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ARTICLE XIII

Grievance Procedure

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A. DEFINITION:

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1. A "grievance" is a claim by a grievant that he/she has been adversely affected by an interpretation, application, or violation of the specific provisions of this Agreement. Informally, a grievance may be presented verbally; formally, it shall be presented in writing.
 2. A "grievant" may be any employee in the bargaining unit covered by the terms of this contract. The District and TALB reserve the right to combine multiple like grievances upon mutual agreement. The Association may file grievances that relate to the explicit language contained in Article IV, Association Rights, of this contract.
 3. A "day" is any day on which the grievant and the appropriate manager as part of their regular contract assignments are scheduled to be on duty.
 4. The "immediate manager" is the lowest level manager who has authority to remedy the grievance.

B. INFORMAL LEVEL:

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1. Within twenty (20) days after the alleged violation (except for payroll errors) and before filing a formal written grievance, the grievant shall attempt to resolve his/her claim by an informal conference with his/her immediate manager. If the employee requests, an Association representative may participate with the employee in the informal conference. It shall be the grievant's responsibility to inform the immediate manager that the conference is for the purpose of seeking to resolve the grievance at the informal level.
 2. The immediate manager shall provide a response within five (5) days of the informal conference.

C. FORMAL LEVEL – STEP 1:

Within ten (10) days of the informal conference, should the grievance not be resolved, the grievant shall present his/her grievance in writing on the District Certificated Unit Grievance Form to his/her immediate manager.

1. The statement of the grievance shall be a clear, concise statement of the circumstances giving rise to the grievance, shall include the specific article, section, and paragraph of the contract allegedly misapplied, misinterpreted, or violated, and shall specify the remedy sought.

- 2. The immediate manager shall communicate the decision to the employee in writing within ten (10) days after receiving the grievance or within five (5) days following a conference.

D. FORMAL LEVEL – STEP 2:

Upon receipt of the Step 1 response, and if the decision of the immediate manager is not satisfactory, the grievant, within ten (10) days of receipt of the response may file an appeal with Employee Relations Services which shall transmit it to the Superintendent or to another district-level manager designated by the Superintendent.

- 1. The statement of the grievance shall be a clear, concise statement of the circumstances giving rise to the grievance, shall include the specific article, section, and paragraph of the contract allegedly misapplied, misinterpreted, or violated, and shall specify the remedy sought.
- 2. The grievant or the respondent (Superintendent or designee) may request a personal conference regarding the grievance. The respondent shall communicate his/her decision in writing to the grievant within fifteen (15) days of receipt of the appeal or within five (5) days following a conference.

E. FORMAL LEVEL – STEP 3:

If the grievant is not satisfied with the decision at Step 2, he/she may within ten (10) days after receipt of the decision at Step 2, submit to Employee Relations Services a written request for mediation of the grievance. Employee Relations Services shall within five (5) days after receipt of the written request submit to the California State Conciliation Service a request for the immediate services of a mediator.

The parties agree that Step 3 of this Grievance Procedure may be waived by mutual agreement of the grievant and the District.

- 1. The function of the mediator shall be to assist the parties to achieve a mutually satisfactory resolution of the grievance by means of the mediation process.
- 2. If a satisfactory resolution of the grievance is achieved by means of this mediation process, both parties to the grievance shall sign a written statement of resolution to that effect, and thus waive the right of either party to further appeal the grievance.

F. FORMAL LEVEL – STEP 4, BINDING ARBITRATION:

If resolution of the grievance is not achieved as a result of mediation (Step 3) or if Step 3 has been waived, the grievant may request the Association to submit the grievance to arbitration.

If the Association proceeds to arbitration, the statement of grievance shall be filed with Employee Relations Services on the appropriate Step 4 form within ten (10) days

1 following the conclusion of mediation. The form shall include the same information as
 2 cited in D.1. above and the response at Step 2 as well as the exclusive representative's
 3 endorsement of filing.
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5 **1. Selection of Arbitrator:**
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- 7 a. Within ten (10) days of receipt of the Step 4 grievance form, Employee
 8 Relations Services and Association staff shall attempt to agree upon a
 9 mutually acceptable arbitrator and obtain a commitment from said arbitrator
 10 to serve.
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 12 b. In the event that the parties cannot agree upon an arbitrator, within the
 13 specified period, a list of seven (7) arbitrators experienced in hearing
 14 grievances in public schools shall be requested from the State Conciliation
 15 Service or the American Arbitration Association. The parties shall select
 16 an arbitrator from this list by alternately striking names. The order of
 17 striking shall be determined by flipping a coin.
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19 **2. Powers of the Arbitrator:**
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- 21 a. The arbitrator shall have no authority to hear evidence and/or rule on any
 22 sections of this Agreement which were not present in the original grievance,
 23 Formal Level - Step 1.
 24
 25 b. The parties shall attempt to agree upon a statement of the issue(s) to be
 26 submitted to arbitration. If the parties cannot agree, the arbitrator shall
 27 determine the issue(s) by referring to the written grievance documents.
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 29 c. After a hearing and after both parties have had an opportunity to present
 30 written arguments, the arbitrator shall submit a decision within thirty (30)
 31 days.
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 33 d. The arbitrator's decision shall be in writing and shall set forth the findings of
 34 fact, reasoning, and conclusions on the issue(s) submitted. The arbitrator
 35 shall be without power or authority to make any decision which requires the
 36 commission of an act prohibited by law or which changes or is violative of
 37 the terms of this Agreement. Subject to the limitations specified in Article
 38 VI, Section C., it is agreed that the remedy of the arbitrator may include such
 39 financial reimbursement as may be necessary to make the grievant whole for
 40 any monetary loss resulting from a violation, misapplication, or
 41 misinterpretation of the specific provisions of this Agreement.
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 43 e. The decision of the arbitrator shall be submitted to the Association and the
 44 Director of Employee Relations Services, and shall be binding upon the
 45 parties.
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- 1 f. If any question arises as to the arbitrability of the grievance, such question
2 will be ruled upon by the arbitrator only after he/she has had an opportunity
3 to hear the merits of the grievance.
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5 3. **Areas of Exclusion:**
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7 The arbitrator shall have no power to recommend or resolve:
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- 9 a. Any issue arising out of the exercise by the Board or the Administration of
10 its responsibilities under Article III, Reserved Rights of the District, except
11 as modified by specific provisions of this Agreement.
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13 b. Issues involving evaluation other than procedures specifically identified in
14 Article XIII, Evaluation Procedures.
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16 4. **Cost of Arbitration:**
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- 18 a. All costs of the services of the arbitrator, including but not limited to, per
19 diem expenses, travel and travel time, and the cost of any hearing room
20 which is not the property of the school district shall be borne equally by the
21 District and the Association.
22
23 b. Either party may request that the hearing be recorded. The costs of a
24 certified court reporter shall be paid by the party requesting the reporter and
25 only the party paying for the reporter shall receive a transcript of the
26 hearing. Alternately, both parties may mutually agree to share equally the
27 costs of the reporter, in which case both parties shall receive a copy of the
28 transcript.
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30 c. The grievant and required employee witnesses will be granted released time
31 as necessary to participate in any hearing required by the arbitration process.
32 The release of employee witnesses will be scheduled to minimize classroom
33 disruption.
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35 d. Each party shall bear the expense of the preparation and presentation of its
36 own case.
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- 38 5. **Expedited Arbitration.** The parties may mutually agree that arbitration may
39 proceed under the expedited Rules of the American Arbitration Association.
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41 G. **MISCELLANEOUS PROVISIONS:**
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- 43 1. **Right to Representation.** The District and the Association recognize the right of
44 the employee to present grievances without involvement of the Association and the
45 right of the Association to represent the employee who so requests it. Both the
46 grievant and the respondent reserve the right to have representation at each of the
47 steps.

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2. **Time Limits.** The District and the Association agree that time limits in this Article may be extended by mutual consent. If the respondent at any step fails to meet the deadline for a response, the grievance may be appealed to the next higher step. Failure of the grievant to request an extension or to meet time limits shall render the grievance null and void.
 3. **Conferences.** Upon request of either a grievant or a respondent, a conference shall be arranged for discussion of a grievance.
 4. **Released Time:**
 - a. An employee with a grievance shall be granted reasonable released time to process the grievance.
 - b. The Association may, upon request of the grievant, have released time for an authorized representative to participate in a grievance conference.
 - c. The Association shall designate in writing to Employee Relations Services the names of unit members who are authorized as grievance representatives prior to the District's approval of released time.
 - d. Except for the informal conference, an employee must request approval from the site manager at least twenty-four (24) hours prior to being released from duties to participate as a grievant or representative in a grievance conference.
 - e. Released time shall be limited to one Association representative per grievance conference.
 - f. Released time for processing grievances at the site level shall be at times that do not disrupt direct service to students.
 5. **Bypass to Appropriate District-Level Manager.** If the Association and Employee Relations Services agree, and where the site manager would not be the appropriate respondent, Level 1 of the grievance procedure may be bypassed and the grievance brought directly to the appropriate District-level manager.
 6. **Group Grievance.** If more than one employee shares in the same allegation, only one grievance may be filed in their behalf upon mutual agreement of the Association and the District manager named in the grievance.
 7. **Filing of Materials.** All documents, communications, and records dealing with the processing of a grievance shall be filed separately from the personnel files of the participants.

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8. **Grievance Withdrawal.** A grievance may be withdrawn at any level without establishing precedent.
9. As per Government Code, Section 3543.5, the District shall not impose or threaten to impose reprisals, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their participation in the grievance procedure.
10. Issues properly addressed through the grievance procedure may not subsequently be considered through the District complaint procedure.