

## SECTION VI – GRIEVANCE PROCEDURES

### Section 1: Purpose

The purpose of this procedure is to facilitate efficient operation of the District by providing an orderly, agreed upon process for resolving serious disputes, if any, which arise out of the implementation of this agreement.

### Section 2: Definitions

(a) A “complaint” is an informal assertion that a provision of this agreement has been misapplied and the misapplication adversely and directly affects the complainant.

(b) A “grievance” is a claim by an employee of an alleged violation, misinterpretation, or misapplication of the express terms of this Agreement, which personally and adversely affects the employee. Other employer-employee relation matters are not within the scope of this procedure.

(c) An “employee” is a certificated person employed by the Poway Unified School District who is covered by the terms of this agreement.

(d) A “working day” is one of the days during which the District Office is open for business.

(e) “Supervisor” is the administrator having immediate jurisdiction over the matter which gave rise to the grievance.

(f) A “grievant” is an employee asserting a grievance.

(g) A “multiple grievance” is an identical grievance filed by more than two (2) grievants at the same time. By mutual consent of the members of the entire group and District, the parties may agree to process these grievances as a single grievance. However, no more than two (2) members of the group shall represent the group.

(h) A “party in interest” is an employee who might be required to take action, or against whom action might be taken in order to resolve a grievance.

(i) Time limits in this procedure may be waived by mutual agreement. Time limits would not be utilized during non-working days as defined in (d) above unless agreed to by both parties.

(j) The Federation may file a grievance on an alleged violation, misinterpretation, misapplication of the express terms if this agreement.

1 **Section 3: Level I - Informal Resolution**

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3 Every attempt will be made to resolve a grievance at the lowest level possible.

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5 (a) Informal discussion with immediate supervisor is required by the grievant if  
6 appropriate.

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8 **Section 4: Level II - Formal Written Procedure**

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10 (a) An employee may initiate a formal grievance by filing a completed grievance form  
11 with his/her supervisor within thirty (30) days of the event giving rise to the  
12 grievance, or within thirty (30) days of when the employee could reasonably have  
13 known of the event. Grievance forms shall be provided by the District. Relevant  
14 information obtained during Level I may be inserted. Information copies shall be  
15 sent to the Assistant Superintendent, Personal Support Services. Information shall  
16 include:

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18 1. A description of the specific grounds of the grievance, including names, dates,  
19 and places necessary for a complete understanding of the grievance.

20

21 2. A listing of the provisions of this agreement which are alleged to be violated.

22

23 3. A listing of specific actions requested of the School District which will remedy the  
24 grievance.

25

26 4. A request for a conference with the supervisor or his/her designated  
27 representative, if desired.

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29 If the supervisor desires he/she may request a conference with the grievant. If  
30 either the grievant or the supervisor requests a conference at Level II above, the  
31 request must be granted. The grievant, the party in interest if any, and the  
32 supervisor may request the presence of a representative at any conference  
33 contemplated by this subsection (a).

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35 (b) If requested by either party, a conference will be held within ten (10) working days  
36 after receipt of the written grievance. The grievant, the party in interest, if any, and  
37 the supervisor may each request the presence of a representative at any  
38 conference.

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40 (c) The supervisor or his/her representative shall render a written decision to the  
41 employee within ten (10) working days after the conference with the grievant.  
42 Information copies of the decision shall be sent by the supervisor to the Assistant  
43 Superintendent, Personnel Support Services.

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1 **Section 5: Level III - Appeal to the Associate Superintendent, Personnel Support Services**

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3 (a) Should the proposed resolution at Level II be unsatisfactory, the grievant may, within  
4 ten (10) working days after receiving the written response from the immediate  
5 supervisor, appeal the decision to the Assistant Superintendent, Personnel Support  
6 Services. The grievant must state the grievance in writing, describing:

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8 (1) The violation or misapplication of the contract.

9

10 (2) The adverse effects upon the grievant.

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12 (3) The specific remedy sought.

13

14 (4) The specific reasons why the resolution proposed by the supervisor is  
15 unsatisfactory.

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17 (b) The Associate Superintendent, Personnel Support Services, upon receiving a  
18 properly prepared and filed grievance, will investigate the situation and prepare a  
19 proposed resolution within ten (10) working days. This proposed resolution will be in  
20 writing and a copy will be sent to the grievant and the supervisor involved.

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22 **Section 6: Level IV - Mediation**

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24 Either party may request the services of a mediator from the State Mediation/  
25 Conciliation Service to attempt to resolve the grievance prior to submission to Level V of  
26 the Grievance Procedure. Such request must be made in writing within ten (10) working  
27 days following the date of the proposed resolution on Level III.

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29 **Section 7: Level V - Binding Arbitration**

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31 (a) Initiation of Binding Arbitration

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33 If the grievant is not satisfied with the disposition of the grievance at Level IV, or if  
34 the parties do not use mediation as a means of resolving the grievance, the grievant,  
35 with the written consent of the Federation, shall forward a written request for  
36 arbitration to the State Mediation/Conciliation Service (San Diego Office), with a  
37 copy to the Assistant Superintendent, Personnel Support Services within ten (10)  
38 working days following the conclusion of Level IV mediation sessions or the  
39 issuance of a proposed resolution by the Assistant Superintendent, Personnel  
40 Support Services, if Level IV procedures were not utilized.

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42 (b) Selection of Arbitrator

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44 If the parties have not mutually agreed upon an arbitrator, the grievant and the  
45 employer's representative shall select the arbitrator from a list of five names  
46 provided by the State Mediation/ Conciliation Service. Each party may, in turn, strike  
47 out one name until only one name remains. Should more than one arbitrator remain  
48 acceptable to the parties, the particular arbitrator will be decided by lot.

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1 The first option of elimination shall alternate. All grievances reaching the arbitration  
2 level shall be numbered. The odd numbered grievances will give the grievant first  
3 right to elimination; even numbered grievances will give the employer first right to  
4 elimination.

5  
6 (c) Pre-hearing Procedures

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8 All documentary evidence to be presented at the arbitration hearing shall be  
9 disclosed to the opposing party at least ten (10) working days prior to the arbitration  
10 hearing.

11  
12 Each party shall notify the other party of the identity of witnesses to be presented  
13 during the arbitration. Such notification shall occur at least ten (10) working days  
14 prior to the arbitration hearing.

15  
16 (d) Conduct of Hearing

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18 The parties may mutually agree on the locale where the arbitration is to be held.

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20 The hearing shall commence at the convenience of the arbitrator, provided however,  
21 that all sessions shall occur on working days.

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23 (e) Costs

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25 All costs for the arbitrator, including, but not limited to, per diem, travel and  
26 subsistence expenses, and the cost of any hearing room, shall be paid by the  
27 non-prevailing party to the arbitration. The identity of the non-prevailing party shall  
28 be determined by the arbitrator. Either party may request a transcript of the hearing.  
29 The expense of such transcript shall be paid by the party requesting a transcript. All  
30 other costs attendant to the arbitration will be borne by the party incurring them,  
31 including, but not limited to, attorney, or other fees, duplicating costs, witness  
32 subpoena fees and mileage, expert's consultation and witness fees. Release time  
33 for witnesses employed by the District shall be the time of actual testimony at this  
34 hearing plus a reasonable period before and after the giving of testimony at this  
35 hearing. A full day release time may be given when necessary.

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37 (f) Powers, Duties, and Limitations Upon Arbitrator

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39 1. The arbitrator is limited to the terms of the grievance and this Agreement and  
40 shall not add to, subtract from, modify, vary, or alter the terms or conditions of this  
41 Agreement. The arbitrator shall limit the award strictly to the interpretation or  
42 application of the express provisions of the Agreement, and the arbitrator shall  
43 have no authority to interpret the provisions of local, state, or federal rules,  
44 regulations, statutes, guidelines, policies, or judicial precedents unless these are  
45 specifically referred to in the express provisions of the Agreement.  
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- 1 2. The arbitrator is without power or authority to make any decision which requires  
2 the commission of an act prohibited by law or which is violative of or  
3 contradictory to the terms of the Agreement.  
4
- 5 3. The arbitrator shall not consider or hear evidence concerning the reasons or  
6 causes for dismissal, suspension, or layoff. Also, the arbitrator shall not consider  
7 or hear evidence concerning the reasons or cause for other discipline of unit  
8 member(s) which may be outside the express provisions of this Agreement.  
9
- 10 4. Any actions alleged to constitute a grievance which occurred prior to the effective  
11 date of this Agreement or which occur after the expiration date of this Agreement  
12 shall not be subject to nor within the scope of arbitration unless the parties  
13 dispute: (1) involves facts and occurrences that arose before the expiration of the  
14 agreement; (2) involves post-expired conduct that infringes on rights accrued or  
15 vested under the expired agreement; or (3) involves a contractual right that,  
16 under normal principles of contract interpretation, survives the expiration of the  
17 agreement.  
18
- 19 5. No arbitration shall occur where another administrative, judicial or legal body,  
20 tribunal, agency, or forum exists which may or could have resolved the  
21 allegations contained within the grievance, including, by way of example and not  
22 by way of limitation, the Department of Fair Employment and Housing, the Equal  
23 Employment Opportunity Commission, and a Commission in Professional  
24 Competence.  
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#### 26 (g) Form and Time of Decision

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28 1. The arbitrator shall render a written award and mail that award directly to each  
29 party within thirty (30) days from the close of the record or as mutually extended  
30 by the parties. The written award shall set forth the arbitrator's findings of fact,  
31 reasoning, and conclusions on all the questions submitted to the arbitrator.  
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- 33 2. The arbitrator may, upon written application of a party to the arbitration made not  
34 later than ten (10) days after the receipt of a copy of the award, correct the award  
35 because there was an evident miscalculation of figures or the award is imperfect  
36 in a matter of form not affecting the merits of the controversy. The party  
37 requesting correction shall mail a copy of the request to each other party, with the  
38 other party possessing five (5) days from its receipt to respond. The arbitrator  
39 shall possess thirty (30) days to make such corrections, if desired.  
40
- 41 3. Judgment on the award rendered by the arbitrator may be entered in any federal  
42 or state court having jurisdiction thereof.  
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#### 44 **Section 8: Representation**

- 45  
46 (a) At any step in this procedure, the grievant may be heard personally or may be  
47 represented.  
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1 (b) The person against whom the grievance is filed, and all parties interested may be  
2 represented by no more than two (2) persons of their choice at any one session.

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4 (b) Designation of the grievant's representative and/or organization shall be in writing.  
5 The designation shall be filed on the grievance form at Level II.

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7 **Section 9: General Provisions**

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9 (a) An employee who wishes to have a grievance heard under this procedure must  
10 initiate action within thirty (30) days of when the employee could reasonably have  
11 known the event.

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13 (b) Time allowances set forth in this grievance procedure may be extended by mutual  
14 consent of the grievant and the School District.

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16 (c) Any grievance not appealed to the next step of the procedure within the prescribed  
17 time limits shall be considered settled on the basis of the answer given in the  
18 preceding step. If a decision is not given to the aggrieved party within the time limit,  
19 an appeal may be taken to the next level.

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21 (d) Upon request, all parties to the grievance shall make available to other parties  
22 involved, all pertinent information not privileged under law in their possession or  
23 control which is relevant to the issue raised by the grievance. Costs shall be borne  
24 by the party or unit making the request.

25

26 (e) All grievances must begin at the lowest level at which resolution is possible and may  
27 be terminated at any level by the complainant's written or oral statement.

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29 (f) The failure of the grievant to respond to reasonable conference opportunities within  
30 the time line specified herein shall terminate the grievance.

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32 (g) By mutual consent of both parties, steps in this procedure may be omitted.

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34 (h) The employer shall not agree to the resolution of the grievance until the Federation  
35 has received a copy of the grievance and the proposed resolution and has been  
36 given the opportunity to file a response.

37

38 (i) No grievance conference shall be required of the grievant other than those  
39 specifically stated in this procedure.

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