

ARTICLE XIX

GRIEVANCE

A. Definitions

1. A "grievance" is defined as an allegation that the grievant has been adversely affected by a violation, misinterpretation, or misapplication of the provisions of this Agreement.
2. A "grievant" may be any member of the bargaining unit or the Association as per Section 3543.1(a) of the EERA and PERB Decision No. 791.
3. A "day" is any day on which the administrative offices of the District are open for business except when a grievance is filed after May 1 and prior to the end of the school year, the time limits shall be regarded as calendar days. Time limits affected by the winter and spring recesses shall be extended by five (5) days.
4. The "immediate supervisor" is the lowest level administrator having jurisdiction over the grievant and who has the authority to resolve the particular grievance.

B. Forms

Forms for submitting grievances shall be mutually agreed upon by the Association and the District.

C. Timelines

1. Since it is important that grievances be processed as rapidly as possible, time limits specified at each level shall be considered maximums and every effort shall be made to expedite the process. Time limits may be extended by mutual agreement.
2. If grievants do not meet the time limits set forth in this Article, they shall lose their right to pursue the grievance procedure or be deemed to have accepted the decision at any level.
3. Every effort shall be made to schedule hearings for the processing of grievances at times which shall not interfere with the regular teaching periods of the participants. If any grievance hearing must be scheduled during teaching periods, the grievant, a unit member serving as representative of the grievant, or any unit member required by either party to participate as a witness in such hearing shall be released from duty without loss of pay for participation at the hearing.

D. Confidentiality

1. No public comments shall be made by any party involved in the grievance procedure at any level until the grievance has been resolved.
2. Documents, communications, and/or records dealing with the processing of a grievance shall not be placed in the personnel files of any grievants or other participants in the grievance.

E. Limits

1. No reprisals of any kind shall be taken by the District against any unit member by reason of participation in the grievance procedure.
2. Nothing contained in this Article shall be construed as limiting the right of any unit member alleging a grievance to discuss the matter informally with any appropriate District representative and to have the grievance adjusted without intervention of the Association provided the adjustment is consistent with the terms of this Agreement and the Association has been given an opportunity to be present at such adjustment and to share its views. The Association shall be given an opportunity to file a written response to any proposed settlement prior to the final resolution of the grievance.
3. The grievance procedure shall not be used to contest the dismissal of unit members nor the application of the requirements of EEOC, Title VI, Title VII, Title IX, unemployment insurance, or any other federal or state statute for which a specific method of review is provided by law.
4. Issues arising out of the Management Rights section of this Agreement shall not be subject to the grievance procedure.

F. Grievance Procedure

1. Informal Level
 - a. Before a formal written grievance is filed, the grievant shall attempt to resolve the matter by an informal conference with the immediate supervisor.
 - b. Within fifteen (15) days after the occurrence of the act or omission or when the grievant could reasonably be expected to know of the act or omission giving rise to the grievance, the grievant shall request a conference with the immediate supervisor.
 - c. The immediate supervisor shall schedule the conference within five (5) days after receipt of the request for conference and respond to the grievant

in writing within two (2) days after such conference. If the grievant is not satisfied with the results of the informal conference, the grievant shall proceed to Level I.

- a. The grievant may be represented by an Association representative at all meetings and hearings above the informal level of this procedure and at the informal level after the grievant has had at least one informal conference with the immediate supervisor.

2. Level I

- a. The grievant shall present the grievance in writing on the appropriate form to the immediate supervisor within five (5) days after receiving the response to the informal conference. This shall be a clear, concise statement of the grievance citing the specific section(s) of this Agreement alleged to have been violated and/or misinterpreted and/or misapplied, the circumstances involved, the decision rendered at the informal level, and the specific remedy sought.
- b. The immediate supervisor shall hold a hearing with the grievant and communicate a decision in writing within seven (7) days after receiving the grievance.
- c. Within the above time limits, either the grievant or the immediate supervisor may request, and shall be granted, an additional conference(s) with the other party.

3. Level II

- a. If the grievant is not satisfied with the decision at Level I, the grievant may, within seven (7) days, appeal the decision on the appropriate form to the Superintendent or designee.
- b. This appeal shall include a copy of the original grievance, the decisions at the Informal Level and Level I and a clear, concise statement of the reasons for the appeal.
- c. The Superintendent or designee shall hold a hearing and communicate a decision in writing to the parties within ten (10) days after receipt of the appeal.

- d. The processing of a grievance beyond Level II shall constitute an expressed election on the part of the grievant and the Association that the grievance arbitration procedure is the chosen forum for resolving the issues contained in the grievance and that the grievant will not resort to any other forum for resolution or review of the issue until the grievance process has been completed.

4. Level III

- a. If the grievant is not satisfied with the decision at Level II, the grievant may, within five (5) days, request in writing, with a copy to the Superintendent, that the Association submit the grievance to arbitration.
- b. The Association, by written notice to the Superintendent, may submit the grievance to arbitration no later than ten (10) days after receipt of the request for arbitration by the grievant.
- c. The Association and the District shall, within seven (7) days, request a list of five (5) persons experienced in hearing grievances in public schools from the California State Mediation and Conciliation Service. The selection of an arbitrator shall be determined by a striking process in which the first party to strike shall be determined by a flip of a coin; then each party shall alternately strike a name until one name remains. The remaining name shall be the arbitrator.
- d. Any questions as to the arbitrability of the grievance shall be ruled upon by the arbitrator.
- e. The arbitrator's decision shall be limited to the application and interpretation of the provisions of this Agreement; and consideration shall be given only to those issues, facts, opinions, and information which have been carried through all prior steps of the grievance procedure.
- f. The arbitrator shall be without power or authority to make any decisions which require the commission of an act prohibited by law or which is violative of the terms of this Agreement.
- g. The arbitrator shall have no power to establish salary schedules or structures.
- h. After the arbitration hearing, the arbitrator shall render a decision in writing within thirty (30) days which shall be final and binding on both parties. The arbitrator's decision is subject to appeal by either party through the courts in a manner prescribed by law.

- i. All costs for the arbitrator and the hearing shall be borne equally by the Association and the District. All other costs shall be borne by the party incurring them.

- j. The Association shall discourage any attempt of unit members and shall not encourage or cooperate with any unit member in any appeal to any court, PERB, or labor board decision of the arbitrator; nor shall the Association or unit members, by any means, attempt to bring about a settlement of any grievance other than via the grievance procedure.