

## **ARTICLE 8: GRIEVANCE PROCEDURE**

### 8.100 Definitions

A “grievance” is an allegation filed in writing on the appropriate form (Appendix F) by a unit member regarding a violation or misapplication of the specific provisions of this Agreement. Actions to challenge or change the policies, regulations or matters outside of the Agreement are not within the scope of this procedure, and review shall be taken under separate processes.

A “day” is a day in which the unit members are scheduled to work as set forth in this Agreement. The “immediate supervisor” is the lowest level administrator having immediate jurisdiction over the grievant and who has been designated by the District to adjust grievances.

A “grievant” is any unit member covered by the terms of this agreement and/or the Association, when filing on behalf of specifically named unit members who qualify as grievants. Association grievances shall be filed by the President of the Association or his/her designee(s).

### 8.200 Procedure

#### 8.210 Level I

Within twenty (20) days of when the grievant knew or reasonably should have known of the act or omission which gave rise to the grievance, the grievant must present such grievance in writing on the appropriate form (Appendix F) to the immediate supervisor.

The grievance shall consist of a clear concise statement of the problem, the provision of the Agreement involved, and the specific remedy sought.

The supervisor shall communicate a decision in writing within five (5) days after receiving the grievance. Within the above time limit, either party may request and receive a personal conference with the other party.

#### 8.220 Level II

If the grievant is not satisfied with the decision at Level I, within five (5) days after receipt of the Level I response, the grievant may appeal the decision to the next level on the appropriate form (Appendix F).

The Superintendent or designee shall communicate in writing a decision within ten (10) days after receipt of the appeal. Within the above limit, either party may request and receive a personal conference with the other party.

#### 8.230 Grievance Mediation

If the Association is not satisfied with the disposition of the grievance at Step 2, or if no written decision has been received from the District within the time limits prescribed in Step 2, the Association may request to submit a grievance to mediation.

- a. The Association must notify the District in writing within ten (10) working days of the conclusion of Step 2 of the Association’s desire to refer the grievance to mediation. The District shall respond to the Association whether or not the District

**ARTICLE 8:            GRIEVANCE PROCEDURE – continued**

agrees to the mediation of the grievance no later than five (5) working days after receipt of the Association’s written request.

- b. Within five (5) working days following the agreement of the District and the Association to mediate the grievance, the Association shall notify the State Mediation and Conciliation Service (SMCS). SMCS shall schedule a mediation conference at the earliest possible date. Mediation conferences will take place at a mutually convenient location and time.
- c. The mediator will have the authority to meet separately with either party, but will not have the authority to compel the resolution of a grievance.
- d. The presentation of facts and considerations shall not be limited to those presented at Step 2 of the grievance procedure. Proceedings before the mediator shall be informal in nature. There shall be no formal evidence rules. No transcript or record of the mediation conference shall be made, except in the event that a mutually agreed upon settlement is reached. Any settlement offers made by either party during the grievance mediation process shall not be referenced, either directly or indirectly, in any subsequent arbitration proceeding involving the instant grievance.
- e. Unless the parties agree otherwise, the mediator shall not serve as the arbitrator should the grievance proceed to Level III of the grievance process.
- f. Written material presented to the mediator shall be returned to the party presenting that material at the termination of the mediation conference, except that the mediator may retain one (1) copy of the written grievance to be used solely for the purposes of statistical analysis.
- g. The fees and expenses of the mediator and the Administrative Office shall be shared equally by the parties.

8.240 Level III

If not satisfied with the decision in Level II, the grievant, within five (5) days after receipt of the Level II response, may request in writing that the Association submit the grievance to arbitration.

The Association, by written notice to the Superintendent or designee within fifteen (15) days of the Level II response, may submit a grievance to an arbitrator who shall be selected by mutual agreement. If no agreement can be reached within five (5) days of the notice, the parties shall request of the State Conciliation Service a list of five (5) names of persons experienced in hearing grievances. Each party shall alternately strike a name until only one name remains. The order of strike shall be determined by lot.

In each dispute, the arbitrator shall, as soon as possible, hear evidence and render a decision on the issue(s) so submitted. If the parties cannot agree upon a submission agreement, the arbitrator shall determine the issue(s) by referring to the written grievance and the answers thereto at each step. After hearing, and after both parties

**ARTICLE 8:            GRIEVANCE PROCEDURE – continued**

have been given the opportunity to make written arguments, the arbitrator shall submit the findings and recommendations. The recommendations and awards shall be final and binding upon the parties in issues involving the grievance procedure herein. Under no circumstances does the arbitrator have the power to render a final and binding award that would constitute a payment by the District where the specific amount or the impact would exceed a total of \$45,000 annually, nor shall such an award be enforceable through any agency proceedings or through a court of law.

The arbitrator will have no power to add to, subtract from, or modify the terms of the Agreement or the written policies, rules, regulations and procedures of the District; nor shall the arbitrator be empowered to render a decision on issues not before the arbitrator or on facts not supported by the evidence.

The fees and expenses of the arbitrator and each hearing shall be borne equally by the District and the Association. All other expenses shall be borne by the party incurring them.

If any question arises regarding the arbitrability of a grievance, the party raising the question of arbitrability may, upon request, have such question first ruled upon and decided by an arbitrator prior to any other hearing on the merits of the grievance which would thereafter be conducted by a second and different arbitrator. The fees and expenses of the separate arbitrator deciding the issue of arbitrability shall be borne by the party who raised the question of arbitrability.

8.300 Miscellaneous Provisions

8.310 Nothing contained herein will be construed as limiting the right of any unit member having a grievance to discuss the matter with any appropriate member of management and to have the grievance resolved without intervention or presence of/by the Association, provided that the resolution is not inconsistent with the terms of this Agreement and provided further that prior to any agreement on the resolution, the Association has been given ten (10) days in which to study the issues and to state its views.

8.320 In the event a grievance is filed at such a time that it cannot be processed through all the steps in this grievance procedure by the end of the school year, and if left unresolved until the beginning of the following school year could result in harm to a grievant, the time limits set forth herein will be reduced so that the procedure may be exhausted prior to the end of the school year or as soon as practicable.

8.330 If the District management fails to respond in writing to the grievance within the specified time limit, the grievant has the right to process the grievance at the next level. If the grievant does not process the appeal within the given time limits, the grievance shall be considered as settled and the grievant cannot thereafter grieve the issue(s) again. The time limits specified at each level should be considered maximums and every effort should be made to expedite the process. The time limits, however, may be extended by mutual agreement.

8.340 Every effort will be made by the parties to settle grievances at the lowest possible level.

**ARTICLE 8:            GRIEVANCE PROCEDURE – continued**

- 8.350 No reprisals of any kind will be taken by the District against any grievant, any party in interest, or any other participant in the grievance procedure, by reason of such participation.
  
- 8.360 The processing of a grievance beyond Level II shall constitute an express election on the part of the grievant and the Association that the grievance/arbitration procedure is the sole and chosen forum for resolving all the issue(s) contained in the grievance.