

ARTICLE VIII

GRIEVANCE AND ARBITRATION PROCEDURES

1.0 Grievance and Arbitration Procedures

1.1 Grievance and Parties Defined: This grievance procedure is applicable to grievances arising under, and subject to the limitations contained within, the following:

- a. Article II, Sections 2.0 and 3.0;
- b. Article III;
- c. Article VI;
- d. Article VII, with the exception of Sections 3.1, 3.2, 10.0, and 11.0;
- e. Article VIII;
- f. Article IX, Section 4.0;
- g. Article X, 1.3;
- h. Article XI;
- i. Article XII;
- j. Article XIII except Section 7.0;
- k. Article XV;
- l. Article XVI; and
- m. Any Article or provision so indicated elsewhere in the text of the Agreement, and subject to any exclusion or limitation indicated elsewhere in the text of this Agreement.

A grievance is defined as a claim that there has been a violation of one of the above referenced Articles and Sections and that by reason of such violation the grievant's rights under the Article or Section have been adversely affected. Grievances as so defined may be filed by:

- a. Any employee.
- b. AALA on behalf of an employee with written approval of the involved employee(s). When filing a grievance on behalf of an individual employee, AALA must identify the affected employee. When filing a grievance on behalf of a group of employees, AALA need not specify the names of the affected employees, but must describe the group so that the District has fair notice of the nature and scope of the claim and can then ascertain the names of the affected employees.

1.2 All matters and disputes which do not fall within the above definition of a grievance are excluded from this procedure, including but not limited to those matters for which other methods of adjustment may be provided under the Education Code, such as dismissals and reductions in force under certain circumstances.

Article VIII – Grievance and Arbitration Procedures

1.3 If the same or essentially the same grievance is filed by more than one employee, one grievance may, upon proper notice from AALA, be processed on a representative basis on behalf of the other grievants. The final determination shall apply to all such grievants.

1.4 The respondent in any grievance shall be the District itself rather than any individual administrator.

1.5 Unless the parties mutually agree to the contrary, the filing or pendency of a grievance shall not delay or interfere with any District action while the grievance is being processed. By the same token, if it is later determined that the grievance is meritorious, nothing in the foregoing sentence shall preclude remedial relief covering the period during which the grievance was being processed, including the applicable portion of the 15-day period preceding the filing of the grievance.

1.6 Processing and discussing the merits of a grievance shall not be considered a waiver by the District of a defense that the matter is not arbitrable or that it should be denied for other reasons which do not go to the merits.

2.0 Representation Rights: The grievant may represent himself/herself or may be accompanied and/or represented by an AALA representative at all grievance meetings. The District respondent shall have the right to be accompanied by another District representative. By mutual agreement of AALA and the District, other persons such as witnesses may also attend grievance meetings.

3.0 Released Time for Employees and AALA Representatives: Grievance meetings will be scheduled by the District at mutually convenient times and places during District business hours, and so as to minimize interference with the instructional program. Reasonable employee release time, including necessary travel time will be provided to the grievant, to an AALA representative (if a District employee) if one is to be present, and to any witness (if a District employee) who attends by mutual agreement. Such persons shall also be provided mileage reimbursement. Similar provisions will be made for arbitration hearings.

4.0 Confidentiality: In order to encourage a professional and harmonious disposition of grievances, it is agreed that from the time a grievance is filed until it is finally resolved, neither AALA, the District, the grievant nor any person acting in connection with any of them shall make public the grievance or evidence regarding the grievance. This prohibition is not intended to restrict normal interviewing of witnesses and other necessary preparation for hearings. If the grievant or AALA violates the above confidentiality requirement, the grievance shall be dismissed with prejudice. If the District violates the above confidentiality requirement, the grievance shall be deemed sustained, subject to a hearing limited to the issue of appropriate remedy.

Article VIII – Grievance and Arbitration Procedures

5.0 Effect of Time Limits: If a grievance is not processed by the grievant or AALA at any step in accordance with the time limits of this Article, it shall be deemed withdrawn. The District shall respond in writing in a timely manner, as provided in this Article. If the District fails to do so, the grievance is deemed denied and the grievant may proceed to the next Step or to arbitration under Section 11.0. All time limits and grievance steps may be shortened, extended or waived, but only by mutual written agreement.

6.0 “Day” Defined: A “day”, for purposes of this Article, is defined as any day of the calendar year except Saturdays, Sundays and legal or school holidays.

7.0 Informal Conference: Prior to filing a formal grievance, the employee shall make a reasonable attempt to meet to resolve the dispute by means of an informal conference with the appropriate administrator. This requirement, however, will not set aside the time limits required under Step One.

8.0 Step One: A formal grievance must be filed within 15 days after the grievant or AALA knew or reasonably should have known of the occurrence of the facts upon which the grievance is based. The grievance must be presented in writing by completing the appropriate grievance form. If a grievance does not relate to the immediate administrator and the remedy requested is not within the authority of the immediate administrator to grant, the grievant may initiate the grievance with the responsible administrator who has such authority.

a. A meeting between the grievant and the appropriate administrator shall take place within five (5) days from the date of the presentation of the grievance. The administrator shall reply within five (5) days following the meeting. The receipt of such reply will terminate Step One.

9.0 Step Two: If the grievance is not resolved at Step One, the grievant may, within five (5) days after the termination of Step One, present the grievance to the appropriate Superintendent or designee. A meeting shall take place within five (5) days of the presentation of the grievance. The appropriate Superintendent or designee shall reply within five (5) days following the meeting. The receipt of such reply will terminate Step Two.

10.0 Step Three: (To be bypassed if the Deputy Superintendent was involved in Step Two). If the grievance is not resolved at Step Two, the grievant may, within five (5) days after termination of Step Two, present the grievance to the Deputy Superintendent or designee. A meeting shall take place within five (5) days of the presentation of the grievance. The Deputy Superintendent or designee shall reply within five (5) days following the meeting. The receipt of such reply will terminate Step Three.

Article VIII – Grievance and Arbitration Procedures

11.0 Request for Arbitration: If the grievance is not settled at the above Steps, AALA, with the concurrence of the grievant, may submit the matter to arbitration by a written notice to the Office of Staff Relations within five (5) days after termination of the last Step above.

12.0 Selection of Arbitrator: Within seven (7) days of receipt of the request for arbitration, AALA and the District shall meet to select an arbitrator. The arbitrator shall be jointly selected by AALA and the District, or shall be selected alternatively striking names from the list of arbitrators agreed upon by AALA and District and maintained in the Office of Staff Relations. The District and AALA shall mutually agree to a list of no less than five and no more than ten arbitrators. This list shall be updated/modified by mutual agreement.

a. When the District and AALA are selecting an arbitrator from their mutually agreed upon list of arbitrators, if an arbitrator selected is unavailable for a hearing within sixty days, the parties shall contact the next remaining arbitrator in reverse order of striking until one is selected to serve within sixty days, unless it is mutually agreed to extend the time requirement.

b. The arbitrator shall serve as the Chair of a three member arbitration panel, with the other two members to be appointed directly by the District and AALA respectively. All rulings and decisions will be made by majority decision of the panel.

13.0 Scheduling Hearings: A hearing shall be scheduled within sixty days from selection of the arbitrator, but shall not be scheduled during off-track time except by mutual agreement. Also, by mutual agreement, grievances may be submitted to expedited arbitration.

Expedited arbitration will involve a hearing within ten days following selection of the arbitrator, with no transcripts, no briefs, and with a summary letter award to be issued within five (5) days of the close of the hearing. Expedited cases shall, in all other respects, conform to the provisions of this rule.

14.0 Optional Preliminary Hearing: If the District claims the grievance should be dismissed for reasons that do not go to the merits of the grievance, such as 1) breach of confidentiality, 2) matter beyond scope of procedure, 3) mootness, or 4) untimeliness, the District may cause its claim to be heard and ruled upon by the panel prior to a hearing on merits. If AALA claims that the grievance should be sustained because the District has allegedly violated confidentiality, it may also invoke proceedings under this provision. If either party plans to invoke this separate preliminary hearing, it shall so advise the other party prior to the selection of an arbitrator. Immediately after selection for the preliminary hearing, either party may require, by written notice, that a different arbitrator be selected to hear the merits in the event that the preliminary hearing does not result in dismissal of the grievance.

Article VIII – Grievance and Arbitration Procedures

a. There shall be at least fifteen (15) days between the panel's decision on the preliminary matter(s) and any hearing on the merits (or on remedy in the case of a breach of confidentiality claim raised by AALA).

b. The preliminary hearing is optional to the party having the right to invoke it. If not utilized, the party shall not be precluded from raising its arbitrability defenses (or breach of confidentiality claim) at the regular hearing, provided that it gives the other party reasonable notice of its intention to do so. Both AALA and the District shall retain all rights they have under law to pursue issues relating to arbitrability, or non-arbitrability, of a grievance.

15.0 Documents and Witness Lists: Either party may request from the other the right to review and copy at the requesting party's expense, non-privileged documents relevant to the grievance. If the other party disputes the request, the arbitrator shall determine the issue. The parties shall exchange lists of intended witnesses at least five (5) days prior to the first hearing date.

16.0 Conduct of Hearings: Hearings shall be conducted in accordance with the procedures contained in Government Code Section 11513. Hearing sessions shall be private with attendance limited to the panel, the parties' representatives and witnesses as scheduled. In cases involving below-standard evaluations or disciplinary action, the District shall proceed first in providing evidence.

17.0 Limitations Upon Arbitrators: The arbitration panel shall have no power to alter, add to, or subtract from the provisions of this Agreement, but shall only determine whether a specific Article/Section has been violated as alleged in the grievance and, if so, what the remedy should be within the meaning of the applicable contract provisions. Past practice of the parties in interpreting and applying the provisions of the Agreement, or of predecessor Board Rules, may be relevant evidence, but shall not be used so as to justify or result in what is in effect a modification or addition to this Agreement.

18.0 Effect of Arbitration Award: the arbitration panel's decision shall be final and binding upon the grievant(s), AALA and the District. The California law on final and binding arbitration awards between a school district and an employee organization shall be applicable to such a decision. A final and binding award which determined the merits of a dispute shall be conclusive on the grievant(s), AALA and the District in any subsequent proceedings, including disciplinary and termination proceedings. This grievance procedure shall be the employee's and AALA's sole and final remedy for any claimed violation of this Agreement. The arbitration award shall be issued within sixty days following the final submission of any brief.

19.0 Expenses: All fees and expenses of the arbitrator shall be shared equally by AALA and the District. Each party shall bear the expense of presenting its own case. A transcript of the proceedings shall not be required, but either party may order a

Article VIII – Grievance and Arbitration Procedures

transcript at its own expense. If the other party at any time desires a copy of the transcript, it must share equally the cost of the reporter and transcription as well as the copy.

20.0 No Reprisals: There shall be no reprisal against an employee for utilizing these grievance procedures or for assisting a grievant pursuant to these procedures.

21.0 Grievance Files: The District's Office of Staff Relations shall maintain a file of all grievance records and communications separate from the personnel files of the grievant(s), and grievance documents and decisions shall not be included in the personnel file unless it is reasonably necessary or appropriate to do so.

22.0 Overpayment Grievance Procedure

- a. The District or employee identifies overpayment or underpayment.
- b. District notifies employee and AALA and recommends a recovery plan.
- c. If there is no response or objection within 10 working days from the date of mailing of the notice, the District will implement its recommended recovery plan.
- d. If the employee or AALA makes one of the following objections in a timely manner: denies money owed; questions the amount to be recovered; or objects to the payment plan, a meeting by the employee and/or AALA will be conducted with the District to resolve the objection and determine the recovery plan. If there is no agreement, the employee or AALA may file a grievance regarding the recovery such grievance must be filed within 15 working days following written notice by the District that the discussion process has been exhausted. If a grievance is not timely filed, recovery shall go forward as proposed by the District.
- e. The grievance procedure shall be conducted pursuant to this Article.
- f. Recovery of payments shall be suspended during the grievance procedure.