

ARTICLE V

GRIEVANCE PROCEDURE

1.0 Grievance and Parties Defined: A grievance is defined as a claim that the District has violated an express term of this Agreement and that by reason of such violation the grievant's rights under this Agreement have been adversely affected. Grievances as defined may be filed by the affected employee or by UTLA on its own behalf or on behalf of an individual employee or group of employees where the claims are similar. On filing a grievance on behalf of a group, UTLA need not specify the names of the employees, but must describe the group so that the District has notice of the nature and scope of the claim.

1.1 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 are provided, such as reductions in force and dismissals. Also excluded from this grievance procedure are those matters so indicated elsewhere in this Agreement. Claimed violations of Article VII (Non-Discrimination), are to be handled under appropriate statutory and/or judicial procedures rather than under this grievance procedure; however, claims of discrimination based upon UTLA affiliation are subject to this grievance procedure.

1.2 If the same or essentially the same grievance is filed by more than one employee, then one grievant may process the grievance under this Article on behalf of the other involved grievants. The final determination shall apply to all such grievants.

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

1.4 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 30-day period preceding the filing of the grievance. See also Article XIV, Section 30.0.

1.5 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 should be denied for other reasons which do not go to the merits.

2.0 Representation Rights: At all grievance meetings under this Article, the grievant may be accompanied and/or represented by a UTLA representative. If not, the grievant may represent himself or herself, or be represented by any other person, so long as that person is not a representative of another employee organization. The administrator shall have the right to be

Article V – Grievance Procedure

accompanied by another administrator or District representative. By mutual agreement other persons such as witnesses may also attend grievance meetings.

2.1 When a grievant is not represented by UTLA, the District shall promptly furnish to UTLA (in care of the UTLA Field and Organizing Director) a copy of the grievance. If the grievance is withdrawn without a settlement, the District shall so notify UTLA. The District shall not agree to a final resolution of the grievance until UTLA has been notified of the proposed resolution, and been given an opportunity to state in writing its views on the matter.

3.0 Released Time For Employees and UTLA Representatives: Grievance meetings and hearings will be scheduled by the District at mutually convenient times and places during District business hours. Such meetings will be scheduled so as to minimize interference with regular employee duties. Step One meetings will not be scheduled on released time except when it is convenient to do so during the preparation period of the involved employee(s). If a grievance meeting at Step Two or Arbitration is scheduled during duty hours, reasonable employee released time, including necessary travel time, without loss of salary and with mileage reimbursement, will be provided to the grievant, to a UTLA representative if one is to be present, and to any witness who attends by mutual agreement. For arbitration hearings the grievant, arbitration panel representatives and witnesses as required shall be afforded released time and mileage.

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 a final determination has been reached, all proceedings shall be considered private and any preliminary disposition shall not be made public without the agreement of all parties. The District and UTLA may report on grievances by citing no more than the section and article alleged to have been violated and the stage at which the grievance is at the time of the report. At no time in any report or public record may either party or the grievant cite any names or schools. This prohibition is not intended to restrict normal interviewing of witnesses and other necessary preparation for hearing.

5.0 Effect of Time Limits: If a grievance is not processed by the grievant 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 respond to the grievance in a timely manner at any step, the grievant has the option to proceed directly to the final step of this procedure (See 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.

Article V – Grievance Procedure

7.0 Informal Conference:

a. Before filing a formal grievance, the grievant shall attempt to resolve a grievance by an informal conference with the grievant's immediate supervisor. If a grievance does not relate to the immediate administrator and the remedy requested is not within the authority of the immediate administrator, the grievant may initiate the informal conference with the administrator who has such responsibility and authority. Said conference shall be requested within fifteen (15) days of the occurrence of the act or omission giving rise to the grievance or of the date when the grievant could be reasonably expected to know of the act or omission which gives rise to the grievance.

b. A meeting between the grievant and the immediate administrator shall take place within five (5) days from written request for the informal conference. The administrator shall reply in writing within five (5) days following the informal conference.

c. Dispute Resolution Panel: When certain disputes arise under Article IX-A relative to assignments to class, track and/or coordinator positions, the affected teacher may invoke the Dispute Resolution Procedures found in Article V-A.

8.0 Step One: A formal grievance must be filed within thirty (30) days (as defined in Section 6.0) after the grievant or UTLA knew or reasonably should have known of the act or omission which gives rise to the grievance. It should be noted that there are shorter time limits required for filing grievances alleging violations of certain provisions of this Agreement, such as disciplinary suspensions under Article X and summer school assignments under Article XX. For claims of a payroll or other salary error, the 30 day time limit runs from discovery of the alleged error, but any recovery payment cannot relate back more than three years prior to the grievance filing.

8.1 The grievance must be presented in writing to the immediate administrator by completing the UTLA-District 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, the grievant may initiate the grievance with the administrator who has such responsibility and authority.

8.2 A meeting between the grievant and the immediate administrator shall take place within ten (10) days from presentation of the grievance. The administrator shall reply in writing 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 ten (10) days after the termination of Step One, present the grievance to the appropriate Superintendent, Division Head or designee. Within five (5) days from receipt of the grievance, a meeting shall take place to discuss

Article V – Grievance Procedure

the matter. The administrator shall reply in writing within five (5) days following the meeting. The receipt of such reply will terminate Step Two. (Note: There are separate expedited time limits for handling grievances under Article XXVIII, Safety, Section 3.0)

10.0 [Reserved]

11.0 Request for Arbitration: If the grievance is not settled in Step Two, UTLA, with the concurrence of the grievant, may submit the matter to arbitration by a written notice to the District's Office of Staff Relations within five (5) days after termination of Step Two.

12.0 Selection of Arbitrator: Within seven days of receipt of the request for arbitration, UTLA and the Office of Staff Relations shall **meet to** select an arbitrator to serve as Chairperson of the arbitration panel. The arbitrator shall be jointly selected by UTLA and the District, or shall be selected from the following list by alternatively striking names until one remains.

Irene Ayala	Sheri Ross
Guy Prihar	Jan Stiglitz
Michael Prihar	Katherine Thomson
Paul Roose	Carol Vendrillo

The list (alphabetized by last name) shall be created from a list of no more than eight (8) names submitted by each of the parties no later than June 15th of each school year to be in effect July 1st through June 30th of the following school year. The list shall have a minimum of twelve (12) but no more than sixteen (16) names. UTLA and the District may by mutual written agreement revise the list.

If the arbitrator selected cannot be available for hearing within sixty days, the parties shall contact the next remaining arbitrator in reverse order of striking, until one is selected who is able to serve within sixty days. Once selected, the arbitrator shall serve as the Chairperson of a three-member arbitration panel, with the other two members to be appointed directly by the District and UTLA respectively. All decisions and rulings will be made by majority decision of the panel.

13.0 Optional Preliminary Hearing on Issues Which Do Not Involve Merits of Grievance: If the District claims that the grievance should be dismissed for reasons which do not go to the merits (e.g., mootness, untimeliness, matter beyond scope of procedure, or breach of confidentiality provisions) the District may cause its claim to be heard and ruled upon by the panel prior to a hearing on the merits. If UTLA claims that the grievance should be sustained because the District has allegedly violated the confidentiality provisions, it also may invoke proceedings under this Section. If either party plans to invoke this separate preliminary hearing it shall so advise the other party prior to selection of the arbitrator. Immediately after selection for the preliminary hearing, either UTLA or the District may require that a different arbitrator be selected to hear the merits.

Article V – Grievance Procedure

13.1 There shall be at least fifteen 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 UTLA).

13.2 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 ten days' notice of its intention to do so. Moreover, both UTLA and the District shall retain all rights they have under law to pursue issues relating to arbitrability of a grievance.

14.0 Scheduling Hearings and Decisions: A hearing shall be scheduled within sixty days from selection of the arbitrator, but shall not be scheduled during the summer or off-track time except by mutual agreement. The decision shall be issued within thirty calendar days after final submission of the case. Arbitrators who fail to meet this deadline for decision shall, unless the parties have mutually extended the deadline, be deemed ineligible for selection for new cases until such time as the decision is submitted.

15.0 Expedited Proceedings: Grievances which have been processed through the required steps and which involve primarily issues of fact, such as below standard evaluations or notices of unsatisfactory service, shall be submitted to expedited arbitration. However, either the District or UTLA may require any such grievance to be submitted to regular arbitration rather than expedited arbitration. Expedited arbitration will involve a hearing within ten (10) days following selection of the arbitrator, with no transcript, stenographic services or briefs, and a summary letter award to be issued within five (5) days of the close of hearing. Expedited cases shall in all other respects conform to the provisions of this Article.

16.0 Documents and Witness Lists: Either party may request from the other the production, review and right to copy non-confidential documents relevant to the grievance. If the other party disputes the request, the arbitrators shall determine the issue. The parties shall also, at least five (5) days prior to the first hearing date, exchange lists of intended witnesses.

17.0 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 administrative transfers, evaluations of Below Standard Performance, issuance of Notices of Unsatisfactory Service or Act, or critical material which has been placed in an employee's file under Article X, Section 9.0, the District shall proceed first in providing evidence.

18.0 Limitations Upon Arbitrators: The arbitration panel shall have no power to alter, add to or subtract from the terms of this Agreement, but shall only determine whether an express term of the Agreement has been violated as alleged in the grievance and if so what the remedy should be within

Article V – Grievance Procedure

the meaning of the Agreement. Past practice of the parties in interpreting and applying the terms of this Agreement may be relevant evidence, but shall not be used so as to justify or result in what is in effect a modification (whether by revision, addition or detraction) of the terms of this Agreement. The arbitration panel shall have no power to render an award on any grievance arising after the termination or expiration of this Agreement.

19.0 Effect of Arbitration Award: The arbitration panel's decision shall be final and binding upon the grievant(s), the District and UTLA. The California law on final and binding arbitration awards between a school district and an employee organization shall be applicable to such a decision.

19.1 A final and binding award which determined the merits of a dispute shall be conclusive on the grievant(s) the District and UTLA in any subsequent proceedings, including disciplinary and termination proceedings.

19.2 Unless otherwise indicated in this Agreement, this grievance procedure is to be the employees' and UTLA's sole and final remedy for any claimed breach of this Agreement.

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

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

23.0 Special Grievance Procedure for Non-Unit Members: The District shall make a grievance procedure available to part-time Adult Education teachers who are assigned fewer than 10 hours per week and to day-to-day substitutes who were paid for fewer than 100 days during the preceding year. A grievance under this special procedure shall be defined as a formal written statement alleging a violation of a specific Board Rule or administrative regulation of the District on the subject of wages, hours of employment or safety conditions, and that by reason of such alleged violation, the employee's rights have been adversely affected.

Article V – Grievance Procedure

23.1 The filing or pendency of a grievance under this procedure shall not delay or interfere with implementation of any District action during the processing thereof.

23.2 The rules and procedures specified in Article V, Sections 3.0 through 12.0, 14.0, 16.0, 17.0, 18.0, 20.0, 21.0 and 22.0 shall be applicable to this procedure.

23.3 The arbitrator's decision under this procedure shall be advisory to the Deputy Superintendent or designee whose decision shall be final and binding. This grievance procedure is to be the non-unit member's sole and final remedy for any claimed breach of Board rules or regulations within the scope of the procedure.