

ARTICLE 12 GRIEVANCE PROCEDURE

12.1 Purpose

This grievance procedure is intended to provide a formal method of resolving worker grievances. Since it is the intention of the Union and the District to encourage the informal resolution of potential grievances at the lowest possible administrative level, this procedure may be used only after the worker and supervisor have made a conscientious effort to resolve the dispute informally. The worker may have the assistance of a Union steward in informal resolution attempts.

12.2 Definitions

12.2.1 "*Agreement*" means the contract negotiated between the District and ACE pursuant to the Educational Employment Relations Act.

12.2.2 "Grievance" means a written statement by a worker, or by the Union on behalf of a worker, alleging that he or she has been directly wronged by the District's violation, misinterpretation or misapplication of a specific provision of the agreement. "Grievance" also means a written statement by the Union alleging that the chapter itself has been directly wronged by the District's violation, misinterpretation or misapplication of a specific provision of the *Agreement*.

12.2.3 To "file" means to deliver, either personally, or by certified mail return receipt requested. A document is "filed" on the day it is received.

12.2.4 "Notice" means a notice of grievance on a form agreed upon by the Union and the District.

12.2.5 "Working day" means any day during which the central administrative offices of the District are open for business.

12.2.6 "Union representative" unless specified may mean a chapter officer, a steward, and/or a Worksite Organizer.

12.3 Who May File a Grievance

A grievance may be filed by any of the following individuals so long as they are not alleging a violation, misinterpretation or misapplication of the *Agreement* previously grieved.

12.3.1 Any worker who, at the time of filing, is a member of the bargaining unit; or

12.3.2 A Union representative who has been authorized to file the grievance on behalf of the grievant or the Union.

12.4 **Representation**

At the informal step and thereafter, the grievant and the person designated by the Chancellor to represent the District, if any, may each be assisted by a representative who may advise or act for the party he or she represents. However, the grievant shall not be represented by an agent of any worker organization other than the Union.

12.5 **Filing a Formal Grievance**

12.5.1 A formal grievance is initiated by the filing of a Notice of Grievance on the prescribed notice form, (the grievance form is included in Appendix A).

12.5.2 The Notice must be filed by the grievant or Union representative with the grievant's supervising manager and with the Director of Human Resources. Failure to file the grievance with the Director of Human Resources within the time limit will invalidate the filing of the grievance. If the grievance is not filed correctly with the supervising manager, the Director of Human Resources will direct the grievance to the appropriate manager for response. If the grievant is not represented by the Union, a copy of the grievance must also be filed with the Union Worksite Organizer.

12.5.3 In those circumstances where the nature of the complaint involves the immediate supervisor, the employee may initiate the grievance at the second level of review.

The grievance must be filed within 30 working days after the grievant discovered or reasonably could have discovered the circumstances or action giving rise to the grievance. Regardless of the date of discovery, however, a notice shall not be timely if it is filed after the applicable statute of limitations period set forth in relevant laws. Informal attempts at resolution must take place within the 30 working day period before filing of the grievance; provided, however, that if attempts at informal resolution require further discussion the timeline for filing a formal grievance may be extended by mutual written agreement of the parties.

12.6 **First Level of Review**

12.6.1 Either the supervising manager or the grievant may request a conference with the other. At such a conference, the parties may exchange written and oral information about the grievance. The grievant and the supervising manager may each have a representative at the conference.

12.6.2 Within 10 working days following the receipt of the grievance, the supervising manager shall render a written decision including the reasons therefore. The supervising manager shall send the decision to the grievant, with copies to the Director of Human Resources and the Union Worksite Organizer.

12.7 **Second Level of Review**

- 12.7.1 If the supervising manager denies the grievance, or fails to render a timely decision, the grievant may proceed to the second level of review. To do so the grievant must file a request for a second level review within ten working days following the date of the decision at the first level or the date on which that decision was due, whichever is earlier. The request must be filed with the second level manager and with the Director of Human Resources with copies to the Union.
- 12.7.2 Upon receipt of a notice, the second level manager may meet with the grievant, the steward, and the Union representative and the person designated to represent the District, if any. At the meeting, the second level manager shall permit the grievant and the District representative to express their arguments regarding the grievance and to submit any relevant information.
- 12.7.3 Within ten working days following his or her receipt of the notice, the second level manager shall render a written decision including the reasons therefore. The decision shall be sent to the grievant, with copies to the Director of Human Resources and the Union Worksite Organizer.

12.8 **Requests for Arbitration and Selection of Arbitrator**

- 12.8.1 If the second level manager denies the grievance or fails to make a timely decision, the Union may refer the grievance to arbitration. Arbitration is initiated by the filing of a written request for arbitration signed by the grievant and an authorized representative of the Union.
- 12.8.2 The request for arbitration must be filed with the Director of Human Resources within ten working days following the date of the decision of the second level manager, in the event the second level manager fails to make a timely decision, within ten working days following the date on which the decision of the second level manager was due under Section 12.7.3.
- 12.8.3 Within fifteen working days following the filing of a request for arbitration, the Director of Human Resources and a representative of the Union shall, in the absence of an agreement between the Union and the District regarding the designation of an arbitrator petition the State Mediation and Conciliation Service for a list of five disinterested persons who are experienced in grievance arbitration. Upon receipt of the list of five names each party shall alternate in striking individual names, and the person remaining after four names have been stricken shall be designated as the arbitrator. The designation of the party that will first strike a name shall be determined by the toss of a coin.

12.8.4 Each party shall bear the cost of preparing and presenting its own case in arbitration. All fees and expenses of the arbitrator shall be shared 1/2 by the District and 1/2 by the Union.

12.9 **Arbitration Hearing**

12.9.1 The arbitrator shall establish an arbitration date with the concurrence of the parties, provided, however, that if an arbitration date cannot be established within 90 calendar days of the selection of the arbitrator, either party may request the appointment of another arbitrator pursuant to Section 12.8.

12.9.2 Within the guidelines established by these procedures, the arbitrator shall establish the rules for conduct of the hearing and shall decide all procedural issues presented including matters regarding the admission of evidence.

12.9.3 Attendance at the hearings shall be limited to:

12.9.3.1 the grievant and up to two representatives;

12.9.3.2 the District Representative and the District Representative's advisor, if any;

12.9.3.3 the arbitrator;

12.9.3.4 witnesses, but only for the time they are needed;

12.9.3.5 an observer designated by the Union;

12.9.3.6 the Director of Human Resources, or an observer designated by the Director.

12.9.4 At the hearing only the participants listed in Sections 12.9.3.1 through 12.9.3.4 may participate. The grievant, the grievant's representative(s) and all necessary witnesses, shall be provided released time for the time during which they are needed.

12.9.5 The grievant shall demonstrate, by preponderance of the evidence, that he or she was directly wronged by the action or circumstances that gave rise to the grievance. Once the grievant establishes a prima facie case the burden of producing evidence shall shift to the District.

12.10 **Arbitrator's Decision and Report**

12.10.1 Following the conclusion of the hearing, the arbitrator shall be requested to prepare his or her report within sixty (60) days and file it with the Chancellor, the grievant and the Union as soon as possible. The report shall consist of the

arbitrator's detailed findings of facts, conclusions and recommendations for resolving or terminating the grievance.

12.10.2 The report of the arbitrator shall be final and binding, except that there shall be no binding arbitration for disciplinary matters under Article 16 of this *Agreement*. The arbitrator's authority shall be limited to interpretation of contract provisions and the arbitrator shall have no authority to add to, subtract from, or otherwise modify the terms of the contract. The arbitrator's award shall be limited to those measures necessary to remedy the contract violation, if one is found. If the award includes back pay, back pay shall be limited to one year from the date the grievance was filed.

12.11 **Miscellaneous Provisions**

12.11.1 The time limits specified in these procedures are maximum limits. Notwithstanding this provision, any time limits specified in these procedures may be extended by agreement of the parties.

12.11.2 When two or more grievances involving the same alleged violation, misinterpretation or misapplication of the *Agreement* or presenting a common question of fact and law have been submitted, the Union and the District may agree that said grievances be consolidated.

12.11.3 A grievance may be withdrawn or settled at any time.

12.11.4 The Union and District, may, by mutual agreement, proceed immediately to arbitration on any grievance. If the Director of Human Resources and Union representative agree that it is not appropriate to file a grievance at the first level, it may proceed directly to the second level. A grievance filed at level two must be filed within the timelines specified for filing a grievance unless timelines are extended by the mutual written agreement of the District and the Union.

12.11.5 All documents, communications and records dealing with the processing of a grievance shall be placed in a separate grievance file, except that any document or record removed from a personnel file, or any other file, for use in a grievance proceeding shall be returned to the original file.

12.11.6 A worker in this unit may present a grievance directly and have such grievance adjusted without intervention of the Union as long as the adjustment is not inconsistent with the terms of the *Agreement*. As provided in these procedures, the Union shall be provided copies of any grievances filed by workers and any decisions rendered. Notwithstanding any other provision of these procedures, before any final resolution of any worker processed grievance, the Union shall be given the opportunity to file a written response to the proposed decision or settlement regarding the grievance. No worker-processed grievance may proceed to arbitration without the Union's concurrence.

Any disagreement concerning whether the decision or settlement is inconsistent with the *Agreement* shall be subject to the grievance procedure.

- 12.11.7 A grievant and Union steward shall be entitled to a reasonable amount of time to prepare and write a grievance during regularly scheduled working hours without loss of pay.
- 12.11.8 A grievant and Union steward shall be entitled to a reasonable amount of time to process a grievance during normal working hours with no loss of pay.