

PCCD Counterproposal #1 10/26/22
ARTICLE 14 - GRIEVANCE PROCEDURE

14.1 Definitions

- 14.1.1 A "grievance" is an allegation by any member of the bargaining unit **of the Union**, who allegedly has been adversely affected by a violation of a specific term of this Agreement. When a "grievance" is filed at the formal level of this grievance procedure, it shall be in writing, signed and dated by the employee or the Union submitting the grievance, and shall contain a specific description of all of the facts which the employee or the Union claims shows a violation of a specific term of this Agreement. The written grievance also must identify the specific term of this Agreement claimed to have been violated, how and by whom it was violated, the date of the violation, the names of any witnesses or individuals who can or may provide information regarding the claimed violation, and the specific remedy sought.
- 14.1.2 A "grievant" is the Federation or a member of the bargaining unit.
- 14.1.3 A "day" is a day in which the administrative office of the District is open.
- 14.1.4 A "Federation Grievance Representative" is an authorized representative of the Federation who has been appointed by the Federation for the purpose of assisting and representing individual grievants at any level or step of this grievance procedure. The Federation shall inform the Assistant Superintendent/Vice President for Human Resource Services in writing as to the identity of all Federation Grievance Representatives.

14.2 Informal Level

- 14.2.1 Before filing a written grievance, the grievant shall attempt to resolve the problem by an informal conference with the Dean or lowest-level educational administrator to whom the grievant reports. If the Dean or lowest level educational administrator is unavailable for the **information** conference during the last five (5) days of the thirty (30) day period in Section 14.3.1, a formal grievance may be filed and held in abeyance while attempts to resolve the problem informally continue.

14.3 Formal Levels

14.3.1 Step 1.

- a) Within thirty (30) days after the occurrence of the act or omission, or within thirty (30) days after the grievant knew or reasonably should

have known of the act or omission giving rise to the grievance, the grievant must present such grievance in writing to the Dean or lowest-level educational administrator to whom the grievant reports. The grievant shall send a copy to the Federation at the same time. The term “days”, at this Step 1 only, does not include days during any intersession or summer session during which the grievant is not scheduled to work.

- b) This statement shall be a clear, concise statement of the grievance, the circumstances involved, the decision rendered at the informal conference, under Section 14.2 above, and the specific remedy sought.
- c) The Dean or lowest-level educational administrator to whom the grievant reports shall communicate a decision to the employee in writing within twenty (20) days after receiving the grievance. The Dean or lowest-level educational administrator shall send a copy to the Federation at the same time. If the Dean or lowest-level educational administrator to whom the grievant reports does not respond within the time limit, the grievant may appeal to the next step.
- d) Within the above time limits, either party may request a personal conference with the other party. At such conference the grievant may be represented by no more than one (1) Federation Grievance Representative, and the Dean or lowest level educational administrator may be represented by no more than one representative, unless mutually agreed otherwise. Any such conference shall be scheduled by mutual agreement.

14.3.2 Step 2.

- a) In the event that the grievant is not satisfied with the decision at Step 1, **he/she they** may appeal to the Assistant Superintendent/Vice President directly responsible for that employee. Such appeal must be in writing and filed within twenty (20) days with the Assistant Superintendent/Vice President. The grievant shall send a copy to the Federation at the same time.
- b) This appeal shall be a clear, concise statement of the reasons for the appeal.
- c) The Assistant Superintendent/Vice President shall communicate a decision to the employee in writing within twenty (20) days after receiving the grievance. The Assistant Superintendent/Vice President shall send a copy to the Federation at the same time. If the Assistant Superintendent/Vice President does not respond with the time limit, the Grievant may appeal to the next step.

14.3.3 Step 3

- a) In the event that the grievant is not satisfied with the decision at Step 2, **he/she they** may appeal to the Assistant Superintendent/Vice President for Human Resource Services. Such appeal must be in writing, and filed within twenty (20) days with the Assistant Superintendent/Vice President for Human Resource Services. The grievant shall send a copy to the Union at the same time.
- b) This appeal shall be a clear, concise statement of the reasons for the appeal.
- c) The Assistant Superintendent/Vice President for Human Resource Services shall communicate a decision to the employee in writing within twenty (20) days after receiving the grievance. The Assistant Superintendent/Vice President for Human Resource Services shall send a copy to the Union at the same time. If the Assistant Superintendent/Vice President for Human Resource Services does not respond within the time limit, the grievant may appeal to the next step with the written consent of the Union.
- d) Within the above time limits, either party may request a personal conference with the other party. At such conference the grievant may be represented by no more than one (1) Federation Grievance Representative, and the Assistant Superintendent/Vice President for Human Resource Services may be represented by no more than one (1) representative, unless mutually agreed otherwise. Any such conference shall be scheduled by mutual agreement.

14.3.4 Step 4

- a) In the event that the grievant is not satisfied with the decision at Step 3, **he/she they** may appeal, with the written consent of the Union, to confidential mediation with the assistance of a mediator from the California State Mediation and Conciliation Service. The appeal shall be addressed to the Assistant Superintendent/Vice President for Human Resource Services. Such appeal must be in writing and filed within ten (10) days with the Assistant Superintendent/Vice President for Human Resource Services.
- b) A mediator will meet separately or with both parties together in an effort to resolve the grievance. If, after a reasonable time, the mediator believes that the grievance may not be resolved, the grievant may pursue any other available legal remedies.

14.4 Binding Arbitration

14.4.1 Designated Representatives

During the binding arbitration phase of the grievance process, either party may elect to use an attorney or other professional resource person.

14.4.2 Fees and Expenses

The parties shall bear their own costs and expenses, except for the following:

- a) The cost of the arbitrator and the court reporter shall be shared by both parties.
- b) The cost of obtaining a transcript shall be shared equally by both parties if a transcript is requested by the arbitrator. Otherwise, the cost shall be paid by the party requesting the transcript.
- c) The grievant and the Union shall have reasonable access to clerical and secretarial services provided by the District for the processing of grievances.

14.4.3 Grievance Forms

The Grievance & Appeal Form is located in Appendix E and on the PFF website.

14.4.4 Arbitration

If the Federation proceeds to arbitration, it shall, within twenty (20) days of receipt by the grievant of the Superintendent/President's written answer, notify the District in writing. Within ten (10) days of such notification, representatives of the District and the Federation shall attempt to agree upon a mutually acceptable arbitrator and obtain a commitment from said arbitrator to service. If the parties are unable to agree upon an arbitrator, the selection shall be made by rotation from a permanent panel of five (5) arbitrators (per side letter).

- 14.4.4.1 If one (1) or more of the arbitrators on the panel no longer wishes to serve, such person(s) shall be replaced by mutual agreement of the District and the Federation.

- 14.4.4.2 The arbitration hearing shall be private with attendance limited to the parties to the grievance and their representatives, if any, and witnesses while testifying.
- 14.4.4.3 If any question arises as to the arbitrability of the grievance, such question shall be addressed prior to the consideration of the merits of the grievance.
- 14.4.4.4 The arbitrator's decision shall be final and binding upon the parties, shall be in writing, and shall set forth findings of fact, reasoning, conclusions and remedy. The arbitrator's decision shall be based solely and exclusively on the evidence and arguments presented by the parties to the grievance and the record in the case.
- 14.4.4.5 The arbitrator shall be limited to deciding the issues submitted by the parties, and the arbitrator shall have the power or authority to award financial compensation in accordance with the provisions of this Agreement. The arbitrator shall not have the authority to add to, subtract from, disregard, alter, delete or modify any of the terms of this Agreement. The arbitrator shall be without power or authority to make any decision which requires the District to do any act in violation of this Agreement.

14.4.5 Expedited Arbitration

By mutual agreement of the District and the Federation, arbitration may be held under the Expedited Rules of the American Arbitration Association.

14.4.6 Miscellaneous

- 14.4.6.1 The grievant, the Federation and the District shall have equal access to any documents and District records which will assist in adjusting the grievance.
- 14.4.6.2 Grievances of a similar or like nature may be joined as a single grievance upon written consent of the grievants involved. Should the grievants so consolidate, the final decision shall be binding upon all parties to the consolidated grievance.
- 14.4.6.3 All rights granted to one party to the complaint shall be granted to the other.

- 14.4.6.4 By mutual agreement, the grievance may revert to a prior level for reconsideration.
- 14.4.6.5 The arbitrator shall be empowered to direct any District employee to attend the hearing without loss of salary to the employee. If the employee refuses to attend the hearing, the arbitrator shall have the power to subpoena the employee.
- 14.4.6.6 Advocates for the parties in arbitration shall exchange all documentary material to be entered as evidence at least ten (10) working days before the first day of the hearing. The names of the witnesses shall be exchanged at least five (5) working days before the first day of the hearings.

14.5 Federation Representation of Grievants

- 14.5.1 At any level or step of this grievance procedure, a Federation Grievance Representative may represent an individual grievant or the Federation.
- 14.5.2 If an individual grievant chooses not to be represented by a Federation Grievance Representative, in accordance with Government Code §3543, the District shall not agree to a resolution of the grievance until the Union has received a copy of the grievance, a copy of the proposed resolution, and been given at least ten (10) days to file a response to the proposed resolution.

14.6 Miscellaneous

No grievant shall use the grievance procedure to appeal any decision of the District or its representatives if such decision is **required** pursuant to any **lawful** order of or written agreement with any state or federal court, regulatory commission or agency **so long as those orders or agreements are consistent with District Board Policies**. **To the extent that this provision is implicated, the District agrees to meet with the Federation to discuss any related impact and effects to their members.**

- 14.6.1 No grievant shall use the grievance procedure in regard to any claim or complaint for which the grievant has used or initiated any other remedial procedure or course established by statute or regulation having the force of law.
- 14.6.2 If the grievant introduces new evidence at any step in the grievance procedure, the District may require that the grievance be returned to the prior step.
- 14.6.3 The Federation may file a grievance at Step 2 rather than Step 1 in cases where the alleged violation of a specific and express term of this Agreement involves all or most of the members of the bargaining unit.

- 14.6.4 Grievances and their responses shall be maintained in files separate from personnel files.
- 14.6.5 If either party will be represented by legal counsel at any step prior to the mediation step (Step 4), reasonable prior notice will be given to the other party.
- 14.6.6 The time limits specified in Steps 2 through 4 of this Article maybe extended by written mutual agreement of the parties.












Article14_TA


Final Audit Report

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