

APPENDIX A -- GRIEVANCE PROCEDURE

A. Purpose

It is recognized that complaints and grievances may arise between the bargaining agent and the employer or between the employer and any one or more employees concerning the application or interpretation of the wages, hours, and terms and conditions of employment, as defined in this Agreement. The employer and the bargaining agent desire that these grievances and complaints be settled in an orderly, prompt, and equitable manner so that the efficiency of the M-DCPS may be maintained and the morale of employees not be impaired. Every effort will be made by the employer, employees, and the bargaining agent to settle the grievances at the lowest level of supervision. The initiation or presentation of a grievance by an employee will not adversely affect his/her standing with the employer. No reprisals of any kind will be made by the Board or its representative or any member of the administration against any party in interest, any Union representative, or any other participant in the grievance procedure by reason of such participation. All documents, grievance forms (sample forms attached hereto), communications, and records dealing with the processing of a grievance shall be filed separately from the personnel files of any party in interest, including final disposition, except for and exclusively for awards resulting from arbitration.

It is agreed that the bargaining agent reserves the exclusive right to process grievances at any step of the grievance procedure, including arbitration, except that any member of the bargaining unit may process a grievance through representation of his/her own choosing, only if the bargaining agent has refused to process the grievance solely because the unit member is not a dues-paying member of the Union. The Union accepts its duty of fair representation but retains its right to preclude the processing of non-meritorious grievances through the steps of this grievance procedure inclusive of arbitration.

B. Definitions

1. Grievance -- formal allegation by an employee and/or the bargaining agent that there has been a violation, misinterpretation, or misapplication of any of the terms and conditions of employment set forth in this Contract or its Appendices.
2. Bargaining Agent -- the employee organization certified as the exclusive bargaining agent, pursuant to Florida Statutes, Chapter 447.307.
3. Aggrieved Employee -- any full-time or part-time teacher and such other persons who are members of the bargaining unit, as certified, pursuant to Florida Statutes, Chapter 447.307.
4. Party in Interest -- any person who might be required to take action or against whom action might be taken in order to resolve the grievance.

5. Supervising Administrator -- the individual having immediate administrative authority over the aggrieved employee(s).
6. Immediate Superintendent -- the Assistant or Associate Superintendent having immediate administrative authority over the Supervising Administrator.
7. Days -- as referred to in the time limits herein, days shall mean working days.
8. Letter of Inquiry -- request, in writing, on proper M-DCPS form, by the bargaining agent, to Labor Relations, seeking clarification of M-DCPS Rules, state law, or this Agreement.

C. Special Provisions

The time limits set forth herein may be extended and/or modified by mutual agreement, using the stipulated Request for Extension of Time Form (sample form attached hereto).

In the event a grievance is filed at such time as it cannot be processed through all steps in the grievance procedure by the end of the aggrieved employee's contract year and, if left unresolved until the beginning of the following year, could result in irreparable harm to a party in interest, the time limits set forth herein will be reduced so that the grievance procedure may be exhausted as soon as practicable.

If the employer violates any time limits, the bargaining agent may advance to the next step without waiting for the employer response.

The parties acknowledge that, as a principle of interpretation, employees are obligated to work, as directed, while grievances are pending.

The employer and the bargaining agent shall have the right of free choice in designating representatives for the purpose of resolving grievances. The Union shall have a maximum of two representatives at a formal grievance hearing.

Aggrieved employees, or employees who are called as witnesses, will be allowed released time without loss of pay to process or assist in the processing of a grievance. The parties will jointly establish rules of procedure and conduct for grievance hearings and submit them for approval by the Superintendent and the UTD President or Designee.

The bargaining agent, in accordance with its own non-discriminatory internal rules, shall have the sole and exclusive right to determine whether any grievance warrants processing through this procedure. In the event the bargaining agent determines at any step of the grievance procedure that a grievance does not warrant processing, a written notification of that determination, using the stipulated Grievance Form, shall be sent to Labor Relations, and to the employee(s) involved.

If the bargaining agent has declined to process or further process any grievance presented to it, solely because the unit member is not a dues-paying member of the Union, such unit member may process his/her own grievance through this procedure and the bargaining agent shall be sent copies of all written communications sent by the employer or the employee(s) involved. Further, an employee is authorized to process his/her own grievance in person or through legal counsel only if the bargaining agent has declined to provide representation in processing a grievance because the unit member is not a dues-paying member of the Union. If an employee processes his/her own grievance in person or through legal counsel, the employee may not adjust the grievance in a manner inconsistent with the terms of the collective bargaining agreement then in effect and, provided further, that the bargaining agent has been given notice and a reasonable opportunity to be present at any meeting called for the resolution of such grievances.

The bargaining agent shall not be responsible for any costs attendant to the resolution of any grievance it has not processed.

The parties acknowledge that multiple grievances may be combined with mutual agreement of the employer and the Union.

One set of Board Rules at each work location shall be made available to Union building representatives for the purpose of reference and information, as well as, for the purpose of expediting the provisions of this grievance procedure.

The use of tape recorders or other mechanical devices is expressly forbidden.

D. Letter of Inquiry

Either the immediate superintendent or bargaining agent may send a Letter of Inquiry on the stipulated Letter of Inquiry Form (sample form attached hereto) to Labor Relations for the purpose of seeking a clarification of a M-DCPS Rule, state law and/or terms and conditions of employment, as set forth in this Agreement.

Labor Relations shall respond within 10 days of receipt of the Letter of Inquiry. If the interpretation of the Letter of Inquiry is not satisfactory, a formal grievance may be filed.

E. Implementation

STEP I

1. The grievance shall be filed within 30 days of the alleged violation, misinterpretation, or misapplication of the terms and conditions of employment set forth in this Agreement.
2. The grievance shall be filed, in writing, stating the specific article, section and language alleged to have been violated, misinterpreted, or misapplied to the

supervising administrator of the aggrieved employee(s). It is further understood and agreed that the aggrieved employee(s) shall be granted released time to attend formal proceedings, as described herein, which are held during working hours. No M-DCPS employee(s) other than the aggrieved employee(s) shall be granted released time to either represent the aggrieved employee(s) or to observe the proceedings as representatives of the bargaining agent.

3. The supervising administrator shall note the date of receipt of the grievance and shall seek to meet with the aggrieved employee(s) at a mutually-agreeable time within five days of receipt of the grievance.
4. The bargaining agent for the unit shall be advised, in writing, as to the date of the proposed meeting and shall have the right to send one observer to the proceeding if the bargaining agent is not involved in the actual representation of the aggrieved employee(s).
5. Within five days of the meeting, the supervising administrator shall render a decision and shall immediately communicate that decision, in writing, to the aggrieved employee and the appropriate immediate superintendent or his/her designee. Additional copies of the decision shall be sent to the Labor Relations and to the exclusive bargaining agent.
6. The bargaining agent may appeal the decision of the supervising administrator within five days of its rendering.
7. The notice of intent to appeal shall be communicated, in writing, to the immediate superintendent. Failure to appeal the decision of the supervising administrator within five days shall constitute acceptance by the aggrieved employee(s) and the bargaining agent of the decision as being a satisfactory resolution of the issues raised.

STEP II

1. If the bargaining agent appeals the decision, the immediate superintendent shall schedule a meeting to take place at a mutually agreeable time, not more than 10 days after receipt of notice of appeal. The immediate superintendent shall immediately communicate notice of appeal to Labor Relations.

The bargaining agent shall be advised, in writing, as to the date of the proposed meeting and shall have the right to send one observer to the proceedings if the agent is not involved in the actual representation of the aggrieved employee(s).

2. Within 10 days of the meeting, the immediate superintendent shall render a decision and shall immediately communicate that decision, in writing, to the bargaining agent. Copies of the decision shall be sent to the aggrieved employee(s) and to Labor Relations. A copy is to be retained by the immediate superintendent.

3. The bargaining agent may appeal the decision of the immediate superintendent within five days of its rendering. The notice of intent to appeal shall be communicated, in writing, to Labor Relations. Failure to appeal the decision of the immediate superintendent within five days shall constitute acceptance, by the aggrieved employee(s) and the bargaining agent, of the decision as being a satisfactory resolution of the issues raised.

STEP III

1. If the bargaining agent appeals the decision, the Superintendent or his/her designee shall schedule a meeting to take place at a mutually-agreeable time, not more than 12 days after receipt of notice of appeal.
2. Within 12 days of the meeting, the Superintendent or his/her designee shall render a decision and shall immediately communicate that decision, in writing, to the aggrieved employee(s). Copies of the decision shall be sent to the aggrieved employee(s), the supervising administrator, the immediate superintendent, and to Labor Relations.
3. Failure to appeal the decision rendered in Step III within five days by notice of intent to submit to arbitration shall deem the decision at Step III to be final and no further appeal will be pursued.

ARBITRATION

If the employer and the bargaining agent fail to resolve the grievance, the grievance may be submitted to final and binding disposition by an impartial neutral, mutually selected by the parties.

Nothing contained in this Appendix or elsewhere in this Agreement shall be construed to permit the Union to file an issue for arbitration unless, by mutual consent, the grievance has not been processed through applicable steps of the grievance procedure.

1. Notice of intent to submit the grievance to arbitration shall be communicated, in writing, by the bargaining agent to Labor Relations within five days of the decision at Step III.
2. Prior to the submission of the appeal to arbitration, the arbitrator may hold a pre-hearing conference to consider and determine:
 - a. the simplification of the issues;
 - b. the possibility of obtaining stipulation of facts and documents that will avoid unnecessary proof;
 - c. such other matters as may aid in the disposition of the grievance; and

- d. matters of jurisdiction or applicability.
- 3. The bargaining agent reserves the exclusive right to institute the arbitration procedures under this Agreement. An employee may process a grievance through Step III only if the bargaining agent refuses to institute the grievance procedures solely because the unit member is not a dues-paying member of the Union.
- 4. Within 10 days after written notice of submission to arbitration, the parties will attempt to agree upon a mutually-acceptable arbitrator and obtain a commitment from said arbitrator to serve. If the parties are unable to agree upon an arbitrator or to obtain such a commitment within the specified time, a request for a list of arbitrators may be made to the Federal Mediation Conciliation Service (FMCS) or the American Arbitration Association (AAA) by either party. The parties will be bound by the rules and procedures of the FMCS in the selection of an arbitrator and the holding and conducting of an arbitration hearing.
- 5. The arbitrator, selected by the parties, or pursuant to the rules of the FMCS, will issue a decision not later than 20 days from the date of the close of the hearings or, if oral hearings have been waived, then from the date final statements and proofs are submitted. The arbitrator's decision will be in writing and will set forth findings of fact, reasoning, and conclusions on the issues submitted and, where permitted by law, may include a monetary award. The arbitrator will be without power or authority to make any decision which requires the commission of an act prohibited by law, or which adds to, subtracts from, modifies, or alters the terms of this collective bargaining agreement.

The decision and award of the arbitrator shall be final and binding.

- 6. All arbitration costs, including the cost of stenographic reporting of the arbitration hearing, if agreed to by the parties, shall be divided equally between the employer and the bargaining agent. Each party will pay the cost of presenting its own case; however, the aggrieved employee(s) or the employee(s) who is called as witness for an arbitration hearing will be allowed released time to process or to assist in the processing of his/her own grievance or to testify.
- 7. It is understood and agreed by the employer, members of the unit, and the bargaining agent, that the resolution of complaints which are grievable or litigable shall be pursued through the grievance procedure until such remedy is exhausted. At that time, the employer, the aggrieved employee(s), and/or the bargaining agent may seek other legal remedies, as are available.

Refusal to discuss a grievance in good faith shall constitute an Unfair Labor Practice and shall be subject to the penalties provided for in Florida Statutes, Chapter 447.503.

8. Both parties agree to negotiate and mutually agree to the rules and procedures which govern arbitration. In the event mutual agreement cannot be reached, the FMCS or AAA will be utilized to process arbitration cases.

F. Alternative Grievance Procedure

The parties agree to establish a joint M-DCPS/UTD ad hoc committee to review and make recommendations regarding the feasibility of an alternative grievance process.