

FUSD/FUDTA COLLECTIVE BARGAINING AGREEMENT WAIVER PROCESS

As Adopted by the FUDTA Representative Council: May 19, 2005

1. Purpose and Conditions

1.1. **Purpose:** The intent of this waiver process is to protect the contractual rights of single bargaining unit members and groups of bargaining unit members whenever a school/work site implements a shared decision-making consistent with the provisions of Article 35 of the FUSD/FUDTA Collective Bargaining Agreement. It is understood that bargaining unit members' desire for restructuring or other creative venture may contain ideas or concepts that conflict with the FUSD/FUDTA Collective Bargaining Agreement. The procedure outlined herein is intended to provide the flexibility necessary for bargaining unit members at school/work sites to restructure the site plan, while, at the same time, protect the integrity and preserve the protections that every bargaining unit member enjoys under the FUSD/FUDTA Collective Bargaining Agreement.

1.2. **Conditions:** The following conditions will apply to this procedure:

- 1.2.1. **Eligibility:** All school/work sites in the Fremont Unified School District that employ bargaining unit members as recognized under Article 2 of the FUSD/FUDTA Collective Bargaining Agreement may apply for a Contract Waiver under these procedures.
- 1.2.2. **Term:** Waiver of the FUSD/FUDTA Collective Bargaining Agreement shall be for one (1) academic year only, and shall be limited to a specific and unique school/work site. Any waiver granted under this process shall not be precedent setting.
- 1.2.3. **Articles:** Waiver requests may be considered for the following Articles of the FUSD/FUDTA Collective Bargaining Agreement only:
 - 1.2.3.1 Article 7: Hours
 - 1.2.3.2 Article 10: Procedures for Evaluations
 - 1.2.3.3 Article 12: Class Size
 - 1.2.3.4 Article 14: Travel
 - 1.2.3.5 Article 22: School Calendar
- 1.2.4. **Meeting Days:** Waiver requests for District meetings on Association Days, as described in Article 3.7, shall remain within the sole jurisdiction of the FUDTA President or his/her designee.
- 1.2.5. **Approval -** Waivers must first obtain 80% site approval, two-thirds approval at Executive Board, and district approval in accordance with Article 35.1.3.

2. Process for Applying for a Contract Waiver

- 2.1. If a school/work site is interested in pursuing a Contract Waiver Request, the initial request must be submitted to the FUDTA Office by a Site Representative using the form that is found in Section 5 of this document.
- 2.2. The Site Representative submitting the Contract Waiver Request must schedule an appointment with the FUDTA President or his/her designee at a mutually agreeable date and time within ten (10) work days of request submission. The purpose of this meeting is to discuss (1) discuss the rationale behind the Contract Waiver Request and (2) review the Contract Waiver Process that extends beyond this meeting.
- 2.3. After completing the requirements of Section 2.2, the Site Representative shall conduct a secret ballot vote, consistent with the provisions of Article 1, subparagraph 1.5 of the FUSD/FUDTA Collective Bargaining Agreement. The ballot shall include the specific language of the Contract Waiver Request and a space to indicate agreement or disagreement with the request. All Bargaining Unit members at the school/work site affected by the Contract Waiver Request shall have the opportunity to vote. A minimum of eighty percent (80%) of all affected Bargaining Unit members at the school/work site must vote in the affirmative in order to proceed to Section 2.4.
- 2.4. The Site Representative submitting the Contract Waiver Request shall submit the Request Form and all ballot materials, including the Final Tally Sheet, a statement in support of the waiver, and a statement in opposition to the waiver, to the FUDTA President or his/her designee within five (5) work days from the completion of the site election.
 - 2.4.1. The FUDTA President shall place the Contract Waiver Request on the Agenda for the next regularly scheduled meeting of the Executive Board
 - 2.4.2. The Site Representative, a Bargaining Unit member in favor of the waiver, and a Bargaining Unit member in opposition of the waiver, shall have the right to address the Executive Board during the meeting while the item is being considered. If present, they may answer questions from the individual Board members. Once questions have been answered, all three parties must leave the Boardroom while the Executive Board arrives at a decision. Any party described in this section can waive his/her right to address the Executive Board.
 - 2.4.3. The FUDTA Executive Board must have a two-thirds vote in the affirmative in order to approve the waiver request.
 - 2.4.4. The FUDTA President, or his/her designee, shall inform the Site Representative submitting the Contract Waiver Request of the decision of the Executive Board in writing within five (5) days of the Executive Board meeting.
 - 2.4.5. The Site Representative submitting the Contract Waiver Request has up to ten (10) work days after the receipt of the Executive Board decision to appeal the decision to the FUDTA Representative Council. The appeal must be submitted to the FUDTA President in writing.

2.4.6. The FUDTA President shall place the Contract Waiver Request Appeal on the Agenda for the next regularly scheduled meeting of the Representative Council.

2.4.7. The FUDTA Representative Council must have a two-thirds vote in the affirmative in order to sustain the appeal and to override the decision of the Executive Board.

2.5. The deadline for submitting all Contract Waiver Requests in order to take effect in a subsequent school year is June 1.

3. Termination or Modification of the Implementation of the Contract Waiver

3.1. A Contract Waiver may be modified or terminated if at least thirty percent (30%) of the Bargaining Unit members at the affected school/work site submit a signed petition to the FUDTA President or his/her designee requesting a review by the Executive Board. The FUDTA President shall place the Request for Review on the Agenda for the next regularly scheduled meeting of the Executive Board.

3.2. The Executive Board shall conduct a hearing over the Request for Review. The Site Representative, a bargaining unit member in support of the review, and a bargaining unit member in opposition to the review shall each have the right to address the Executive Board.

3.3. The Executive Board, by simple majority, shall either uphold or deny the Request for Review. If the review is denied, the original terms of the Contract Waiver Requests shall be maintained for the balance of the academic year. If the review is upheld, the Executive Board may determine what modification may be appropriate in order for the Contract Waiver to remain in place for the balance of the academic year. The Executive Board may also determine that the Contract Waiver must be terminated immediately.

3.4. Any decision reached in Section 3.3 may be appealed to the Representative Council. The procedure used shall be the same as that described in Sections 2.4.4, 2.4.5, 2.4.6 and 2.4.7

4. Grievance Procedure for the Contract Waiver Process

4.1. The Contract Waiver Process is not subject to the Grievance Procedure since this process is internal to FUDTA, and is not subject to any misapplication, misunderstanding, or misinterpretation by any party of FUSD.

5. Request Form for FUSD/FUDTA Collective Bargaining Agreement Waiver

5.1. A Site Representative shall use the Contract Waiver Request Form (see following page) when submitting a waiver request.

CONTRACT WAIVER REQUEST FORM

Site:

Site Rep:

Date:

Summary of Waiver Being Requested:

FUSD/FUDTA Contract Articles Under Consideration:

Rationale for Waiver Request:

Meeting Date with FUDTA President or Designee:

Election date(s):

Election Results: Total # voting: _____

Yes: # _____ No: # _____ Abstention: # _____

Are there at least 80% voting YES? _____

Date sent to FUDTA President or Designee: _____

What impact will this Waiver Request have on Bargaining Unit Members at your site?

Statement in Support of the Waiver Request:

Statement in Opposition of the Waiver Request:

FUDTA Executive Board Decision: Approve: _____ Denial: _____

District Decision: Approve: _____ Denial: _____

Date Appeal to Rep Council submitted to FUDTA President: _____