, direction, promotion, demotion, discipline and termination of all personnel.”

Green Dot. Green Dot’s Agreement, like LAUSD’s, requires “just cause” for any discipline.

LA Leadership. LA Leadership’s Agreement requires “Just cause” for discipline of teachers after two years, but does not impose any standard on discipline of teachers prior to that point.

Ocean. Ocean’s Agreement requires that discipline for any “ongoing” teacher must be based on “just cause.”

*Perris Union High School District: Choice 2000 Online School*

Perris. Under the Perris Agreement, an administrator may initiate discipline only for “just cause.” Discipline may include suspension without pay for up to

15 days; longer suspensions are governed by the Education Code. The Agreement reserves to the District power to terminate and discipline only “for just cause” as set forth in Education Code sections 44930 through 44960.

Choice 2000. Choice 2000’s Agreement requires that discipline of any teacher must be based upon “just cause.”

*San Diego Unified School District: Darnall Charter School*

San Diego. San Diego’s Agreement provides that a teacher may be suspended up to fifteen days for any reason in the Education Code, including unsatisfactory performance, unprofessional conduct, or persistent violation or refusal to obey state law or board regulations. The Agreement does not regulate suspensions of fifteen days or more, which are governed by the Education Code.

Darnall. Discipline can be based on “unsatisfactory performance,” unprofessional conduct, or violation of reasonable regulations, policies and procedures.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. The Ravenswood District’s Agreement allows a school to discipline a teacher “only for just cause.” Discipline includes warnings or reprimands.



Edison. Edison's Agreement imposes a lower standard than Ravenswood's, requiring only that discipline cannot be imposed for arbitrary or capricious reasons.

*Grossmont Union High School District: Helix Charter School*

Grossmont. Like LAUSD, Grossmont is subject to the Education Code provisions regarding discipline, which are explained above.

Helix. The Helix Agreement requires "just cause" for discipline of any teachers after two years. The Agreement explicitly incorporates certain elements of the Education Code, providing that, other than as stated in Education Code sections 44939, 344940, and 44942, no discipline can be imposed without "just cause."

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. Petaluma's Agreement recites that the District and Union negotiated as mandated by Government. Code section 3543.2 regarding alternative methods of addressing unsatisfactory performance, short of dismissal procedures under Education Code section 44941. The Agreement provides that teachers cannot be "cited" without "just cause." Specifically, the District may take disciplinary action only for (1) violations of district policy, code of ethics, conduct expected of professional educators;

(2) abusive behavior (physical or verbal) toward students, employees or public during school-related activities; or (3) failure to perform contractual obligations.

Live Oak. A teacher with permanent status (in the teacher's fourth year) can only be suspended without pay "for cause"; examples listed include unsatisfactory performance, neglect of duty, inefficiency, discourteous treatment, and unprofessional conduct.

*Discipline Process / Progressive Discipline*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. Under California law, bargaining is mandatory, if requested by either party, regarding the causes for discipline and disciplinary procedures, other than dismissal, including suspension of pay for up to fifteen days. This applies to both probationary and permanent teachers (Cal. Govt. Code § 3543.2(b)). In the absence of mutual agreement on these subjects, the provisions of the Education Code govern (Cal. Govt. Code § 3543.2(b)).

Consistent with the Education Code, LAUSD's Agreement (Section 11) provides that discipline may include a Notice of Unsatisfactory Service or Act, or suspension for up to fifteen days without pay (Cal. Govt. Code § 3543.2(b)). The Agreement requires that the concept of "progressive discipline" must be followed, although some circumstances may make progressive discipline unnecessary. A Notice of

Unsatisfactory Service or Act may not be based on any event that occurred “more than a reasonable period of time” before the suspension.

The Agreement also provides that when it is evident that an employee conference may result in possible disciplinary action, the teacher must be notified of the purpose of the meeting, and has the right to be accompanied by a UTLA representative or other person. Likewise, prior to issuing a Notice of Unsatisfactory Service or Act, the school must inform the teacher that (1) the action is about to be taken, (2) a meeting will be held to discuss the matter, and (3) the employee may be accompanied by a UTLA representative.

Discipline authorized by the Agreement (up to suspension without pay for 15 days) may be imposed independent of the evaluation procedures in the Agreement, and independently of statutory suspension and dismissal proceedings. Such discipline is not a precondition for a statutory suspension or dismissal process. However, if any suspension or dismissal proceeding is predicated on the conduct on which any discipline under Section 11 is based, any grievance under Section 11 that has not yet proceeded to arbitration must be stayed pending resolution of the statutory proceedings.

Camino Nuevo. Camino Nuevo’s “management rights” clause gives the School authority over “selection, classification, direction, promotion, demotion, discipline and termination of all personnel.” It does not impose any progressive discipline requirement.

Green Dot. This Agreement is silent on this subject.

LA Leadership. This Agreement is silent on this subject.

Ocean. Ocean's Agreement requires Progressive Discipline, consisting of several steps: (1) verbal warning, which may result in a post-conference memorandum, to which the teacher may attach a written response; (2) written warning; (3) written reprimand, which may only be issued after two verbal warnings within the preceding two years, and to which the teacher may also attach a written response; (4) suspension without pay for up to 15 days, which generally may be issued only after a written reprimand has been issued for similar actions; and (5) dismissal, which can only occur after the previous steps have failed, or for egregious conduct.

Any suspension or dismissal must be initiated in writing through a Notice of Recommended Discipline, which must include a statement describing the factual basis for the action, any rule or regulation violated, and the proposed penalty. The Notice must also include any documentary materials supporting the action, and a statement of the teacher's right to respond within five days before discipline is imposed. A copy must be sent to the Union President. As in LAUSD, teachers are entitled to Union representation at all disciplinary meetings, conference or hearings. The teacher must be notified in advance if the meeting or hearing could lead to disciplinary action. Finally, no disciplinary action can be based on material from a parent or student unless it has been properly investigated under Agreement.

*Perris Union High School District: Choice 2000 Online School*

Perris. Under the Perris Agreement, any discipline must be consistent with a “progressive disciplinary approach.” Prior to issuance of any discipline, the school must discuss the proposed action and the reasons for the action, and take the teacher’s response into account.

Choice 2000. The Choice 2000 Agreement requires the School to follow Progressive Discipline, but does not establish any specific process.

*San Diego Unified School District: Darnall Charter School*

San Diego. San Diego’s Agreement authorizes several forms of discipline, the most serious of which are a Letter of Reprimand and Suspension. Usually a Letter of Reprimand can only be issued after progressive discipline, which includes the following steps: (1) verbal warning (which is not provided in writing), (2) written warning (maintained in teacher’s file or program personnel file), and (3) letter of reprimand (maintained in teacher’s district personnel file). The Supervisor has discretion to determine the number of verbal and written warnings prior to issuing a written reprimand. However, for egregious conduct, Supervisor may issue a letter of reprimand without verbal or written warning. A teacher generally cannot be suspended unless the Supervisor has issued one verbal warning, one written warning, and one letter of reprimand, although immediate suspension is authorized for “egregious conduct.” The

teacher must be given a written statement of the charges forming the basis of the suspension decision.

Darnall. Much like the San Diego, Darnall's Agreement requires three steps of "progressive discipline" for any disciplinary conduct warranting action by a Director: (1) a verbal warning (which is not placed in the teacher's file, but is documented by the Director and a unit member); (2) a written warning (which is maintained in the teacher's personnel file); and (3) a Letter of Reprimand (maintained in maintained in the teacher's). Each step must be followed for any distinct conduct, beginning with a Verbal Warning. However, egregious conduct may warrant a letter of reprimand without verbal or written warning.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. Progressive discipline must be applied except where "the serious nature of the offense" may require the District to impose a written warning or reprimand. Progressive discipline includes: (1) Verbal Counseling or Warning, which may result in a post-conference summary memorandum, but will not be placed in the teacher's personnel file (2) Written Warning, which can only be issued if the teacher has been verbally warned about similar actions in the last twelve months, and which is not placed in the teacher's personnel file; (3) Written Reprimand, which can only be issued if the teacher has received a written warning about similar conduct in the last 12 months; the teacher must sign the reprimand to acknowledge receipt, and a copy may be placed in

the teacher's personnel file; and (4) Notice / Letter of Reprimand, which must contain a statement of the specific acts or omissions on which it is based; a statement of the cause for which the action is recommended; a description of the Education Code section, policy or regulations that has been violated, if applicable; the proposed penalty and effective date; and a statement of the teacher's right to challenge the discipline by requesting a hearing under the Agreement's grievance procedure.

If a teacher is placed on administrative leave, the teacher must be given advance notice in a letter sent by certified mail, which must also be sent to the Union President and the site administrator.

Edison. This Agreement is silent on this subject.

*Grossmont Union High School District: Helix Charter School*

Grossmont. Grossmont's Agreement provides that all discipline shall include progressive discipline, although it does not mandate specific steps to be followed. Additionally, the School must provide prior notice to the teacher, and the opportunity for a conference upon the request of the teacher. As authorized by the Education Code, discipline can include suspension for no more than 15 days.

Helix. Helix's Agreement closely follows Grossmont's, requiring progressive discipline, and prior notice of any discipline with an opportunity for a

conference. As under the Grossmont Agreement, suspension cannot be more than 15 days.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. The Petaluma Agreement requires that a teacher must receive a full, complete statement of any charges before discipline is imposed. The teacher must also be given the opportunity to be represented by the Union or another representative, an opportunity to rebut any charges, and the right to appeal. The District must give an informal, verbal warning before implementing formal discipline procedures, except for “more serious incidents.” Discipline must be commenced by giving notice to teacher in writing. The notice and other documents cannot be placed in the teacher’s file until the teacher has had the opportunity to respond. Following notification, a conference must be held between the teacher, union representative, principal, and Superintendent or his designee. Within five days of the conference, the Superintendent or designee must notify the teacher of the District’s intended action.

The following steps of progressive discipline must be followed: (1) a written warning, with suggestions for correction; (2) a second written notice, including “probation” for a specified period in which the teacher may correct the problem; (3) suspension without pay for up to five work days; and (4) if the unsatisfactory action is repeated within 18 months, the District may continue with suspension.



Live Oak. This Agreement is silent on this subject.

*Discipline: Ability to Challenge or Grieve*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. The LAUSD Agreement authorizes any teacher to file a written statement in response to any Notice of Unsatisfactory Service or Act, which must be attached to all copies of the Notice retained by the District. Additionally, any Notice of Unsatisfactory Service or Act is grievable under Article V of the Agreement. However, if the discipline includes suspension without pay, the teacher may submit a notice of appeal to the District within three days. The District must then hold an appeal meeting, and issue a decision by the following day. Within two days of that decision, the Union must notify the District if it intends to appeal the matter to arbitration. After the District takes action, it must provide the Union a copy of any written statements of students related to the matter, upon request by the Union. The Union must be given an opportunity to interview any student witness called to testify at arbitration.

Camino Nuevo. As Camino Nuevo's Agreement is silent regarding the ability to file a grievance regarding discipline, the Agreement's general grievance procedure is available.

Green Dot. Green Dot's Agreement provides that any violation of any provision of the Agreement is subject to grievance.

LA Leadership. As LA Leadership's Agreement is silent regarding the ability to file a grievance regarding discipline, the Agreement's general grievance procedure is available.

Ocean. Ocean's Agreement requires that a copy of any suspension or dismissal must be sent to the Union President. The School must also provide a copy of the materials, rules or regulations on which the discipline is based, and must provide the teacher an opportunity to respond. The teacher also has the right to have a Union representative present. As the Agreement is silent regarding the ability to file a grievance regarding discipline, the Agreement's general grievance procedure is available.

*Perris Union High School District: Choice 2000 Online School*

Perris. Under the Perris Agreement, a copy of any discipline must be sent to the local office of the CTA and the President of Perris Secondary Educators Association. A teacher may file a written appeal with the Superintendent within 7 days of notice of disciplinary action. If a timely appeal is filed, it will be heard by a mutually acceptable arbitrator. After the arbitrator rules, if the Board disagrees, it may reject the decision and proceed under Education Code section 44944 with a panel hearing on the same charges, whose decision will be final. However, the Appropriateness of the particular discipline imposed is within the exclusive jurisdiction of the Board.

Choice 2000. Under the Choice 2000 Agreement, a teacher may appeal any discipline to the Superintendent, and then proceed to Arbitration. However, the Board may reject the Arbitrator's decision. Unlike the Perris Agreement, the Board is not then required to proceed under the Education Code, but is authorized instead to act on its own discretion. A copy of any discipline must be sent to the Union.

*San Diego Unified School District: Darnall Charter School*

San Diego. San Diego's Agreement establishes a unique process for challenging Letters of Reprimand and Suspensions. A teacher may challenge a Letter of Reprimand by requesting review by the Superintendent's designee within 10 days. The Union has the right to request a hearing to review the District's decision, but submitting a written request within ten working days of the decision. The parties must then attempt to mutually select a hearing officer; failing agreement, an officer is selected randomly from a district panel. The parties may present oral and documentary evidence to the hearing officer, who must provide a written decision upholding or setting aside the letter of reprimand. That decision is final. If the reprimand is determined to be appropriate, the reprimand and any rebuttal by the teacher is placed in the teacher's personnel file, and in a Human Resources file separate from the personnel file. If the reprimand is found not to be appropriate, the decision and other documents must be kept in a Human Resources file separate from the personnel file.

The Union may also request a hearing on a teacher's suspension within 10 days of the issuance of the charges, which must be conducted by a mutually-agreed hearing officer or by a State Office of Administrative Hearings judge. Each party may produce oral and documentary evidence at hearing. The standard of proof is the "preponderance of the evidence." The teacher has the right to receive the transcript; costs are split evenly between the District and Union. The decision of the hearing officer is final, but may be reviewed by the Superior Court through a petition for writ of mandate under the California Code of Civil Procedure, filed within thirty days of the decision.

Darnall. The Darnall Agreement also provides a unique method of challenging a disciplinary reprimand. Any teacher may request review by the Board, in writing, within ten days of the reprimand. The Board President must place the request on the agenda for the next Board meeting. The teacher may bring a representative. If the reprimand is approved, it is placed in the teacher's file; if not, it must be removed.

Ravenswood City School District: Edison McNair / Brentwood

Ravenswood. Like LAUSD, Ravenswood is subject to the Education Code provisions regarding challenges to teacher discipline, which are explained above.

Edison. Edison's Agreement specifically provides that any disciplinary decision may be the subject of a grievance.

*Grossmont Union High School District: Helix Charter School*

Grossmont. Like LAUSD, Grossmont is subject to the Education Code provisions regarding discipline, which are explained above.

Helix. This Agreement is silent on this subject.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. The Teacher or Union may appeal any disciplinary decision on the basis that the action is unwarranted. Notice of appeal must be given to the Superintendent or designee within five days of notification of the action to be taken. The action is stayed while the appeal is pending.

The teacher and Union may request an appeal panel, consisting of one teacher selected by the teacher and Union, an administrator selected by District, and an impartial party selected by other two. The panel must then hold a hearing to determine only whether the action taken is warranted. The panel's decision is binding, and the expenses of any third party are equally shared by the Union and District. Alternatively, the teacher and Union may invoke the binding arbitration procedure in the Agreement's Grievance provisions. The Arbitrator must decide only whether the action taken is warranted, and the Arbitrator's decision is binding.

Live Oak. Prior to termination, the teacher must be provided with a statement of charges and be given the opportunity to respond orally or in writing; the teacher has the right to appear before the Board to contest the statement of charges, and may obtain counsel. The Board's decision is final.

*Dismissal: Grounds*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. Because dismissal is a prohibited topic of bargaining, the Agreement contains no provisions regarding the grounds for dismissal; rather, the District is governed by the Education Code, which provides a specific list of permissible reasons for dismissal (discussed above).

A probationary teacher may be effectively dismissed by giving notice of non-reelection, meaning the teacher will not return to the school the following year. Educ. Code § 44644(a). No finding of cause is necessary. Education Code section 44932 provides a specific list of permissible reasons for dismissal of a permanent teacher, or dismissal of a probationary teacher during the school year, which include “immoral or unprofessional conduct,” “unsatisfactory performance,” “evident unfitness for service,” and “persistent violation of or refusal to obey the school laws of the state, State Board of Education or the governing board of the school district.” Other grounds may justify dismissal, but the District must specify the instances of behavior that constitutes unprofessional conduct. Cal. Educ. Code § 44933.

Camino Nuevo. The Camino Nuevo Agreement authorizes immediate dismissal “for cause” during the term of a teacher’s contract, which includes performance. The Agreement provides that “cause” is to be interpreted solely by the Executive Director, the Principal or their designee. The Agreement lists examples “a” through “s,” which are meant to be illustrative and not exhaustive. Examples include unsatisfactory performance, as defined by the School’s Professional Evaluation Rubric, provided that the teacher has been given written notice of any deficiency and has had thirty days to cure any deficiencies. The administration must provide a written support plan outlining the resources that were offered to the teacher to facilitate improvement during the 30-day period. Examples also include being unfit for service, including documentation of inability to appropriately instruct or associate with children or students; refusal to comply with or support any regulation, law, or policy of the school; immoral conduct, including conviction of a felony; failure to maintain a teaching credential; and insubordination, including refusal to do assigned work.

Green Dot. Green Dot allows dismissal of any teacher only “for cause.” The Agreement also specifically provides that if a teacher on an Improvement Plan does not show sufficient improvement to meet the required standard, Green Dot may dismiss the teacher or elect not to re-hire the teacher for the following year.

LA Leadership. LA Leadership’s Agreement requires “just cause” for dismissal of any teacher after two years.

Ocean. Under the Ocean Agreement, any dismissal of an “ongoing” (permanent) teacher must be “substantiated and for just cause.” Causes enumerated by the Agreement include (individually or collectively) discourteous or disrespectful treatment; dishonesty; theft or destruction of property; unauthorized use of school equipment; use of firearms or weapons; use of intoxicants; conviction of a felony or crime of moral turpitude; insubordination; absence without leave; unprofessional conduct; unsatisfactory performance (as defined by the Agreement’s Evaluation provisions); violating the School’s safety or health policy; having a material conflict of interest; harassment; failure to maintain the appropriate teaching credential; failure of good conduct during or outside duty hours “tending to injure the public service”; and abandonment of service.

Perris. Like LAUSD, the Perris District must comply with the Education Code provisions governing dismissal, which are outlined above. The Agreement provides that the District retains the power to terminate “for just cause” as set forth in Education Code sections 44930 through 44960.

Choice 2000. Choice 2000’s Agreement authorizes discipline only for “just cause,” but does not specifically require “just cause” for dismissal.



*San Diego Unified School District: Darnall Charter School*

San Diego. Like LAUSD, San Diego is subject to the Education Code provisions regarding dismissal, which are explained above.

Darnall. Under the Darnall Agreement, if a teacher receives a “Below” or “Far Below” rating, the School must place the teacher on an Improvement Plan. If sufficient progress is not made within sixty days, the Director should recommend non-renewal to the Board. The Board’s decision is final.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. Like LAUSD, Ravenswood is subject to the Education Code provisions regarding dismissal, which are explained above.

Edison. This Agreement is silent on this subject.

*Grossmont Union High School District: Helix Charter School*

Grossmont. Like LAUSD, Grossmont is subject to the Education Code provisions regarding dismissal, which are explained above.

Helix. This Agreement is silent on this subject.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. Like LAUSD, Petaluma is subject to the Education Code provisions regarding dismissal, which are explained above.

Live Oak. A decision not to renew a probationary teacher's employment is "at-will," and does not require cause. A probationary teacher may be released during the school year for "reasonable cause." A teacher with permanent status (beginning in the teacher's fourth year) can only be dismissed "for cause"; examples listed include unsatisfactory performance, neglect of duty, inefficiency, discourteous treatment, and unprofessional conduct.

*Dismissal: Procedure*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. Because dismissal is specifically excluded from the scope of bargaining for conventional public schools, dismissal in LAUSD is governed by the Education Code.

*Probationary Teachers*. A probationary teacher may be effectively dismissed by giving notice of non-reelection, meaning the teacher will not return to the school the following year. Educ. Code § 44644(a). No finding of cause is necessary. For teachers in their first year of employment, notice of non-reelection can be given at

any time prior to June 30; teachers in their second consecutive year of employment must be given 30 days' notice of non-election by March 15. The Notice must include a statement of the reasons for the dismissal and notice of the opportunity to appeal. Cal. Educ. Code § 44948.3(a)(2).

During the school year, probationary teachers may be dismissed for unsatisfactory performance under The Stull Act, or "for cause." When a teacher is dismissed for unsatisfactory performance, a copy of the evaluation conducted pursuant to the Education Code must accompany the written notice. Dismissal of a probationary teacher for unsatisfactory performance requires 90-day notice, as does dismissal for unprofessional conduct, providing a grace period in which to attempt to cure deficiencies before dismissal is carried out.

*Permanent Teachers.* Under the Education code, before dismissing (or suspending without pay), a permanent teacher for "unsatisfactory performance," the school must provide prior written notice at least 90 days prior to the intended dismissal date. The dismissal process is initiated by the filing of written charges with the school's governing board, which must specify all of the facts relevant to the decision, and the statutes and rules violated. Cal. Educ. Code § 44938(b)(1). Only conduct occurring in the previous four years may be included. The notice requirement is intended to provide the teacher sufficient time to correct any faults and overcome the grounds for the charge.

Camino Nuevo. Camino Nuevo may decline to renew any individual contract by providing written notice of nonrenewal by May 15. The Agreement

authorizes the School to immediately terminate a teacher “for cause” during the term of an individual contract.

Green Dot. If a teacher on an Improvement Plan does not show sufficient improvement to meet the school’s standards, the school may terminate or choose not to re-hire the teacher for the following year. The school must follow a specified procedure: (1) Provide written notice to the teacher by April 15 of that year; (2) The notice must include the reason for the action, and an opportunity to appeal; (3) the teacher may request a conference in writing within 10 days; (4) if there is no request, the conference is waived; (5) the conference is held before the Board in closed session, unless the teacher requests an open session; (6) the teacher may have a Union representative present; and (7) the teacher may use the grievance process.

LA Leadership. This Agreement is silent on this subject.

Ocean. Under the Ocean Agreement, if the School decides not to renew a probationary teacher’s employment, the teacher must receive notification by April 1. If a probationary teacher’s employment is terminated mid-year in the second year, the teacher must receive 30 days’ pay and benefits. For any “ongoing” (permanent) teacher, the Agreement requires that a copy of the dismissal must be sent to the Union President. The School must also provide a copy of the materials, rules or regulations on which the dismissal is based, and must provide the teacher an opportunity to respond. The teacher also has the right to have a Union representative present.

*Perris Union High School District: Choice 2000 Online School*

Perris. Like LAUSD, Perris is subject to the Education Code provisions regarding dismissal, which are explained above.

Choice 2000. All Choice 2000 teachers are required to be given contracts for each school year. However, the Agreement provides that the contract may be terminable upon 30 days written notice or pay in lieu thereof. Choice 2000 does not impose any specific procedural requirements for dismissal.

*San Diego Unified School District: Darnall Charter School*

San Diego. Like LAUSD, San Diego is subject to the Education Code provisions regarding dismissal, which are explained above.

Darnall. Darnall's Agreement specifically authorizes dismissal for failure to meet the School's performance standards. If a "Below Standard" or "Far Below Standard" rating is anticipated on any California Teaching Standard on the teacher's Summary Evaluation, the school must notify the teacher by December 1, and must then meet to create an Improvement Plan. If the school's issues or concerns have not been satisfactorily addressed within sixty days, the Director will recommend non-renewal to the Board. The Board's decision is final. The Director can also initiate an improvement plan during a non-evaluation year, for which the same 60-day deadline applies.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. Like LAUSD, Ravenswood is subject to the Education Code provisions regarding dismissal, which are explained above.

Edison. This Agreement is silent on this subject.

Grossmont. Like LAUSD, Grossmont is subject to the Education Code provisions regarding dismissal, which are explained above.

Helix. This Agreement is silent on this subject.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. Like LAUSD, Petaluma is subject to the Education Code provisions regarding dismissal, which are explained above.

Live Oak. A probationary teacher may be released during the year for “reasonable cause,” provided the teacher is notified by April 1. Permanent teachers may only be dismissed for cause, but the school must provide a statement of charges and an opportunity to respond.

*Dismissal: Ability to Challenge or Grieve*

*Los Angeles Unified School District: Camino Nuevo, Green Dot, LA Leadership Academy, Ocean Charter School*

LAUSD. Because California law specifically excludes teacher dismissal from the scope of collective bargaining in conventional public schools, LAUSD teachers are protected by California law rather than the LAUSD Agreement. Under California law, any teacher who wishes to contest a dismissal based on unprofessional conduct or unsatisfactory performance may file a request for a hearing within 30 days of receiving notice (Cal. Educ. Code § 44934). After receiving a demand for a hearing, the district may rescind its decision or schedule the matter for a hearing (Cal. Educ. Code § 44943). The hearing is conducted in accordance with California's Administrative Procedure Act (Cal. Govt. Code § 11500 et seq). The teacher has the right to be represented by counsel, to obtain the names of the district's witnesses, and to inspect all relevant documents. The hearing is held by a 3-member board called a Commission on Professional Competence ("CPC"). One member is chosen by the teacher, one by the district, and the third is an administrative law judge. The teacher's representative is typically chosen by her Union, from a list of employees trained to serve as CPC hearing officers. A majority vote is required for dismissal, and the CPC must issue a written ruling containing findings of fact and determination of issues. If the district's decision to dismiss is overruled, the teacher is reinstated. Either party may petition to the Superior Court for review of the CPC's decision. The Court exercises independent judgment in reviewing the CPC.

Camino Nuevo. Any termination of an individual contract “for cause” can be grieved in writing under Article 9, initiating at Step 2 of the Agreement’s grievance process, within five work days. However, a decision not to renew a contract is not subject to grievance. Likewise, termination due to reduction in force is not subject to the Agreement’s grievance procedure.

Green Dot. Any provision of Green Dot’s Agreement may be a subject of grievance and arbitration. If a teacher on an Improvement Plan does not show sufficient improvement to meet the school’s standards, the school may terminate or choose not to re-hire the teacher for the following year. The Agreement’s dismissal procedures specifically provide that the teacher may have a Union representative present for any disciplinary steps including those leading to dismissal, and that the teacher may use the grievance process.

LA Leadership. LA Leadership’s Agreement specifically provides that any dismissal of a teacher after two years may be grieved. The grievance is initiated at Step 2 (submission to the Executive Director).

Ocean. As Ocean’s Agreement is silent regarding the ability to file a grievance regarding dismissal, the Agreement’s general grievance procedure is available.



*Perris Union High School District: Choice 2000 Online School*

Perris. As in LAUSD, a teacher dismissed by the Perris District may use the procedures provided by the Education Code to challenge a dismissal.

Choice 2000. Choice 2000's Agreement provides that any provision of the Agreement may be the subject of a grievance.

*San Diego Unified School District: Darnall Charter School*

San Diego. Like LAUSD, San Diego is subject to the Education Code provisions regarding dismissal, which are explained above.

Darnall. If a teacher is dismissed for failing to make sufficient progress while on an improvement plan, the teacher may appeal the decision to Board. The Board's decision is final.

*Ravenswood City School District: Edison McNair / Brentwood*

Ravenswood. Like LAUSD, Ravenswood is subject to the Education Code provisions regarding dismissal, which are explained above.

Edison. This Agreement is silent on this subject. Accordingly, the Agreement's general grievance procedure may be used.

*Grossmont Union High School District: Helix Charter School*

Grossmont. Like LAUSD, Grossmont is subject to the Education Code provisions regarding dismissal, which are explained above.

Helix. This Agreement is silent on this subject. Accordingly, the Agreement's general grievance procedure may be used.

*Petaluma City Elementary School District: Live Oak Charter School*

Petaluma. Like LAUSD, Petaluma is subject to the Education Code provisions regarding dismissal, which are explained above.

Live Oak. Any permanent teacher must be given a statement of charges constituting cause for dismissal, and opportunity to respond. The teacher may appeal the decision to the Board, and has the right to have counsel present.

**“Merit Pay”**

*Pay for Performance – Individual*

LAUSD, Camino Nuevo, Green Dot, LA Leadership, Ocean. None of these schools currently provides any form of performance pay to individual teachers.

Perris, Choice 2000. Choice 2000 has a four-step salary schedule, and its teachers can only progress through the steps of the schedule if they receive a “Satisfactory” evaluation.

San Diego, Darnall. Neither of these schools currently provides any form of performance pay to individual teachers.

Ravenswood, Edison. Neither of these schools currently provides any form of performance pay to individual teachers.

Grossmont, Helix. Helix’s salary schedule includes an “Incentive (Merit pay) Salary” component. However, additional pay is actually provided only for good attendance: teachers using two days or less from their allotted ten days during the school year are eligible for a one-time payment of \$200 to \$600.

Petaluma, Live Oak. Neither of these schools currently provides any form of performance pay to individual teachers.

*Pay for Performance – School-wide*

LAUSD, Camino Nuevo, Green Dot, LA Leadership, Ocean. None of these schools currently provides any form of performance pay on a school-wide basis.

Perris, Choice 2000. Neither of these schools currently provides any form of performance pay on a school-wide basis.

San Diego, Darnall. Neither of these schools currently provides any form of performance pay on a school-wide basis.

Ravenswood, Edison. Neither of these schools currently provides any form of performance pay on a school-wide basis.

Grossmont, Helix. Neither of these schools currently provides any form of performance pay on a school-wide basis.

Petaluma, Live Oak. Neither of these schools currently provides any form of performance pay on a school-wide basis.

*Pay for Subject-matter*

LAUSD, Camino Nuevo, Green Dot, LA Leadership, Ocean. Camino Nuevo provides a bilingual stipend of \$2,000, and a stipend of \$1,000 for “hard to fill” positions.

Perris, Choice 2000. Neither of these schools currently provides any form of performance pay for the subject matter taught.

San Diego, Darnall. Neither of these schools currently provides any form of performance pay for the subject matter taught.

Ravenswood, Edison. Edison provides a bilingual stipend, originally set at \$750, or \$1,500 for teachers with BCLAD certification who are working in a bilingual setting.

Grossmont, Helix. Neither of these schools currently provides any form of performance pay for the subject matter taught.

Petaluma, Live Oak. Neither of these schools currently provides any form of performance pay for the subject matter taught.