

**Tentative Agreement
Between San Diego Unified School District and
San Diego Education Association
2014 Successor Collective Negotiations Contract**

ARTICLE 15 (GRIEVANCE PROCEDURE)

The San Diego School Education Association ("SDEA") and San Diego Unified School District ("District") have negotiated and reached a tentative agreement on certain terms for a successor Collective Negotiations Contract (CNC) on the June 5, 2014. Negotiations between the parties continue.

In accordance with the signed Ground Rules, no tentative agreement shall be a final agreement except as a part of a total package agreement between the parties. Both parties agree that final approval of the tentative collective bargaining agreement is subject to ratification by SDEA membership and approval of the Board of Trustees.

Italicized language set forth below expresses the parties' intent, and will not be incorporated into the SDEA.

Section 15.1: STATEMENT OF INTENT

It is the intention of both the District and the Association to develop a process that results in the resolution of grievances which arise from the collective bargaining agreement at the level within the system where the issue originates. Both Parties endorse and encourage frank and open discussion of grievances and the use of a variety of nonadversarial problem-solving techniques including mediation, interest-based exploration of interests and options for solution, and other means as appropriate.


Section 15.2: DEFINITIONS:

15.2.1. A "grievance" is a claim by one or more specifically named bargaining unit members or by the Association that there has been a violation, misinterpretation, or misapplication of a specific provision of this Agreement which personally and adversely affects the grievant(s).

15.2.2. A "group grievance" may be filed when there are mutually-agreed common questions of fact pertaining to each grievant.

15.2.3. A "grievant" is a unit member, a group of unit members, or the Association.

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Section 15.3: STEP ONE - INFORMAL RESOLUTION - IMMEDIATE SUPERVISOR

A unit member and his/her immediate supervisor, or other district administrator if appropriate, shall attempt to resolve differences or dissatisfactions in a collaborative and problem solving mode, as soon as possible, but such resolutions must be in accordance with the provisions of this Agreement. **Upon mutual agreement, either party may bring an additional participant to the step one (1) meeting**

Section 15.4: STEP TWO - FORMAL - IMMEDIATE SUPERVISOR

15.4.1. If a satisfactory resolution of the problem is not reached through the informal discussion process, the grievant shall have the right to file a grievance with his/her supervisor or other appropriate district administrator. The grievance shall be filed within fifteen (15) workdays, from the date the grievant learned of, or reasonably should have known of, the act or omission giving rise to the grievance.


15.4.2. The grievance shall be filed on a form jointly developed by the District and the Association and made available by the Association or the ~~Human Resources Services~~ **Labor Relations Division**.


The grievance shall contain a clear and concise statement of the act or omission giving rise to the grievance including the name of any involved employee, date(s), time(s) and place(s) involved in the alleged grievance. It shall also specify the section(s) of the contract which are alleged to have been violated, the specific remedy sought by the grievant, and the reason why the immediate supervisor's (or other district administrator's) proposed resolution, if any, is unacceptable.

15.4.3. Upon receipt of the written grievance, the administrator shall schedule a meeting to discuss the grievance. The meeting shall be conducted within ten (10) workdays from the date when the grievance is received by the administrator. The purpose of this meeting shall be to attempt to resolve, in a collaborative manner, the issues raised in the grievance.

If a resolution is not reached at the meeting, the administrator shall issue a written response within ten (10) workdays of this meeting.

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Section 15.5: STEP THREE - FORMAL - DISTRICT LEVEL

- 15.5.1. The grievant may appeal the decision rendered by the supervisor or other district administrator by filing the grievance form with the ~~Human Resources Services-~~ **Labor Relations** Division or designee within ten (10) workdays after receiving the Step Two decision. Information copies shall be sent to the grievant's supervisor or other appropriate district administrator and the Association. Relevant information obtained during Step Two may be asserted.
- 15.5.2. The District and the Association shall attempt to resolve the issues raised in the grievance through collaborative problem-solving efforts.
- 15.5.3. A conference shall be scheduled **and conducted within twenty (20) workdays** by the appropriate administrator in the ~~Human Resources Services-~~ **Labor Relations** Division or designee ~~within ten (10) workdays~~ after receipt of the grievance. All Parties may be represented at the conference.
- 15.5.4. Within ten (10) workdays after the conference with the grievant, the appropriate administrator in ~~Human Resources Services-~~ **Labor Relations** Division or designee shall render a proposed written decision, copies of which shall be sent to the grievant's immediate supervisor and the Association.

Section 15.6: STEP FOUR - ARBITRATION

- 15.6.1. If a grievance is not resolved at Step Three, the Association may request a hearing before an arbitrator. The request shall be filed in the ~~Human Resources Services-~~ **Labor Relations** Division or designee within fifteen (15) workdays after the written decision of the division representative becomes effective.
- 15.6.2. Within five (5) workdays after receipt of a request for arbitration, the ~~Human Resources Services-~~ **Labor Relations** Division or designee and the Association agree to meet and review the pending arbitration case. If no agreement is reached, the ~~Human Resources Services-~~ **Labor Relations** Division or designee shall request the State Mediation and Conciliation Service to supply a list of seven (7) arbitrators. If no agreement is reached, the cost of any filing fees shall be split evenly between the Parties. The arbitrator shall be chosen by allowing each Party, in turn, to strike out one (1) name until only one (1) name remains. The determination of the Party to strike first shall alternate between the Association and the District.

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15.6.3. The cost of arbitration shall be borne as follows:

15.6.3.1. The District and the Association shall share equally in the payment for the services and expenses of the arbitrator.

15.6.3.2. Upon mutual agreement, a qualified court reporter shall be employed to record verbatim the hearing. Without mutual agreement, either Party may employ and compensate such a reporter.

15.6.4. Powers and limitations of the arbitrator shall be as follows:

15.6.4.1. The function of the arbitrator shall be:

- a. To hold a hearing concerning the grievance, and
- b. To render a binding decision within thirty (30) calendar days of the hearing or receipt of closing briefs (if any).

15.6.4.2. The arbitrator shall have no power to alter, amend, change, add to, or subtract from any of the terms of this Agreement but shall determine only whether or not there has been a violation, misinterpretation, or misapplication of this Agreement as alleged by the grievant or grievants.

15.6.4.3. The arbitrator shall determine disputed interpretation of terms actually found in the Agreement or determine disputed facts upon which the application of the Agreement depends. The arbitrator may not decide any issue not submitted and may not interpret or apply the Agreement so as to change what can fairly be said to have been the intent of the Parties as determined by generally accepted rules of contract construction. The arbitrator shall not render any decision or award merely because in the arbitrator's opinion such decision or award is fair and equitable.

15.6.4.4. The decision of the arbitrator shall be based solely upon the evidence and arguments presented by the Parties in the presence of each other and upon arguments presented in briefs.

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15.6.4.5. No decision rendered by the arbitrator shall be retroactive beyond the beginning of the last payroll period prior to the fifteen (15) workday period for filing a grievance specified in Step One of this grievance procedure. The arbitrator shall have no power to render an award in any grievance during any period of time in which the Association or its members (when encouraged, supported, or sanctioned in any way by the Association) are involved in unprotected concerted activities or a strike.

Section 15.7: STEP FIVE - APPEAL

The decision of the arbitrator is not appealable by either Party except as provided in this Section and, unless so appealed, shall be the full, complete and final resolution of the grievance and implemented in accordance with its terms.

Either the Association or the District may appeal the arbitrator's decision to a court of competent jurisdiction within twenty (20) workdays of such decision on either or both of the following grounds, which the Parties intend to include within their interpretation and understanding of Code of Civil Procedure Sections 1286.6 and 1286.4, respectively:

15.7.1. Where another remedy has been provided by law which leads to a different result than that reached by the arbitrator, and in which event shall be deemed that the arbitrator exceeded his/her powers under this Agreement.

15.7.2. Where the arbitrator's decision is contrary to any of the provisions of Section 15.6.4, it shall be deemed to be arbitrator misconduct and/or that the arbitrator has exceeded his/her powers under this Agreement.

15.7.3. In addition to Sections 15.7.1 and 15.7.2, any award made by an arbitrator may be corrected or enforced pursuant to Code of Civil Procedure Section 1285 et seq., except that, where a shorter time is specified in this Agreement to commence a court proceeding than is given under the Code of Civil Procedure, the shorter time of this Agreement shall control.

Failure of either Party to commence a court action within the period indicated herein, shall constitute a waiver of the right to appeal and the decision of the arbitrator shall become final and non-appealable.

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Section 15.8: GENERAL PROVISIONS

- 15.8.1. No party may be required to discuss any grievance if his/her representative is not present.
- 15.8.2. Unless otherwise provided, the time allowance set forth in this grievance procedure may be extended by mutual written agreement of the unit member or the association representative and the appropriate representative of the District.
- 15.8.3. Any grievance not appealed to the next step of the procedure within the prescribed time limits shall be considered settled on the basis of the answer given in the preceding step.
- 15.8.4. If the District does not render a written response within the limits set forth at any step of the proceedings, the grievant may advance to the next step by filing the grievance form(s) within the limits specified at each step of the Grievance Procedure.
- 15.8.5. By mutual agreement of the Association and the ~~Human Resources Services~~ **Labor Relations** Division, or designee grievances involving an action by an administrator above the level of principal or supervisor may be filed at Step Three.
- 15.8.6. No reprisal of any kind will be taken by or against any participant in the grievance procedure by reason of such participation.
- 15.8.7. Wherever under this grievance procedure documents are required to be served or filed on one party by another **and are personally delivered** they shall be accompanied by a "Proof of Service" which shall include a statement by the party or the party's agent that the document was personally delivered. **Grievance documents required to be served or filed on one party by another do not require a "Proof of Service" if sent by United States mail with first class postage properly affixed, transmitted electronically or by e-mail or facsimile or was deposited in the school mail and the date on which said action was taken. The date of United States postage stamp or date and time stamp of electronic transmittal shall serve as proof of document submission.**

The Proof of Service shall either be in the form of an affidavit or a declaration made under penalty of perjury. Forms for Proof of Service shall be provided by the District and made available by the Association or the Human Resource Services Division.

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15.8.8. If the representative of the grievant is a unit member, the District shall permit a reasonable amount of released time for the representative for the purpose of processing the grievance.

15.8.9. Released Time Provisions:

15.8.9.1 During any arbitration hearing conducted under this Agreement, the District agrees to release without loss in compensation up to a single grievant and up to two (2) witnesses.


15.8.9.2. Unless mutually agreed otherwise, the Association will reimburse the District for the cost of visiting teachers for any additional ~~grievants~~ **grievant** or witnesses.

15.8.10. All documents generated under this procedure will be kept separately from the unit member's personnel file and in the ~~Human Resources Services~~ **Labor Relations** Division offices.


15.8.11. In any cases in which the Association did not have a representative present at Step Three of the grievance procedure, the District shall not implement a proposed resolution of a grievance until the Association has been sent a copy of the grievance and has been given five (5) workdays within which to file a response.

15.8.12. The provisions of this Article shall not apply to the provisions of a contract or plan document relating to the health and welfare benefits plans provided under Article 9. Such issues shall be resolved through the complaint resolution procedure which is a part of each plan.

FOR SDEA




Lindsay Burningham
Date: 6/5/14




Tim Hill
Date: 6/5/14

FOR THE DISTRICT



Mark Bresee
Date: 6/5/2014



Jennifer Carbuca
Date: 6/5/2014

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