

# BEAVERTON EDUCATION ASSOCIATION'S COUNTER PROPOSAL

## ARTICLE 4

January 27, 2022

BEA proposed **new language is in red**, proposed deletions **highlighted in light red**.

BSD proposed **new language is in blue**, proposed deletions **highlighted in light blue**.

Mutually proposed/agreed upon **new language are in green**, and mutually proposed agreed upon deletions **highlighted in light green**.

Language that is **highlighted in green but NOT crossed out** is agreed upon existing language.

For proposals from BEA (like this one!):

Language in blue ~~that is crossed out~~ is BSD proposed language that has not been accepted by BEA.

Language highlighted in light blue but not crossed out in this counter is language that has been deleted in the BSD proposal but reinstated in the BEA proposal.

## ARTICLE 4

### GRIEVANCE PROCEDURE

The following grievance procedures shall apply to employees. There shall be no restraint, coercion, interference, discrimination, or reprisal exerted by either party on any employee or any administrator concerning the filing of a grievance.

#### A. Definitions

1. A "grievance" is a contention or a claim by an employee or class of employees that there has been a personal loss or injury resulting from a violation or inequity in the application or interpretation of one or more of the terms of this Agreement. "Personal loss" or "injury" shall mean that the grievant has been directly affected in a substantive way as a result of the alleged violation of the Agreement.

A grievance shall not include, and this grievance procedure shall not apply to any of the following:

- a. Any matter as to which the District is without authority to act;
  - b. Any proceeding for dismissal or non-extension of permanent teachers or non-renewal of probationary teachers;
  - ~~c. Any attempt to change this Agreement provided such changes are consistent with this Agreement;~~
  - ~~d.~~ Evaluations and targets are not grievable except for violations of procedural requirements and timelines contained in the District's evaluation guidelines and ORS 342.850.
2. A "grievant" is an employee or class of employees who initiates a claim, of an alleged violation of this Agreement. A "class" grievance may be filed only where the alleged violation affects a clearly identified class, i.e. all employees in the District, all employees in a school building or all employees in a department. Any individual employee individual member of the bargaining unit or class of employees affected by the grievance may have it adjusted (including the dismissal thereof) without the intervention of the Association if: may file a grievance without the assistance of the Association and have it adjusted provided:
    - a. The adjustment is consistent with the terms of this Agreement; and
    - b. The Association has been notified of such grievance and given opportunity to be present at the adjustment.

~~As an exception to the above,~~ The Association may initiate grievances where it alleges a violation with respect to its organizational rights provided for it by name in this Agreement.

The Association may also file a grievance on behalf of a class of employees, as defined above, where all members of the class are similarly affected by the same alleged violation of the Agreement. In such instances the Association shall identify the nature of the complaint as required in a) through e) Level I.b so the District may respond to the grievance based on the facts of the case. Such grievance shall be filed at Level I and presented to the appropriate administrative authority as defined in Section B-8.

3. The term "days" shall mean working school days. Weekends, ~~or vacation days~~ breaks (such as Thanksgiving Break, Winter Break, Spring Break) and/or holidays are thus excluded, except that:
  - a. If the cause for grievance occurs from May 1 through the last work day of the school year, the time limits shall be considered to be governed by ~~calendar~~ business days instead of work days and shall run throughout the summer months.
  - b. If the cause for a grievance occurs after the last work day of the school year (summer), the employee shall within 20 ~~calendar~~ business days as defined in B-2, either initiate the processing of the grievance or notify the Association and the District's Chief Human Resource Officer in writing of the employee's intent to initiate the process at the beginning of the next employee work year. Failure to notify in writing within the time limits shall be considered a waiver of any claim by the employee.

## B. General Procedures

1. The grievant, who must be present at all steps of the procedure if possible, except in Class Grievances where a grievant must be present, may be represented at all steps of the grievance procedure in person or, may also choose to have a representative of the Association present as a representative. The grievant may also require that the administrator whose action is the subject of the grievance be present, if possible.
2. The number of days indicated at each level should be considered maximum and every effort should be made to expedite the process. ~~Failure to submit a grievance within twenty days of the events giving rise to the grievance or the grievant's knowledge of such events shall result in the grievance being waived.~~

3. It may at times become necessary to extend time limits. These extensions are to be kept to a minimum and must be mutually consented to in writing by the parties involved at any time.
4. Failure at any step of this procedure to communicate the decision in writing on a grievance within the specified time limit shall permit the grievant to proceed to the next step. Failure at any step of this procedure to appeal a decision to the next step within the specified time limit shall be deemed to be acceptance of the decision rendered at that step.
5. The Board and its administrators will cooperate with the grievant in the investigation of any grievance and, further, will furnish the grievant or the representative with such necessary and readily available information as is requested for the processing of any grievance.
- ~~6. Except as otherwise provided by law, an employee shall invoke and exhaust the grievance procedure remedies before resorting to any other legal or state or federal administrative remedies for the conduct complained of, and failure to do so shall preclude resort to such other remedies.~~
7. 6. Fees and expenses for the arbitrator, if appointed, shall be borne equally by the Association and the District.
- ~~8. 7. Any grievance not under the jurisdiction of an immediate supervisor shall~~ Grievances shall commence at Level I, with the appropriate administrative authority to adjust the grievance. ~~If the position held by this administrator or supervisor is above the position described at Level I of this procedure, the procedure shall commence at Level II, following the informal conference.~~
- 9.8. The Association will be notified promptly of the terms of settlements made at each level of any written grievance filed and may itself file a grievance based on an alleged inconsistency of the settlement with the terms of this Agreement within five days from receipt of such notice.
- ~~10.9~~ 9. All documents, communications and records constituting records of the grievance and its processing, shall be filed in a separate grievance file (i.e., separate from all other files) and shall not be open for inspection by other than the staff of the Human Resource Department in the absence of the specific approval of the Superintendent. However, such approval shall not be given for inspection by building administrators for their use in connection with decisions or recommendations regarding employment status, ~~or~~ assignment or transfer considerations, or evaluations.

Except as otherwise provided by law, meetings and hearings under this procedure shall not be conducted in public and shall include only such representatives of the District and the grievant and their designated or selected representatives heretofore referred to in this Article.

### C. Levels

#### 1. LEVEL I – Immediate Supervisor/Principal

##### a. Informal Conference

Within twenty days of the occurrence of a grievance or twenty days of knowledge of the facts that are the basis of a grievance, the grievant shall give notice to the principal, immediate supervisor or appropriate higher-level administrator that a grievance exists. The principal or immediate supervisor shall schedule an informal conference to discuss the grievance ~~to occur~~ within five days of notice from the grievant. Since the purpose of this grievance procedure is to settle equitably and informally, if possible, at the lowest possible administrative level, disputes constituting a grievance, a thorough discussion of the claim shall be conducted by the grievant and the principal or immediate supervisor to seek grounds for the resolution of the problem. Problem solving at the District Level (See Article 2, Section 4) may also be used to attempt to resolve the grievance. Failing resolution, the grievant shall reduce the grievance to writing and deliver it to the principal or immediate supervisor at the formal Level I step.

##### b. LEVEL I - Written Grievance

~~In order to be considered and processed beyond the Informal Conference, Level I, each grievance shall have been initiated within 20 days of the occurrence of the cause for complaint, or, if the grievant did not have knowledge of said occurrence at the time of its happening, then within 20 days of the first such knowledge.~~

In the event the problem has not been resolved at the Level I Informal Conference, the grievant shall within five days after the informal conference, prepare a written statement of such fact on the form contained in Appendix B constituting the complaint and setting forth: a) the article of the Agreement allegedly violated, ~~b) the nature and extent of the injury or loss, c) the results of previous discussions of the grievance, d) the grievant's dissatisfaction with the decision rendered at the informal conference, e) the remedy sought;~~ and furnish it to the principal or supervisor, who shall ~~forward the grievance to the Superintendent~~ have five days to respond in writing.

The grievant shall have five days from receipt of the written response at Level I to advance the grievance to Level II by submitting the written grievance and the written response from the administrator to the Superintendent or designee.

2. LEVEL II – Superintendent or Designee

a. Meeting

Within ten days after receiving the grievance appeal, the Superintendent or designee shall meet with the grievant for a thorough discussion of the grievant's claim. They shall seek grounds for resolution of the alleged violation.

Within five days of the Level II meeting, the Superintendent or designee shall provide the grievant and the Association with a written statement containing the Level II decision and the reasons therefore.

b. Appeal

Within five (5) days of the receipt of the decision at Level II, the grievant may file an appeal in writing to the Superintendent or the Superintendent's designee for elevation to Level III.

3. LEVEL III – School Board

a. Submission of Grievance

The District and the Association (or the employee) may each submit a written summary of the grievance to the Board so they are normally received at least five (5) working days in advance of the Board meeting at which the grievance will be acted upon. Copies of the material sent to the Board by one party shall be sent to the other party simultaneously.

The Board will notify the Association of the time and place of the Board Meeting where the grievance will be heard. The parties will be given equal time on the Agenda to present their case. Additional time shall be provided for each party to respond to questions. The Board shall not communicate with or meet with any administrator or association representative except during the hearing provided herein in its deliberations regarding the grievance.

Any Article allegedly violated by the District and not identified by the grievant at Level III shall not be considered by the arbitrator at Level IV.

b. Board Decision

The Board shall act on said appeal on or before the date of its next regular meeting, provided that if it is received less than five days prior to such meeting, it shall act thereon on or before the date of its second regular meeting following such receipt. Its decision shall be written and shall be furnished to the parties ~~forthwith~~ **within ten five business days after the hearing**. Failing resolution:

#### 4. LEVEL IV – Arbitration

Definition of Grievances Subject to Arbitration. Insofar as the Board's decision is alleged by the grievant to be a violation, misinterpretation, ~~or~~ erroneous, **or inequitable** application of a specific provision of this Agreement, the grievant may submit the grievance to the Association. The Association shall determine whether or not to submit the grievance to arbitration. Submission for binding arbitration must be with the concurrence of and by the Association. In such cases, the following procedure shall apply:

##### a. Notification of Intent to Appeal

Within ~~five~~ **ten** days of the date of the Board's decision, the Association shall notify the Chief Human Resource Officer of its intent to appeal the grievance to arbitration. Thereafter, the representative of the Association and the Chief Human Resource Officer shall meet to prepare a formal statement of the issue to be submitted to the arbitrator. If, after five days from receipt of the notification of intent to appeal, agreement is not reached on the issue to be submitted to the arbitrator, each party may draft its own description of the issue to be arbitrated.

##### b. Selection of Arbitrator

Within ~~five~~ **ten** days of the date of the Association's notification of intent to appeal, **the Board and the Association shall attempt to agree upon a mutually acceptable arbitrator who will make a commitment to serve. If none has been obtained within said period, then within the following five days either the Association or the Board may shall jointly request the Employment Relations Board American Arbitration Association furnish a list of seven arbitrators, and the selection of the arbitrator shall be by alternately striking names from the list, with the remaining individual to serve as arbitrator. in accordance with the voluntary arbitration rules of the AAA, except if the parties cannot agree upon an arbitrator from the first list submitted, the AAA shall submit up to two additional lists so a mutually acceptable arbitrator can be selected.**

##### c. Arbitration Hearing

The arbitrator shall confer with the representatives of the parties and hold hearings promptly and shall issue a decision not later than 30 days from the date of the close of the hearings or, if oral hearings have been waived, then from the date final statements and proofs on the issues are submitted. The arbitrator's decision shall be in writing and shall set forth findings of fact, reasoning and conclusions on the issues submitted in accordance with the definition of grievances subject to arbitration. The arbitrator may not add to, subtract from, or amend the terms of this Agreement and shall be without power or authority to make any decision which requires the commission of an act prohibited by law or which is a violation of the terms of this Agreement.

The arbitrator shall not be empowered to reinstate a terminated teacher in any grievance arising out of a violation of Article 4-A-1-d of this Agreement. Insofar as the decision involves only matters subject to arbitration as above defined and is based on ~~substantial~~ evidence presented at the hearing, such decision shall be final and binding on the grievant, all personnel of the District and the parties of this Agreement.