

## ARTICLE 5 GRIEVANCE PROCEDURE

### 5.1 Definitions, Time Limitations

5.1.1 Grievance: A "grievance" is defined as an allegation by a professional educator, 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, provided the conduct complained of directly affects the professional educator(s).

5.1.1.2 "Association grievance" is a grievance by the Association where the conduct complained of affects one or more professional educators 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, 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 educators 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 Level II. Grievances regarding salary and/or placement on the Appendix A salary schedule shall be filed with the Chief Human Resources Officer or designee and shall be considered as a Level II grievance. The Level II, Step 1 hearing may be waived by mutual agreement.

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

5.1.2 Grievant: A "grievant" is the professional educator or professional educators or the Association making the claim.

5.1.3 Day or Workday: Unless specifically defined as calendar days, all days in this agreement mean contract days for the bargaining unit included in the standard calendar; excluding holidays, weekends, and

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other non-working days including winter, spring and summer breaks. During the summer recess, a grievance may proceed upon mutual consent of the parties.

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

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

5.1.6 The District shall continue, with respect to professional educators, to provide the separate grievance procedure in existence with respect to issues arising solely under policies and regulations other than this Agreement, or regarding matters which are not employment relations as defined by law.

### 5.2 Purpose

The purpose of this procedure is to secure, at the lowest possible level, equitable solutions to the problems that may from time to time arise affecting professional educators. Both the parties agree that these proceedings will be kept informal and confidential as may be appropriate at any level of the procedure.

### 5.3 General Procedures

#### 5.3.1 Representation

A professional educator who initiates a grievance may elect to be represented by the Association or the professional educator may elect to represent ~~themselves/himself/herself~~ at Levels I. If the professional educator elects to represent ~~themselves/himself/herself~~, the professional educator shall so indicate in writing ~~and shall include a statement that the professional educator assumes responsibility for all costs which the professional educator incurs associated with the processing of the grievance.~~

#### 5.3.2 Parties Present

5.3.2.1 ~~The grievant shall have the right to be present with witnesses at any level of the grievance process (but may waive this right through the Association representative). The presence of the administrator whose action is the subject of the grievance may be required.~~ The grievant is entitled to Association representation at any meeting or hearing held under this procedure.

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5.3.2.2 When it is necessary, pursuant to the grievance procedure provided for in this Agreement, for grievants, building or program representatives, members of the Association's Advocacy Committee, or any other representative designated by the Association to attend a grievance meeting or hearing during a school day, up to up to two representatives and the grievant(s) shall, upon notice to his/her supervisor or principal, and to the Superintendent, be released without loss of pay, as necessary, in order to permit participation in the foregoing activities. However, should the participation of witnesses in the grievance procedure necessitate the employment of a substitute, the Association shall assume the responsibility for payment of the cost of the substitute.

### 5.3.3 Individual Adjustment

Any professional educator may file and process a grievance through Level II of this procedure and have said grievance adjusted without intervention of the Association provided:

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

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

### 5.3.4 Time Extensions

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

5.3.4.2 Failure at any step of this procedure to communicate the decision in writing on a grievance within the specified time limit shall permit the grievant to proceed to the next step.

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

### 5.3.5 Cooperation

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All parties shall cooperate in the investigation of a grievance and promptly supply any readily available relevant information or documents to the other party.

### 5.3.6 Limitation of Remedies

Except as otherwise provided by law, this grievance procedure shall constitute the exclusive remedy of professional educators and the Association.

### 5.3.7 Contents of Grievance

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

### 5.3.8 Separate Files

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

### 5.3.9 Forms

Grievance forms shall be prepared jointly by the administration and the Association and given appropriate distribution so as to facilitate operation of the grievance procedure.

### 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.

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### 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 professional educators at a single building shall be raised by the filing of a formal written complaint 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 ten (10) days the grievance shall be discussed by the supervisor and the professional educator and, if requested by the professional educator, persons approved by the Association, one (1) of which shall be designated as the official representative for the professional educator.

5.4.1.3 Step 3: In the event no settlement occurs at the Step 1 meeting, the supervisor, within ten (10) days of the meeting, shall set forth the reasons for the decision.

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

### 5.4.2 Level II. Chief Human Resources Officer or designee

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

5.4.2.2 Step 1: Within ten (10) days of receipt of the grievance, the Superintendent or designee shall conduct a grievance hearing.

5.4.2.3 Step 2: Within ten (10) days following completion of the Level II, Step 1 hearing, the Chief Human Resources Officer or designee shall provide a written decision to the parties. However, at the request of the Chief Human Resources Officer or designee, or the grievant, a

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~~meeting~~ ~~an informal hearing~~ will be held within five (5) days to discuss the grievance and decision. In such case, the written decision shall be issued within five (5) days following the meeting.

5.4.2.4 Step 3: If the grievance is not settled at Level II, Step 2, a copy of the decision of the Chief Human Resources Officer, or designee shall be submitted to the Superintendent and the Board of Education.

### 5.5 Arbitration

5.5.1 If a grievance is not resolved at Level II, it may be appealed to arbitration within sixty (60) days of receipt of the Level II Step 2 decision, ~~except for dismissals. Grievances regarding dismissal where the employee has elected to appeal the dismissal to Fair Dismissal Appeals Board (FDAB) may not be submitted to arbitration under this agreement.~~ Only the Association may appeal a grievance to arbitration.

#### 5.5.2 Requesting an Arbitrator

After receipt of the Level II, Step 2 response or decision, the Association may request a list of seven (7) Oregon and Washington arbitrators from the Oregon State Conciliation Service who are members of the American Arbitration Association Labor Panel. A copy of the request shall simultaneously be filed with the District. Each party shall then alternately strike one (1) name from the list supplied until one (1) name remains and that person shall be arbitrator. The winner of a coin toss shall be the first to strike names. In the alternative, the parties may jointly agree upon any person to serve as arbitrator.

#### 5.5.3 Authority of Arbitrator

The arbitrator shall be encouraged to issue a decision within twenty (20) days of the close of the hearing or submission of briefs, whichever occurs later. The arbitrator's decision shall be in writing and shall set forth findings of fact, reasons and conclusions. The arbitrator may not add to, subtract from, or modify the terms of this Agreement, and may not award punitive damages. The arbitrator's decision shall be final and binding.

#### 5.5.4 Costs

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

#### 5.5.5 Attendance

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

### 5.5.6 Evidence

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

### 5.5.7 Affidavits

The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as s/he deems proper after consideration of any objections made to its admission.

### 5.5.8 Oaths

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

### 5.5.9 Waiver of Oral Hearings

The parties may provide by written agreement for the waiver of oral hearings.

### 5.5.10 Time and Place

The arbitrator shall fix the time and place for each hearing. At least five (5) days prior thereto, s/he shall mail notice of the time and place thereof to each party.

### 5.5.11 Order of Proceedings

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

### 5.5.12 Serving of Notices

Each party shall be deemed to have consented and shall consent that any papers, notices or processes necessary or proper for the initiation or continuation of an arbitration under these rules and for any court action in connection therewith or the entry of judgment of an award made thereunder may be served upon such party (a) by mail addressed to such party or his/her attorney at his/her last known address, or (b) by personal service on such attorney or the Employee Relations Department or the Office of the Association as applicable.

### 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, s/he 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



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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 him or her. 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

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

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