

## ARTICLE 5: GRIEVANCE PROCEDURES

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

For prompt and equitable resolution of employee complaints alleging discrimination, please refer to BSD Administrative Regulation AC located on the BSD website. For information on harassment complaint procedures, refer to BSD Administrative Regulations GBN/JBA, GBNA or JFCF located on the BSD website.

### A. Definitions

1. A “grievance” is a contention or a claim by the Association, a classified employee, or a group of classified employees ~~who allege~~ **with a common claim regarding** a violation of the same article under the same circumstances, that **they have been personally impacted by** ~~there has been to them a personal loss or injury resulting from~~ a violation of the terms of this 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 attempt to change or amend this Agreement.
  - c. Any matter governed by Board Policy or Administration Regulation.
  - d. Evaluations of employee performance are not grievable.
  - e. Any matter not included within the Collective Bargaining Agreement is not grievable.
2. A “grievant” is the Association, a classified employee, or a group of classified employees ~~who allege~~ **with a common claim regarding** a violation of the same article under the same circumstances, who initiate(s) a grievance, provided that the classified employee or group must be directly **impacted** ~~injured as defined above~~ by the conduct complained of in the grievance. A classified employee not directly affected by a ruling or interpretation of this Agreement is not an ~~injured~~ **impacted** person as defined above. A classified employee may have their grievance adjusted or resolved (including the dismissal thereof) without the intervention of the Association if:
    - a. ~~¶~~The adjustment is not inconsistent with the terms of this Agreement; and
    - b. ~~¶~~The Association President has been notified by the employee; and
    - c. ~~¶~~The Association has been given **the** opportunity to be present at the adjustment.
  3. The Association may file a grievance as long as the grievance states it is filed on behalf of at least one named unit member. In addition to the above, the Association may also initiate grievances where it alleges a violation with respect to its organizational rights provided for it by name in this Agreement.
  4. The term “days” shall mean business days. Weekend or vacation days are thus excluded, except that, between May 1 and the start of the following school year, the time limits shall consist of all calendar days so that the matter may be resolved expeditiously before the start of the next school term (unless an extension is agreed to by written mutual consent) or as soon thereafter as is practicable.

### B. LEVELS AND STEPS

## **LEVEL I - Supervisor/Director (Appendix C)**

### **Step 1 (Informal Conference)**

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 administrator or supervisor to seek grounds for the resolution of the problem. The grievant shall advise the administrator or supervisor prior to the start end of this conference that these discussions constitute the "informal conference." ~~If the Association is the grievant under Section A.3 above, this conference will be held with the Executive Administrator of Human Resources over Classified Personnel.~~

In order to be considered and processed beyond the Informal Conference, Level I, each grievance shall have been initiated within twenty (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 twenty (20) days of the first such knowledge.

### **Step 2 (Formal Conference)**

In the event the problem has not been resolved at Level I, Step 1, the grievant shall, within ten (10) days after the informal conference, prepare a written statement (using the Grievance Record form located in Appendix C of this contract) of such fact constituting the complaint and setting forth:

- a. Statement of the alleged contract violation;
- b. Article and Section citation of language allegedly violated,
- c. Remedy sought;
- d. Decision rendered at the informal conference; and
- e. Explanation of why the decision from the informal conference was refused.

The grievance record form shall be furnished to the designated Human Resources administrator ~~Executive Administrator of Human Resources over Classified Personnel~~ who shall, within ten (10) days of receipt of the complaint, meet with the grievant and the appropriate administrator or supervisor and attempt to resolve the matter. Within five (5) days of the formal conference the designated Human Resources administrator ~~Executive Administrator of Human Resources over Classified Personnel~~ shall prepare a written statement of the reasons for ~~his/her~~ their decision.

### **Step 3 (Appeal)**

Within ten (10) days of receipt of the decision or within ten (10) days after the formal conference held at Step 2, whichever is later, the grievant may file an appeal in writing to the ~~Chief Human Resource Officer~~ Superintendent or designee, setting forth the grounds upon which the grievance is based and the reasons why the grievant considers the decision rendered at Level I, Step 2, to be unacceptable. Copies of the decision and statement of reasons from Step 2 above shall be filed with the appeal.

## **LEVEL II – Chief Human Resource Officer**

~~Within ten (10) days after receiving the appeal, the Chief Human Resource Officer shall review the facts in the case and the decisions rendered at previous steps in the grievance procedure and communicate their decision in writing to the grievant.~~

~~Within ten (10) days of receipt of the decision, the grievant may file an appeal in writing to the~~

~~Superintendent setting forth the grounds upon which the grievance is based and the reasons why the grievant considered the decision rendered at Level II to be unacceptable. Copies of the decision and statement of reasons from Level II shall be filed with the appeal.~~

### **LEVEL ~~II~~ ~~III~~ - Superintendent and Board Step 1 (Hearing)**

Within ten (10) days after receiving the appeal, the Superintendent or their designee shall meet with the grievant and the ~~Chief Human Resource Officer~~ **designated Human Resources administrator** to discuss their respective positions on the matter.

#### **Step 2 (Recommended Decision)**

Within ten (10) days following the conclusion of the meeting, the Superintendent shall recommend a decision to the Board.

#### **Step 3 (Board Decision)**

The Board shall act on said recommendation on or before the date of its next regular meeting; provided that if it is received less than ten (10) days prior to such meeting, it shall act thereon or before the date of its second regular meeting following such receipt. Its decision shall be written and shall be furnished to the parties.

### **LEVEL ~~III~~ ~~IV~~ – Arbitration**

#### **Definition of Grievances Subject to Arbitration**

Insofar as the Board's decision is alleged by the grievant to be a violation of a specific provision of this Agreement and does not involve claims of discrimination in violation of State or Federal employment discrimination statutes, the grievant may request that such decision be submitted for binding arbitration. (Discrimination claims are excluded because of the adequate State and Federal administrative and judicial remedies applicable for redress of such claims.) Submission for binding arbitration must be with the concurrence of and by the Association. In such cases, the following procedure shall apply:

#### **Step 1 (Notification of Intent to Appeal and Preparation of Submission Agreement)**

Within ten (10) 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 ten (10) 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.

#### **Step 2 (Selection of Arbitrator)**

Within ten (10) days of the date of the Association's notification of intent to appeal, the District 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 ten (10) days either the Association or the Board may request that the Employee Relations Board (ERB) furnish a list of seven (7) arbitrators, and the selection of the arbitrator shall be in accordance with the voluntary labor arbitration rules of the ERB, ~~except that if the parties cannot agree upon an arbitrator from the first list submitted, the ERB shall submit up to two (2) additional lists so that a mutually acceptable arbitrator can be selected.~~

#### **Step 3 (Arbitration Hearing)**

The arbitrator shall confer with the representatives of the parties and hold hearings promptly and shall issue their decision not later than thirty (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 to him/her them. The arbitrator shall limit himself/herself themselves to the issue(s) submitted to him/her them. The arbitrator's decision shall be in writing and shall set forth his/her their 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 violation of the terms of this Agreement, nor may an arbitrator substitute his/her their judgment for that exercised by an administrator or the Board on any matter reserved to management under the terms of this Agreement.

Insofar as his/her the arbitrator's decision involves only matters subject to arbitration as above defined and is based on substantial evidence, such decision shall be final and binding on the grievant, all personnel of the District and the parties of this Agreement. The costs for the services of the arbitrator, including per diem fees and actual and necessary travel and subsistence expenses and the cost of the hearing room shall be borne equally by the District and the Association. Any other expenses incurred shall be paid by the party incurring them same.

### C. GENERAL PROCEDURES

5. The grievant, who must be present at all steps of the procedure, may be represented at all steps of the grievance procedure by himself/herself themselves or may at his/her option also have a representative of the Association present to represent him/her them.
2. The number of days indicated at each level should be considered maximum and every effort should be made to expedite the process. However, it may at times become necessary to extend time limits. To be effective, these extensions must be mutually agreed to in writing by the parties involved at any time.
3. Failure at any step of this procedure to communicate the decision in writing on a grievance within the specified or agreed upon 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.
4. Except as otherwise provided by law, a classified employee shall invoke and exhaust the grievance procedure remedies before resorting to any other legal or ~~S~~state or ~~F~~federal administrative remedies for the conduct complained of, and failure to do so shall preclude resort to such other remedies.
5. In order to be considered under this procedure, each grievance must have been initiated at Level I Step 1 within fifteen (15) business days of the occurrence of the cause for complaint, or, if the grievant could not have had knowledge of said occurrence at the time of its happening, then within fifteen (15) business days of the first such knowledge.
6. Any grievance based upon an event or condition relating to an alleged violation of the terms of this Agreement which is not under jurisdiction of a supervisor shall be presented to the appropriate administrative authority. Any grievant may request, in writing, a conference with the supervisor or administrator who has approved the action which has caused him/her them to be aggrieved. If the matter is not resolved by such conference, the grievant shall submit a statement which sets forth the basis and the particulars of his/her their grievance as specified in Level I, Step 2.
7. The parties agree that the grievance procedures in this contract are intended to be used to resolve all

issues about what the contract means. Because there is an arbitration provision that leads to a final and binding decision as to the interpretation of the contract, the parties agree that the grievance and arbitration procedure will always be used when it is available in lieu of other types of actions which raise an issue of contract interpretation.

8. 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, the grievant(s) and their designated or selected representatives heretofore referred to in this Article.

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