

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.

Section 3: Level I – Informal Resolution

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

1 (a) Informal discussion with immediate supervisor is required by the grievant if
2 appropriate.
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4 **Section 4: Level II – Formal Written Procedure**

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

- 13 1. A description of the specific grounds of the grievance, including names, dates, and
14 places necessary for a complete understanding of the grievance.
- 15 2. A listing of the provisions of this agreement which are alleged to be violated.
- 16 3. A listing of specific actions requested of the School District which will remedy the
17 grievance.
- 18 4. A listing of specific actions requested of the School District which will remedy the
19 grievance.
- 20 4. A request for a conference with the supervisor or his/her designated
21 representative, if desired.
22

23 If the supervisor desires he/she may request a conference with the grievant. If
24 either the grievant or the supervisor requests a conference at Level II above, the
25 request must be granted. The grievant, the party in interest if any, and the
26 supervisor may request the presence of a representative at any conference
27 contemplated by this subsection (a).
28

29 (b) If requested by either party, a conference will be held within ten (10) working days
30 after receipt of the written grievance. The grievant, the party in interest, if any, and the
31 supervisor may each request the presence of a representative at any conference.
32

33 (c) The supervisor or his/her representative shall render a written decision to the
34 employee within ten (10) working days after the conference with the grievant.
35 Information copies of the decision shall be sent by the supervisor to the Assistant
36 Superintendent, Personnel Support Services.
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38 **Section 5: Level III – Appeal to the Associate Superintendent, Personnel Support** 39 **Services**

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41 (a) Should the proposed resolution at Level II be unsatisfactory, the grievant may, within
42 ten (10) working days after receiving the written response from the immediate supervisor,
43 appeal the decision to the Assistant Superintendent, Personnel Support Services. The
44 grievant must state the grievance in writing, describing:
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- 46 (1) The violation or misapplication of the contract.
47
48

1 (2) The adverse effects upon the grievant.

2
3 (3) The specific remedy sought.

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5 (4) The specific reasons why the resolution proposed by the supervisor is
6 unsatisfactory.

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

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13 **Section 6: Level IV – Mediation**

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

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20 **Section 7: Level V – Binding Arbitration**

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22 (a) Initiation of Binding Arbitration

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

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33 (b) Selection of Arbitrator

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

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41 The first option of elimination shall alternate. All grievances reaching the arbitration
42 level shall be numbered. The odd numbered grievances will give the grievant first right
43 to elimination; even numbered grievances will give the employer first right to
44 elimination.

1 (c) Pre-hearing Procedures

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

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

9
10 (d) Conduct of Hearing

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

13
14 The hearing shall commence at the convenience of the arbitrator, provided however,
15 that all sessions shall occur on working days.

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17 (e) Costs

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

30
31 (f) Powers, Duties, and Limitations Upon Arbitrator

- 32
33 1. The arbitrator is limited to the terms of the grievance and this Agreement and shall
34 not add to, subtract from, modify, vary, or alter the terms or conditions of this
35 Agreement. The arbitrator shall limit the award strictly to the interpretation or
36 application of the express provisions of the Agreement, and the arbitrator shall
37 have no authority to interpret the provisions of local, state, or federal rules,
38 regulations, statutes, guidelines, policies, or judicial precedents unless these are
39 specifically referred to in the express provisions of the Agreement.
- 40
41 2. The arbitrator is without power or authority to make any decision which requires
42 the commission of an act prohibited by law or which is violative of or contradictory
43 to the terms of the Agreement.
- 44
45 3. The arbitrator shall not consider or hear evidence concerning the reasons or
46 causes for dismissal, suspension, or layoff. Also, the arbitrator shall not consider
47 or hear evidence concerning the reasons or cause for other discipline of unit
48 member(s) which may be outside the express provisions of this Agreement.

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2 4. Any actions alleged to constitute a grievance which occurred prior to the effective
3 date of this Agreement or which occur after the expiration date of this Agreement
4 shall not be subject to nor within the scope of arbitration unless the parties dispute:
5 (1) involves facts and occurrences that arose before the expiration of the
6 agreement; (2) involves post-expired conduct that infringes on rights accrued or
7 vested under the expired agreement; or (3) involves a contractual right that, under
8 normal principles of contract interpretation, survives the expiration of the
9 agreement.

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11 5. No arbitration shall occur where another administrative, judicial or legal body,
12 tribunal, agency, or forum exists which may or could have resolved the allegations
13 contained within the grievance, including, by way of example and not by way of
14 limitation, the Department of Fair Employment and Housing, the Equal
15 Employment Opportunity Commission, and a Commission in Professional
16 Competence.

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18 (g) Form and Time of Decision

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20 1. The arbitrator shall render a written award and mail that award directly to each
21 party within thirty (30) days from the close of the record or as mutually extended
22 by the parties. The written award shall set forth the arbitrator's findings of fact,
23 reasoning, and conclusions on all the questions submitted to the arbitrator.

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25 2. The arbitrator may, upon written application of a party to the arbitration made not
26 later than ten (10) days after the receipt of a copy of the award, correct the award
27 because there was an evident miscalculation of figures or the award is imperfect
28 in a matter of form not affecting the merits of the controversy. The party requesting
29 correction shall mail a copy of the request to each other party, with the other party
30 possessing five (5) days from its receipt to respond. The arbitrator shall possess
31 thirty (30) days to make such corrections, if desired.

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33 3. Judgment on the award rendered by the arbitrator may be entered in any federal
34 or state court having jurisdiction thereof.

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36 **Section 8: Representation**

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38 (a) At any step in this procedure, the grievant may be heard personally or may be
39 represented.

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41 (b) The person against whom the grievance is filed, and all parties interested may be
42 represented by no more than two (2) persons of their choice at any one session.

43
44 (c) Designation of the grievant's representative and/or organization shall be in writing.
45 The designation shall be filed on the grievance form at Level II.

1 **Section 9: General Provisions**

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- 3 (a) An employee who wishes to have a grievance heard under this procedure must initiate
- 4 action within thirty (30) days of when the employee could reasonably have known the
- 5 event.
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- 7 (b) Time allowances set forth in this grievance procedure may be extended by mutual
- 8 consent of the grievant and the School District.
- 9
- 10 (c) Any grievance not appealed to the next step of the procedure within the prescribed
- 11 time limits shall be considered settled on the basis of the answer given in the
- 12 preceding step. If a decision is not given to the aggrieved party within the time limit,
- 13 an appeal may be taken to the next level.
- 14
- 15 (d) Upon request, all parties to the grievance shall make available to other parties
- 16 involved, all pertinent information not privileged under law in their possession or control
- 17 which is relevant to the issue raised by the grievance. Costs shall be borne by the
- 18 party or unit making the request.
- 19
- 20 (e) All grievances must begin at the lowest level at which resolution is possible and may
- 21 be terminated at any level by the complainant's written or oral statement.
- 22 (f) The failure of the grievant to respond to reasonable conference opportunities within
- 23 the timeline specified herein shall terminate the grievance.
- 24
- 25 (g) By mutual consent of both parties, steps in this procedure may be omitted.
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- 27 (h) The employer shall not agree to the resolution of the grievance until the Federation
- 28 has received a copy of the grievance and the proposed resolution and has been
- 29 given the opportunity to file a response.
- 30
- 31 (i) No grievance conference shall be required of the grievant other than those
- 32 specifically stated in this procedure.
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