

## ARTICLE XXI - GRIEVANCE

### 21.1 Definitions

- 21.1.1 A "grievance" is a claim alleging a violation, misapplication, or misinterpretation of a specific provision of this Agreement, exclusive of all other documents.
- 21.1.2 A "grievant" is either a unit member covered by this Agreement or a class of similarly situated unit members or AFT. In the case of multiple grievance claims regarding the same allegation, AFT may select one grievance to be processed, and the decision rendered will be applicable to all claims on the same issue arising from the same set of circumstances.
- 21.1.3 An "immediate supervisor" means the individual who is not a member of the unit and who assigns, reviews, and directs the work of the grieving unit member(s).
- 21.1.4 A "representative of the unit member" shall mean someone selected by the grievant to assist him/her in presenting and processing his/her grievance. The representative need not be an AFT representative.
- 21.1.5 "Days" shall mean working days.
- 21.1.6 A "management representative" shall include any designee as determined by the District.
- 21.1.7 A "District grievance form" shall mean the form contained in Appendix B of this Agreement.

### 21.2 General Provisions

- 21.2.1 No grievance subject to binding arbitration shall be processed through the Grievance Procedure by any grievant who pursues any other available legal remedy with an agency or judicial body that accepts jurisdiction. If such an agency or judicial body does not accept jurisdiction, the time limit for filing a grievance begins on the date of receipt of notification of rejected jurisdiction.
- 21.2.2 The District and AFT agree that every effort will be made to settle grievances at the lowest supervisory level possible. Nothing contained herein shall be construed as limiting the right of any grievant to discuss a grievance informally with his/her immediate supervisor or to have the grievance resolved at any time without the intervention of AFT, provided that the resolution is not inconsistent with the terms and conditions of this Agreement.
- 21.2.3 The filing of a grievance will in no way interfere with the right of the District in carrying out its management responsibilities subject to the final decision of the grievance. In the event the alleged grievance involves an order, requirement, or other directive that does not involve unreasonable danger to the personal health and safety of the unit member or others or is not illegal and/or does not call for an illegal act, the grievant will fulfill or carry out such order, requirement, or other directive, pending the final resolution of the grievance.

- 21.2.4 If the grievance involves unit members with different immediate supervisors, the grievance may be filed at Step II or Step III as appropriate.
- 21.2.5 If the immediate supervisor at Step I does not have the authority necessary to adjust the grievance, the grievance process shall commence at the step where such authority resides.
- 21.2.6 An investigation or processing of any grievance shall be conducted so as to result in minimal interference with, or interruption of, the instructional program or other District operation and related work activities of the grieving unit member or other District staff.
- 21.2.7 The grievant shall have the right to be accompanied by a representative at each step. When the grievant is a unit member or class of employees, the grievance cannot be processed at Step V without the approval of the AFT except as in 21.3.5.1.
- 21.2.8 All materials concerning the unit member's grievance shall be handled with discretion and kept separate from the unit member's personnel file.

### 21.3 Procedures

For purposes of this Section timelines herein may be extended by mutual agreement of the parties. Neither party waives its right to assert timeliness as a defense absent an agreement to mutually extend the timelines.

#### 21.3.1 Step I - Immediate Supervisor

21.3.1.1 No later than twenty (20) days after an alleged grievance occurs, or within twenty (20) days of when the grievant could reasonably have known of the occurrence, the unit member shall request a conference with his/her immediate supervisor to discuss the grievance. The unit member shall meet with his/her immediate supervisor to discuss the alleged grievance in an attempt to resolve it.

21.3.1.2 The immediate supervisor shall make his/her decision regarding the outcome of the above meeting known in writing to the grievant and AFT, if applicable, within ten (10) days of the meeting.

21.3.1.3 If the grievance is not resolved at this level the unit member may proceed to Step II by formally filing a grievance form.

#### 21.3.2 Step II - Manager above Immediate Supervisor

Within ten (10) days of receipt of the Step I response, if the grievance was not resolved at Step I, the grievant shall present the grievance in writing on the District grievance form to the appropriate manager who has direct authority over the immediate supervisor from Step I. On this form the grievant shall include a clear and concise statement of the grievance, the specific article(s) alleged to have been violated, the circumstances involved, the specific remedy sought, and a copy of the decision rendered at the informal conference. The manager shall meet with the grievant in an attempt to resolve the grievance within ten (10) days of the receipt of such grievance. The manager shall

provide a written decision to the grievant and AFT, if applicable, within ten (10) days of the meeting.

### 21.3.3 Step III - President/Assistant Chancellor

Within ten (10) days of the receipt of the written decision in Step II (or Step I if appropriate) above, the grievant may present the grievance in writing to the President or Assistant Chancellor as appropriate within the campus or District offices. The written statement shall include a copy of the original grievance, a copy of the decisions rendered at previous levels, and a clear, concise statement of the reasons for the appeal to Step III. The President or Assistant Chancellor shall meet with the grievant in an attempt to resolve the grievance within ten (10) days of the receipt of such grievance. The President/Assistant Chancellor shall provide a written decision to the grievant and AFT, if applicable, within ten (10) days of the meeting.

### 21.3.4 Step IV-Mediation (Optional)

21.3.4.1 If the grievance is not resolved at Step III either party may request mediation. However, both parties must agree to the use of the mediation process. Such request shall be made in writing to the Assistant Chancellor, Human Resources within ten (10) days of the Step III decision. Both parties shall be notified when the request for mediation is made.

21.3.4.2 If the use of mediation is agreed to, within ten (10) days of receipt of the request for mediation, the Human Resources office shall request the services of the California Mediation Service or the Employee Assistance Program, whichever the parties agree is more appropriate.

21.3.4.3 The mediation session shall be scheduled at the earliest date that the mediator is available.

21.3.4.4 The mediator shall meet with the parties in an effort to resolve the grievance. The mediator shall have no authority to impose a settlement upon the parties.

### 21.3.5 Step V - Arbitration

21.3.5.1 A grievance that is not settled at Step III or at Step IV, if applicable, may be submitted to Arbitration as provided herein, only if AFT gives written notice to the District of its desire to arbitrate the grievance. Issues relating to matters of retroactive payments and discipline including termination will be submitted to advisory arbitration. All other allegations of violation of this Agreement will be submitted to binding arbitration.

The request for arbitration shall be made in writing to the Assistant Chancellor, Human Resources within ten (10) days of the Step III decision or within ten (10) days of the completion of the Step IV mediation process.

#### Appeal of Discipline

A unit member who is appealing discipline subject to the grievance process may file the request for arbitration without the AFT's concurrence. An appeal of discipline (request for advisory arbitration) shall be made in writing to the

AFT/FS

Assistant Chancellor, Human Resources within ten (10) days of the date of the final notice of discipline.

- 21.3.5.2 The District and AFT agree to discuss the establishment of a Permanent Arbitration Panel and related procedures upon ratification of this Agreement. Until such time as the parties agree upon a Permanent Arbitration Panel, the District shall request the State Mediation and Conciliation Service to supply a panel of a minimum of five (5) arbitrators from which the District and AFT shall select an arbitrator utilizing the striking method described below.

Upon receipt of the list of arbitrators, the arbitrator shall be chosen by allowing each party, in turn, to strike out one (1) name until only one (1) name remains.

- 21.3.5.3 The parties will share equally the real costs (after reimbursement for mandated costs) of the fees and expenses of the arbitrator. All other expenses shall be borne by the party incurring them, and neither party shall be responsible for the expense of witnesses called by the other.

- 21.3.5.4 Within forty-five (45) calendar days after final submission of the grievance to the arbitrator, he/she shall present his/her written decision to the grievant and the District. In the case of issues subject to binding arbitration the decision shall be final and binding upon the parties in the dispute. In the case of issues submitted to advisory arbitration, either the grievant or the District may appeal the advisory decision of the arbitrator to the Board of Trustees within thirty (30) days after receipt of such advisory decision. Thereafter, the Board of Trustees shall make the final decision within forty-five (45) days.

- 21.3.5.5 The arbitrator will have no power to alter, amend, change, add to, or subtract from any of the terms of this Agreement, but will determine only whether or not there has been a violation, misapplication, or misinterpretation of the express provisions of this Agreement in the manner alleged in the grievance. The arbitrator shall have no power to establish salary structures. The decision of the arbitrator will be based solely upon the evidence and arguments presented to him/her by the parties in the presence of each other and upon arguments presented in briefs. The arbitrator shall not consider any issue raised by the grievant unless it was known by the District in an earlier step of this grievance procedure. The arbitrator shall have no power to render an award on any grievance initiated before the ratification of this Agreement by both parties.

The parties reserve their rights to appeal the arbitrator's decision pursuant to applicable law.