

ARTICLE 4
Grievance Procedure

- A. **Definition:** Any claim by an employee(s), or the Union, that there has been a violation, misinterpretation or misapplication of any provisions of this Agreement may be processed as a grievance, as hereinafter provided.

Nothing in this Article shall be construed to prevent a bargaining unit member from processing his/her own grievance in person through this grievance procedure and having such grievance adjusted without the intervention of BTU-ESP, if the adjustment is not inconsistent with the terms of this Agreement, and if BTU-ESP has been given reasonable opportunity to be present at any meeting called for the resolution of such grievance, and the BTU-ESP shall be provided with the resolution of such grievance in writing. However, only the Union may submit a grievance to arbitration.

- B. **Exclusive Rights:** The parties agree that the BTU-ESP has the exclusive right to process grievances under all steps of this grievance procedure, except that any bargaining unit member may process a grievance through said procedure if the BTU-ESP expressly waives its right in writing to process a grievance because the unit member is not a dues-paying member of the union. A copy of the waiver shall be provided to the school district's Director of Employee & Labor Relations. 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.

- C. **Procedure:**

1. During all steps of this procedure, an employee may be represented by him/herself or, if he/she prefers, or by a BTU-ESP representative. Records of Counseling and written reprimands, with the exception of those issued by the Special Investigative Unit, shall be grievable only through Step II of the grievance process. Said Records of Counseling and/or written reprimands will be held in abeyance as per Article 7, Personnel Files, Section A.

2. **Informal:** In the event that an employee believes there is a basis for a grievance, he/she shall first discuss promptly the alleged grievance with the immediate supervisor within twelve (12) working days of the date on which the employee could reasonably have known of the occurrence of the event giving rise to the alleged grievance.

3. **Formal:** If, as a result of the informal discussion with the immediate supervisor, an alleged grievance still exists, a formal grievance may be invoked by the employee within five (5) working days of the informal discussion, on the form set forth in annexed Appendix A, signed by the grievant and/or by a representative of the BTU-ESP, which form shall be available from the principal or the BTU-ESP. If the grievance involves more than one school building, a group of employees, or arises from an action above the level of the immediate supervisor, it may be initially filed with the Superintendent at Step II and the informal discussion may be waived by BTU-ESP.

D. **Steps of Formal Grievance Procedure:**

1. Step I - Immediate Supervisor

The grievant may submit to the immediate supervisor, a copy of the grievance form. Within five (5) working days of receipt of the grievance, the immediate supervisor shall meet with the grievant in an effort to resolve the grievance. The immediate supervisor shall indicate the disposition of the grievance in writing to BTU-ESP within five (5) working days after such meeting.

2. Step II - Superintendent

If the grievant and/or BTU-ESP is not satisfied with the disposition of the grievance, or if no disposition has been made with the specified time limit, or if Step I has been omitted, the grievance shall be submitted to the Superintendent within five (5) working days of the disposition of the immediate supervisor or expiration of the time limit. Within five (5) working days of receipt of the grievance, the Superintendent shall meet with the grievant. Within five (5) working days of said meeting, the Superintendent shall indicate the disposition of the grievance in writing. If the parties reach a mutual resolution, it shall be in writing, signed, dated and distributed to the BTU-ESP and the School District. Upon resolution, processing of the grievance shall automatically terminate.

3. Step III - Arbitration

- a. If the grievant or BTU-ESP is not satisfied with the disposition of the grievance by the Superintendent or if no disposition has been made within the specified time limit, the grievance may be submitted only by the BTU-ESP to arbitration before an impartial arbitrator within seven (7)

working days of the written disposition at Step II or the expiration of the time limit. The seven (7) working days will commence from the postmark affixed to the Step II answer envelope by the U. S. Postal Service.

- b. **Selection of Arbitrator:** If the parties cannot agree to an arbitrator within five (5) working days from the notification date, that arbitration will be pursued, the arbitrator shall be selected from a list supplied by the Federal Mediation and Conciliation Service (“FMCS”) or the American Arbitration Association (“AAA”) in accordance with the rules of the respective organization, which rules shall likewise govern the arbitration proceedings.
- c. **Power of Arbitrator:** The arbitrator shall limit his/her decision to the application and interpretation of this Agreement and shall have no power to modify, alter, add to, or subtract from the provisions of this Agreement.
- d. **Cost of Arbitration:** If the arbitrator sustains the position of the grievant, the fees and expenses of the arbitrator, including AAA and FMCS filing fees, shall be paid by the Board. However, if the arbitrator sustains the Board's position, all fees and expenses of the arbitrator and all filing fees shall be paid by the grievant or the Union. If the decision issued by the arbitrator is not the one requested by either party, the arbitrator shall determine the distribution of his/her fees between the parties. Each party shall be responsible for any other expense it chooses to incur. The parties may, by mutual agreement, agree to share the cost of the arbitration.
- e. **Witnesses:** Employees required to testify will be made available without loss of pay; however, whenever possible they will be placed on call to minimize time lost from work. Employees who have completed their testimony shall return to work unless they are the grievant(s). Nothing provided herein shall prevent a witness from being recalled to testify. In group grievances, the group of employees shall be represented by the BTU-ESP and one member of the group.
- f. **Disclosure of Information:** Neither the Board nor the Union shall be permitted to assert in such arbitration proceedings any grounds or rely on any evidence which has not previously been disclosed to the other party.

- g. **Award:** Both parties agree that the award of the arbitration shall be final and binding.
- h. On a case-by-case basis, the parties may mutually agree to utilize an expedited arbitration procedure. The specific procedures covering all aspects of the expedited arbitration hearing must be mutually agreed to by the parties prior to the scheduling of the hearing.
- i. The parties may, by mutual agreement, establish the procedures as well as the working guidelines to select and utilize a panel of arbitrators. The panel of arbitrators would be reviewed every two years at which time the parties, by mutual agreement, may make changes to the panel.

E. **General Provisions:**

- 1. It is the mutual intent of the Union and the Board to resolve all grievances at the earliest possible level of the grievance procedure.
- 2. **Time Limits:**
 - a. The time limits provided in this article shall be strictly observed, but may be extended only by mutual written agreement of the parties. All formal grievances must be appealed to the next step within the specified time limits. Failure to do so shall deem the grievance settled on the basis of the disposition at the previous level. Failure of the administration to respond within the specified time limits shall permit the grievant to appeal to the next level.
 - b. In the event a grievance is filed after May 15 of any year and strict adherence to the time limits may result in hardship to any party, the Superintendent shall use best efforts to process such grievances prior to the end of the school term or as soon thereafter as possible.
 - c. Whenever illness or other incapacity of either party or its representatives prevents attendance at a grievance meeting, the time limits shall be extended to permit such person(s) to be present.
- 3. **Grievance Meetings/Conferences:** When grievance meetings, conferences or hearings are scheduled during school hours, employees required to testify shall be excused without loss of pay or accumulated leave for that purpose.

4. **Discrimination:** The provisions of the Agreement shall be applied without regard to race, creed, color, religion, national origin, age, sex, handicap or marital status.
 5. **Employee Rights: No Reprisals Clause:** All employees will be entitled to fair, reasonable, and equitable treatment in the processing of grievances. An employee who participates or intends to participate in any grievance as described herein shall not be subjected to discipline, reprimand, warning or reprisal because of such participation or intention. All documents, communications and records dealing with the processing of an employee's grievance will be filed separately from the employee's personnel file.
 6. **Adjustment/Resolution:** Adjustment or resolution of any grievance herein shall not be inconsistent with the provisions of this Agreement.
 7. **Expiration of the Agreement:** Notwithstanding, the expiration of this Agreement, any claim or grievance arising thereunder may be processed through the grievance procedure until resolved.
- F. **Waiver:** If the BTU-ESP waives its right to process a grievance to arbitration because the affected employee is not a dues-paying member of the union, the employee may carry the case forward but he/she may be responsible for all arbitration costs pursuant to the provisions in Section E above. Under such circumstances, the BTU-ESP shall not be responsible for arbitration costs associated with the specific grievances.