

ARTICLE 5 GRIEVANCE PROCEDURE

5.1 Definitions, Time Limitations

5.1.1 Grievance: A "grievance" is defined as an allegation by a ~~professional educator bargaining unit member(s), a group of professional educators~~ or the Association that there has been a violation of any provision of this Agreement.

5.1.1.1 "Employee grievance" is a grievance by one (1) ~~or professional educators bargaining unit member(s)~~, provided the conduct complained of directly affects the ~~professional educator bargaining unit member(s)~~.

5.1.1.2 "Association grievance" is a grievance by the Association where the conduct complained of affects one or more ~~professional educators bargaining unit member~~ or the Association.

5.1.1.3 Group grievance: If, in the judgment of the Association, a grievance affects a group or class of ~~professional educators bargaining unit member(s)~~, the Association may submit such grievance in writing to the Chief Human Resources Officer or designee directly and the processing of such grievance shall be commenced at Level II. However, a group grievance affecting ~~professional educator bargaining unit member(s)~~ at a single building or an Association grievance affecting professional educators at a single building shall be initiated at Level I with the principal or immediate supervisor.

5.1.1.4 If a grievance arises from action or inaction on the part of a member of the administration at ~~a level above~~ the principal or immediate supervisor, the grievant shall submit such grievance in writing to the Chief Human Resources Officer ~~or designee~~ and the processing of such grievance will be commenced at

1 Level II. Grievances regarding salary and/or placement on the
2 Appendix A salary schedule shall be filed with the Chief Human
3 Resources Officer or designee and shall be considered as a
4 Level II grievance. The Level II, Step 1 hearing may be waived
5 by mutual agreement. Grievances involving discipline shall be
6 processed at Level II.

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8 5.1.1.5 Grievances that are reasonably related shall be joined and processed
9 together.

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12 5.1.2 Grievant: A “grievant” is the professional educator bargaining unit
13 member(s) or ~~professional educators~~ or the Association making the
14 claim.

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16 5.1.3 Day or Workday: Unless specifically defined as calendar days, all days
17 in this agreement mean contract days for the bargaining unit included
18 in the standard calendar; excluding holidays, weekends, and other non-
19 working days including winter, spring and summer breaks. During the
20 summer recess, a grievance may proceed upon mutual consent of the
21 parties.

22
23 5.1.4 All grievances shall be filed within thirty (30) days after the first
24 knowledge by the injured party of the factual occurrences constituting
25 the basis of the grievance. In case of an assignment, or other
26 continuing classification or condition, a grievance concerning either
27 past or future effects thereof may be limited in its remedy of past
28 effects to adjustment no more than thirty (30) days prior to the filing
29 of the grievance.

30
31 ~~5.1.5 A grievance may not be filed over a unit determination matter or a 1(e)~~
32 ~~violation of ORS 243.672 or a matter that would cause the District to~~
33 ~~commit an unlawful act or a matter imposed upon the District by a~~
34 ~~higher authority.~~

35
36 5.1.6 The District shall continue, with respect to professional
37 educators bargaining unit member(s), to provide the separate grievance

1 procedure in existence with respect to issues arising solely under
2 policies and regulations other than this Agreement, or regarding
3 matters which are not employment relations as defined by law.

4 5 5.2 Purpose

6 The purpose of this procedure is to secure, at the lowest possible level,
7 equitable solutions to the problems that may from time to time arise
8 affecting ~~professional educator~~bargaining unit members. Both the parties
9 agree that these proceedings will be kept informal and confidential as may
10 be appropriate at any level of the procedure.

11 12 5.3 General Procedures

13 14 5.3.1 Representation

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16 A ~~bargaining unit member~~professional educator who initiates a
17 grievance may elect to be represented by the Association or the
18 ~~professional educator~~bargaining unit member may elect to represent
19 themselves at Level I. If the ~~bargaining unit member~~professional
20 ~~educator~~ elects to represent themselves, the ~~bargaining unit member~~professional
21 ~~educator~~ shall so indicate in writing and shall include a
22 statement that the ~~professional educator~~bargaining unit member
23 assumes responsibility for all costs which the ~~bargaining unit member~~professional
24 ~~educator~~ incurs associated with the processing of the
25 grievance.

26 27 5.3.2 Parties Present

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29 5.3.2.1 The grievant shall have the right to be present with witnesses at
30 level 2 or above of the grievance process (but may waive this
31 right through the Association representative). The grievant is
32 entitled to Association representation at any meeting or hearing
33 held under this procedure.

34
35 5.3.2.2 When it is necessary, pursuant to the grievance procedure
36 provided for in this Agreement, for grievants, building or
37 program representatives, members of the Association's

1 Advocacy Committee, or any other representative designated by
2 the Association to attend a grievance meeting or hearing during
3 a school day, ~~up to two representatives and the~~ grievant(s) shall,
4 upon notice to their supervisor or principal, ~~and to the~~
5 ~~Superintendent~~ Chief Human Resources Officer, be released
6 without loss of pay, as necessary, in order to permit participation
7 in the foregoing activities. If a grievance necessitates the
8 presence of more than two bargaining unit members, the parties
9 will discuss how many may attend such a meeting with pay.
10 ~~However, should the participation of witnesses in the grievance~~
11 ~~procedure necessitate the employment of a substitute, the~~
12 ~~Association shall assume the responsibility for payment of the~~
13 ~~cost of the substitute.~~

14 15 5.3.3 Individual Adjustment

16
17 Any bargaining unit member professional educator may file and
18 process a grievance up to but not including through Level II of this
19 procedure and have said grievance adjusted without intervention of the
20 Association provided:

21
22 5.3.3.1 the adjustment is consistent with the terms of this Agreement; and

23
24 5.3.3.2 the Association, or its designated Association representative ~~at~~
25 ~~Level I~~, has been notified in advance of and given opportunity
26 to be present at all meetings held pursuant to this Article. Any
27 such grievance decision shall be forwarded to the Association.

28 29 5.3.4 Time Extensions

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31 5.3.4.1 Time extensions shall be consented to in writing and shall be with
32 the mutual consent of the grievant, or the Association, on behalf
33 of a grievant, and the District.

34
35 5.3.4.2 Failure at Level 1 any step of this procedure to communicate the
36 decision in writing on a grievance within the specified time limit
37 shall automatically move permit the grievant ~~to proceed~~ to

1 the next step. Failure at Level II to communicate the decision in
2 writing on a grievance within the specified time limit shall
3 permit the grievance to proceed to the next step.

4
5 5.3.4.3 Failure at any step of this procedure to appeal the decision to the
6 next step within the specified time limit shall be deemed to be
7 acceptance of the decision rendered at that step.

8 9 5.3.5 Cooperation

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11 All parties shall cooperate in the investigation of a grievance and
12 promptly supply any readily available relevant information or
13 documents to the other party with the goal being to provide such
14 documents within three work weeks.

15 5.3.6 Limitation of Remedies

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17 Except as otherwise provided by law, this grievance procedure shall
18 constitute the exclusive remedy of bargaining unit members
19 professional educators and the Association.

20 21 5.3.7 Contents of Grievance

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23 The written formal grievance shall, if applicable, contain the specific
24 Agreement article and section that has allegedly been violated (e.g.,
25 Article 23.8), and/or identify the basis for the grievance and include a
26 short statement of the facts giving rise to the allegation and the relief
27 sought. The written response shall include the decision and the
28 rationale for such decision.

29 30 5.3.8 Separate Files

31
32 All documents, communications and records dealing with the
33 processing of a grievance shall be filed in a separate grievance file
34 which shall constitute a “personnel file,” within the meaning of the
35 confidentiality provisions of ORS 342.850. Access to those files shall
36 be limited to those with a valid business interest in the case.

5.3.9 Forms

Grievance forms are located in Appendix _____ for Level 1 grievances and Appendix _____ for Level II grievances and they shall be used shall be prepared jointly by the administration and the Association and given appropriate distribution so as to facilitate operation of the grievance procedure. The parties will endeavor to include on documents the PAT numbering system to ensure clarity in processing, however failure to number a grievance will not affect the Parties obligation to process such a grievance.

5.3.10 Privacy

Except as otherwise provided by law or by agreement of the parties, meetings and hearings under this procedure shall not be conducted in public.

5.3.11 Reprisals

No reprisals of any kind shall be taken by the District or by any member of the administration against any grievant, representative, member of the Association, due to participation in the grievance procedure.

5.4 Levels and Steps

5.4.1 Level I. Principal or Immediate Supervisor

5.4.1.1 Step 1: An employee grievance or an Association grievance affecting bargaining unit member(s) professional educators at a single building shall be raised by the filing of a formal written complaint-grievance setting forth the material required by Section 5.3.7, at the office of the professional educator's supervisor.

5.4.1.2 Step 2: Within twenty ten (20) (10) days of the grievance shall filing be discussed by the supervisor and the bargaining unit

1 ~~member professional educator~~ and, if requested by the
2 ~~bargaining unit member professional educator~~, persons
3 approved by the Association, one (1) of which shall be
4 designated as the official representative for the bargaining unit
5 member professional educator. shall meet to discuss the
6 grievance, the supervisor shall issue a response within the
7 twenty (20) day timeframe.

8
9 5.4.1.3 Step 3: In the event no resolution occurs at Level I, the
10 grievance may be appealed to Level II by filing a written
11 appeal within ten (10) days of receipt of the Level I
12 response.~~In the event no settlement occurs at the Step 1~~
13 ~~meeting, the supervisor, within ten (10) days of the meeting,~~
14 ~~shall set forth the reasons for the decision.~~

15
16 ~~5.4.1.4 Step 4: In the event no settlement occurs at Step 3, the grievance~~
17 ~~may be appealed to Level II by filing a written appeal within ten~~
18 ~~(10) days of receipt of the Step 3 response. Such appeal must~~
19 ~~specify the portions of the Step 3 response which are in~~
20 ~~disagreement and the manner in which each portion is in error.~~

21 5.4.2 Level II. Chief Human Resources Officer or designee

22
23 5.4.2.1 An appeal of a grievance from Level I or a grievance filed by the
24 Association affecting bargaining unit member(s) professional
25 educators in more than one (1) building shall be filed at this
26 level. In addition, certain administrative actions included in
27 Section 5.1.1.4 shall also be initiated at this level. Only the
28 Association may initiate or forward a grievance to Level II.

29
30 5.4.2.2 Step 1: Within twenty (20) ~~ten (10)~~ days of receipt of the grievance
31 or Level II appeal, the Chief Human Resources Officer
32 Superintendent or designee shall conduct a grievance hearing
33 within the timeframe above.

34
35 5.4.2.3 Step 2: In the event no resolution occurs at Level II, the
36 grievance may be appealed to Arbitration. Within ten (10)
37 days following completion of the Level II, Step 1 hearing, the
38 Chief Human Resources Officer or designee shall provide a

1 ~~written decision to the parties. However, at the request of the~~
 2 ~~Chief Human Resources Officer or designee, or the grievant, a~~
 3 ~~meeting will be held within five (5) days to discuss the~~
 4 ~~grievance and decision. In such case, the written decision shall~~
 5 ~~be issued within five (5) days following the meeting.~~

6
 7 5.4.2.4 Step 3: Appeals to Arbitration will be sent to ~~If the grievance is~~
 8 ~~not settled at Level II, Step 2, a copy of the decision of the Chief~~
 9 ~~Human Resources Officer, or designee shall be submitted to the~~
 10 ~~Superintendent and the Board of Education.~~

11 12 5.5 Arbitration

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 14 5.5.1 If a grievance is ~~not resolved at Level II, it may be~~ appealed to
 15 arbitration it must be done so within ~~within~~ sixty (60) days of receipt
 16 of the Level II ~~Step 2~~ decision. Only the Association may appeal a
 17 grievance to arbitration.

18 19 5.5.2 Requesting an Arbitrator

20
 21 After receipt of the ~~Level II, Step 2 response or decision~~ appeal to
 22 Arbitration, the Association may request a list of seven (7) Oregon
 23 and Washington arbitrators from the Oregon State Conciliation
 24 Service. Attorneys for the Association and the district will confer and
 25 agree on an acceptable arbitration panel. ~~who are members of the~~
 26 ~~American Arbitration Association Labor Panel~~. A copy of the request
 27 shall simultaneously be filed with the District. Each party shall then
 28 alternately strike one (1) name from the list supplied until one (1) name
 29 remains and that person shall be arbitrator. The winner of a coin toss
 30 shall be the first to strike names. In the alternative, the parties may
 31 jointly agree upon any person to serve as arbitrator.

32 33 5.5.3 Authority of Arbitrator

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 35 The arbitrator shall be encouraged to issue a decision within twenty
 36 (20) days of the close of the hearing or submission of briefs, whichever

1 occurs later. The arbitrator's decision shall be in writing and shall set
2 forth findings of fact, reasons and conclusions. The arbitrator may not
3 add to, subtract from, or modify the terms of this Agreement, and may
4 not award punitive damages. The arbitrator's decision shall be final
5 and binding.
6

7 5.5.4 Costs

8 Fees and expenses for the arbitrator shall be borne equally by the
9 Association and the District.
10

11 5.5.5 Attendance

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13 Persons having a direct interest in the arbitration are entitled to
14 attend hearings, but the arbitrator shall have the power to require the
15 retirement of any witness during the testimony of other witnesses.
16

17 5.5.6 Evidence

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19 Except for evidence used solely for impeachment or rebuttal or to
20 refresh recollection, evidence shall be restricted to exhibits made
21 known to the other party at least twenty-four (24) hours prior to the
22 first arbitration session and to testimony from witnesses whose names
23 were made known to such party within said time; provided that the
24 arbitrator may, upon a showing of good cause or to prevent injustice,
25 relieve a party from this restriction.
26

27 5.5.7 Affidavits

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29 The arbitrator may receive and consider the evidence of witnesses
30 by affidavit, but shall give it only such weight as they deem proper
31 after consideration of any objections made to its admission.
32

33 5.5.8 Oaths

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35 Before proceeding with the first hearing, the arbitrator may take an
36 oath of office. The arbitrator may require witnesses to testify under
37 oath administered by any duly qualified person.

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2 5.5.9 Waiver of Oral Hearings
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4 The parties may provide by written agreement for the waiver of oral
5 hearings.
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7 5.5.10 Time and Place
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9 The arbitrator shall fix the time and place for each hearing. At least
10 five (5) days prior thereto, they shall provide written mail notice of the
11 time and place thereof to each party.
12

13 5.5.11 Order of Proceedings
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15 The arbitrator may, at their discretion, vary the normal procedure
16 under which the initiating party first presents the claim (except in
17 discipline cases), but in any case, shall afford full and equal
18 opportunity to all parties for presentation of relevant proofs. The
19 hearings may be reopened by the arbitrator on their own motion or on
20 the motion of either party for good cause shown at any time before the
21 award is made, but if the reopening of the hearing would prevent the
22 making of the award within the time specified in these procedures or
23 any other specified time agreed upon by the parties in writing, that
24 matter may not be reopened unless both parties agree upon the
25 extension of such time limit.
26

27 5.5.12 Serving of Notices
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29 Each party shall be deemed to have consented and shall consent that
30 any papers, notices or processes necessary or proper for the initiation
31 or continuation of an arbitration under these rules and for any court
32 action in connection therewith or the entry of judgment of an award
33 made thereunder may be served upon such party (a) by mail addressed
34 to such party or their attorney at their last known address, or (b) by
35 personal service on such attorney or the Employee Relations
36 Department or the Office of the Association as applicable.
37

5.5.13 Communication with Arbitrator

Except as expressly authorized herein, there shall be no communication between the parties and the arbitrator other than at oral hearings and those necessary to accomplish the filing of evidence, briefs and papers, to arrange the order of proceedings and to provide notice. Prior to contacting an arbitrator, the opposing party shall be given notice by the initiator.

5.5.14 Arbitrability / Review of Arbitration Decision

Upon request of either party, the arbitrator shall first hear and rule in writing on questions of procedural and substantive arbitrability. Grievances, in order to be arbitrable, must have been processed according to this grievance procedure. Grievances must include only those issues described in Section 5.1.1 unless otherwise agreed to by the parties. Grievances shall be heard unless the contract clearly is not susceptible to the interpretation cited in the grievance. Ambiguity shall result in the grievance being considered. If neither party requests a separate hearing on grounds of arbitrability, and if the arbitrator still rules that a grievance is not arbitrable, they shall not comment on the merits of the grievance in any way.

5.5.15 Conflict of Interest

No person shall serve as arbitrator in any arbitration in which he or she has any financial or personal interest in the result of the arbitration, unless the parties, in writing, waive such disqualification. Prior to accepting the appointment or immediately upon receiving notice of this rule, whichever is later, the prospective arbitrator shall disclose to the parties any circumstances likely to create a presumption of bias or which might disqualify them. If either party declines to waive the presumptive disqualification, the vacancy shall be filled in accordance with the procedures described below.

5.5.16. Substitute Arbitrator

1 If any arbitrator shall resign, die, withdraw, refuse or be unable or disqualified to
2 perform the duties of the office, it shall be vacant, and the matter may be reheard
3 by a new arbitrator. A party desiring to fill such vacancy and continue arbitration
4 must give notice thereof to the other party at the Oregon Employment Relations
5 Board within five (5) days of the date of receipt of knowledge of the vacancy and
6 request that the Employment Relations Board furnish an additional list of seven
7 (7) arbitrators. The successor shall then be selected in the same manner as in the
8 original selection.