

FRESNO UNIFIED SCHOOL DISTRICT PROPOSAL TO FRESNO TEACHERS ASSOCIATION

ARTICLE 19 – GRIEVANCE PROCEDURE

Revise Article 19 as follows:

Section 1. Definitions

1. A "grievance" is a formal, written allegation by a unit member or the Association that there has been a violation, misapplication, or misinterpretation of the provision of this Agreement. Actions to challenge or change the policies of the District as set forth in the rules and regulations or administrative regulations and procedures must be undertaken under separate legal processes.

Other matters for which a specific method of review is provided by law, by the rules and regulations of the Board or Education, or by the administrative regulations and procedures of this school district, are not within the scope of this procedure.

2. A "grievant" may be any one of the following:
 - 2.1 Any certificated, non-management employee(s) of the District covered by the terms of this Agreement. In the event any grievant dies or becomes incapacitated subsequent to filing a grievance, the Association shall be certified to assume the role of grievant for purposes of completing the consideration of the grievance.
 - 2.2 The Association, either on its own behalf or when representing any of the bargaining unit members as authorized in writing.
3. A "day" is any day in which the District Administration Center is open for business with the exception of those days during winter and spring recess. The "immediate supervisor" is the lowest level administrator having immediate jurisdiction over the grievant who has been designated to adjust grievances.
4. The Association may process multiple grievances involving the same or similar facts and issues arising under the terms of this Agreement. The Association, and only the Association, is entitled to file such a "class action grievance".
 - 4.1 Group Grievances - It is recognized by the parties that if grievances which are the same or substantially the same in facts and issues reach Level III, then it is to the parties' benefit to group the grievances for purposes of adjudication.
 - 4.2 Mutual agreement concerning the similarity of facts and issues is a prerequisite to proceeding with a group or "class action" grievance.

- 4.3 The only grievances which may be combined within a group grievance are those which were properly and timely filed as set forth in this article. Once a class or group grievance is certified by the parties as involving claims which have the same or substantially the same facts and issues, no additional grievants may be added to the class, nor may any additional claims be raised, without mutual consent of the parties.
5. Once a grievance dispute is resolved, the parties will state such resolution in writing as a grievance settlement which shall be signed by the grievant, the Association and the District. Any such grievance settlement utilizing a resolution mechanism that is inconsistent with the terms of this Agreement or that affords an alternate advantage to the bargaining unit member(s), grievant, Association or the District not otherwise guaranteed by the terms of this Agreement, shall not be construed as precedent or binding practice for subsequent grievance settlements and/or arbitration awards.
6. Nothing contained herein will be construed so as to limit the right of those considering lodging a grievance from discussing the matter informally with any appropriate management person, with or without Association intervention and/or representation, in an attempt to resolve the matter informally. It is mutually understood and agreed that informal efforts to resolve problems should normally occur, but are not required.
7. Grievants shall have the right to Association representation at all steps, at all conferences and during any and all discussions and/or proceedings, formal or informal, concerned with processing or adjusting the grievance. Neither the Association nor the District shall attempt to isolate any grievant in order to influence an adjustment of the grievance.
8. Nothing contained herein will prevent the grievant from proceeding through this Grievance Procedure short of arbitration without Association intervention. The Association agrees to hold harmless and indemnify the District for all costs and expenses incurred by the District in conforming to the requirement that only the Association may appeal a grievance to arbitration. In the event a grievant so chooses, such process shall be subject to the following provisions:
- 8.1 A copy of the original grievance will be transmitted to the Association when first received by the District.
- 8.2 No resolution of the grievance shall be agreed to until the Association has received a copy of the proposed resolution and has been given fifteen (15) days to file a response.
- 8.3 Any adjustment of such grievance shall not be inconsistent with the terms of the Agreement.
9. It is mutually understood and agreed that the time limits specified at each level are maximums and do not preclude the parties from desirable efforts to expedite the process of seeking a solution.
10. It is mutually understood and agreed that the parties are encouraged to exert every effort to achieve a grievance adjustment affording a solution. It is mutually understood and agreed that the management persons responsible for considering grievances at Levels I through III are not obligated to render a written decision if in their judgment such decision would be detrimental to

resolution of the grievance. In the event no decision is rendered, the grievant may submit such grievance to the subsequent level in conformance with the specified time lines.

11. When acting as a grievant's designated representative, the Association may transmit appeals, informational requests, schedule hearings and/or conferences and generally administer all matters concerned with joint consideration of grievances on behalf of the grievant. This shall not be construed so as to permit the Association to sign grievances for individual unit members who are submitting a grievance unless such is authorized in a written, notarized statement by the individual unit member(s).
12. The District may assert a grievant's or the Association's failure to meet any procedural requirements set forth in this Article at any time during the Formal Grievance Process.
13. It is mutually agreed and understood that the parties should strive to resolve grievances at the earliest stage possible. Settlement at any stage shall not be a precedent in later grievances.

Section 2. Informal Level: Before filing a formal, written grievance, the grievant should attempt to resolve it by an informal conference with his/her immediate supervisor.

Section 3. Formal Level:

- 11.1 Level I. Within fifteen (15) days after the occurrence of the act, omission or violation giving rise to the grievance, or within fifteen (15) days of the time the grievant should reasonably have known of the act, omission or violation giving rise to the grievance, the grievant must present his/her grievance in writing on the appropriate form to his/her immediate supervisor. A grievance must list the specific contract provisions the grievant alleges were violated, misapplied or misinterpreted, together with the allegations describing the specific acts or omissions that violated the contract, as well as the proposed remedy.
 - 11.1.1 Within ten (10) working days after receiving the grievance, the immediate supervisor and the grievant shall schedule a time to meet and discuss the grievance. The immediate supervisor for unit members assigned to a single school shall be the principal. For unit members assigned to no school site, or several school sites, the administrator to whom the member is responsible shall be the immediate supervisor. If there is doubt as to which individual is the immediate supervisor for purposes of grievance processing, the District Office of Labor Relations shall, upon request, inform the grievant who his/her designated immediate supervisor is to enable the grievant's submission of the grievance or complaint for Level I consideration.
 - 11.1.2 The supervisor shall communicate his/her decision to the employee in writing within ten (10) days after receiving the grievance the meeting. If the supervisor does not respond within the time limits, the grievant may appeal to the next level. Failure of the grievant or the Association to meet the timelines set forth herein, or include the necessary elements of a grievance set forth in section 11.1 above, shall render the grievance null and void.
 - 11.1.3 Within the above time limits, a personal conference will be held at the request of either party.

11.2 Level II. In the event the grievant is not satisfied with the decision at Level I, he/she may appeal the decision on the appropriate form to the appropriate Division Superintendent, or his/her designee, within ten (10) days. **The Level II appeal must list the specific contract provisions the grievant alleges were violated, misapplied or misinterpreted, together with the allegations describing the specific acts or omissions that violated the contract, as well as the proposed remedy.**

11.2.1 **Within ten (10) working days after receiving the grievance, the Division Superintendent, or his/her designee and the grievant shall schedule a time to meet and discuss the grievance.** The Division Superintendent, or his/her designee, shall communicate his/her decision within ten (10) **working** days after **receiving the appeal the meeting**. Either the grievant or the Division Superintendent, or his/her designee, may request a personal conference within the above time limits. If the Division Superintendent, or his/her designee, does not respond within the time limits, the grievant may appeal to the next level.

11.2.2. Failure of the grievant or the Association to include the necessary elements of the Level II appeal set forth in section 11.2 above, shall render the grievance null and void.

11.3 Level III. If the grievant is not satisfied with the decision at Level II, he may within ten (10) days appeal the decision on the appropriate form to the Administrator, Labor Relations, or his/her designee. **The Level III appeal must list the specific contract provisions the grievant alleges were violated, misapplied or misinterpreted, together with the allegations describing the specific acts or omissions that violated the contract, as well as the proposed remedy. Within ten (10) working days after receiving the Level III grievance, the Administrator, Labor Relations, or his/her designee, shall schedule a time to meet and discuss the Level III grievance.** The Administrator, Labor Relations, or his/her designee, shall communicate his/her decision to the grievant within ten (10) **working** days **of the meeting**. If the Administrator, Labor Relations or his/her designee does not respond within the time limits provided, the grievant may appeal to the next level.

11.3.1 Failure of the grievant or the Association to include the necessary elements of the Level III appeal set forth in section 11.3 above, shall render the grievance null and void.

11.4 Level IV. If the Association is not satisfied with the decision at Level III, the Association may within ten (10) days submit a request in writing to the Office of Labor Relations for arbitration of the dispute. The Association and the District shall within five (5) days request the State Conciliation Service to supply a panel of five names of persons experienced in hearing grievances in public schools. Each party shall alternately strike a name until only one name remains. The remaining panel member shall be the arbitrator. The order of striking shall be determined by flipping a coin. The Association and the District may mutually agree on an arbitrator not on the panel. If no agreement is reached within five (5) days from the date of submission to arbitration, either party may require that selection be made from the panel described. The Association and the Office of Labor Relations may agree to use expedited arbitration as provided for in accordance with the American Arbitration Association Rules for Expedited Arbitration. If there is agreement to expedited arbitration as delineated immediately above, the District shall notify the arbitrator as soon as reasonably possible, and the arbitrator shall supply the parties with written notification of three possible hearing dates encompassing no less than a two-week span. The parties may then mutually agree on a date or mutually agree

that the District request the arbitrator to supply the parties with three more possible hearing dates, encompassing no less than a two-week span, or either party may require that selection be made from the three dates initially submitted by the arbitrator. In that event, selection of the date shall be accomplished by each party alternately striking a date until only one date remains. The remaining date shall be the date of the hearing. The order of striking shall be determined by the flipping of a coin.

11.4.1 If there is not mutual agreement to expedited arbitration as previously delineated, and regular arbitration is requested, the District shall immediately request the arbitrator to supply the parties with four possible hearing dates encompassing no less than a four-week span.

11.4.2 The parties shall reserve two hearing dates for the arbitration by each party striking one date in turn. The remaining two dates shall be reserved for the arbitration. The order of striking shall be determined by the flipping of a coin. This shall not be construed so as to prevent the parties from mutually agreeing on two of the dates submitted.

11.4.3 In the event the parties have not mutually agreed to proceed under expedited rules, the District shall obtain a recorder for each of the hearing dates scheduled. The costs of the recorder and the transcript shall be borne equally between the District and the Association. The fees and expenses of the arbitrator and the hearing shall be borne equally by the District and the Association.

11.4.4 If the parties cannot agree upon a submission agreement, the arbitrator shall determine the issues by referring to the written grievance and the answers thereto at each step.

11.4.5 Issues arising out of the exercise by the Board and administration of its responsibility referred to in the article on District Rights, including the facts underlying its exercise of such discretion, shall not be subject to the procedure.

11.4.6 The arbitrator shall conduct hearings to consider evidence and arguments in accordance with the appropriate rules/provisions of the California Code of Civil Procedure.

11.4.7 The arbitrator is empowered to recommend his/her mediation of the dispute at any time his/her judgment determines that circumstances warrant such a recommendation. Such mediation will occur only by mutual consent of the Association and the District.

11.4.8 Briefs may be submitted in accordance with the following provisions:

11.4.8.1 By request of either party; or

11.4.8.2 By the order of the arbitrator at the close of a hearing.

11.4.9 In the event briefs are submitted, they shall be postmarked within fifteen (15) days from the parties'/arbitrator's receipt of the transcripts. If dispute should

arise over the submission date, the arbitrator shall establish such submission date and so inform the parties. After the hearing and/or briefs submission, the arbitrator shall submit in writing to the parties his/her findings and an award, which shall be final and binding.

11.4.10 If there is dispute as to the application of the arbitrator's award, the arbitrator shall retain jurisdiction to decide such disputes and to determine the process by which he/she considers such disputes.

11.4.11 The arbitrator will have no power to add to, subtract from, or modify the terms of this Agreement.

11.4.12 Nothing shall preclude the parties from mutually agreeing to extend or shorten any timelines within this Grievance Procedure. Such mutual exceptions must be in writing.

11.4.13 In the event the Association grieves any of the articles for which Association grievance is provided, the grievance procedure shall start at Level III, with fifteen (15) days allowed for the Administrator, Labor Relations, or his/her designee, to render his/her decision.

11.4.14 The District and the Association may mutually agree to contract with an arbitrator to contract or agree with him/her to serve as a permanent arbitrator; that is to arbitrate all matters brought to arbitration between the parties without the parties going through the above-described selection procedure delineated for the selection of an arbitrator.

Section 4. Mutual Disciplines Regarding Processing of Grievances

11.5 The Association and the District are prohibited from utilizing dilatory and/or harassment tactics in connection with the filing and/or processing of grievances. Both parties agree that they will not take any form of reprisal against any bargaining unit member as a result of that bargaining unit member's lawful engagement in grieving or refusing to grieve.

11.6 The party alleging violation, misinterpretation, and/or misapplication of this article shall, as soon as reasonably possible, notify the other party in writing as to the known substance and scope of such charges prior to the formal consideration as described in this article.