

ARTICLE XIII GRIEVANCE ARBITRATION

Section 1

Questions concerning arbitrability shall be initially ruled upon by the arbitrator in a separate hearing prior to a determination on the merits of a grievance.

Grievances which are not settled pursuant to Article XII, which the Association desires to contest further and which involve the interpretation or application of the expressed terms of this Agreement may be submitted to arbitration as provided in this Article, but only if the grieving party gives written notice to the District of its desire to arbitrate the grievance within ten (10) working days after the termination of Step Five of the Unit/Member/Association Four of the District Grievance Procedure. It is expressly understood that the only matters which are subject to arbitration under this Article are grievances which were processed and handled in accordance with procedures of Article XII. Regarding unit member/Association grievances, the substance of evaluation in Article IX (Procedures of Evaluation) (procedures of evaluation are grievable), Article XVI (District Rights), and Article XVII (Non-discrimination) (except as noted within the Article), are specifically excluded from arbitration under the provisions of this Article. Regarding District grievances, arbitration is limited to those articles listed in Article XII, Section 9.

Section 2

As soon as possible and in any event not later than ten (10) working days after the District receives written notice of the Association's desire to arbitrate, the parties shall agree upon an arbitrator. If no agreement is reached within said ten (10) days, an arbitrator shall request a list of seven (7) arbitrators from the California State Mediation and Conciliation Service experienced in education labor relations. The parties shall alternately strike names from the list until only one (1) name remains, that person shall arbitrate the dispute. The determination as to which party strikes first shall be decided by a flip of the coin.

Section.3

The arbitrator shall have no power to alter, amend, change, add to, or subtract from any of the terms of this Agreement. He/she shall only find whether there has been a violation of the expressed terms of this Agreement and policies specified in Article XII definition of a "grievance," in the respect alleged in the grievance. The findings of the arbitrator shall be based solely upon the evidence and arguments presented to him/her by the respective parties in the presence of each other, except to the extent that post-hearing briefs are filed. Such post-hearing briefs, if any, shall be based solely upon the evidence presented by the respective parties in the presence of each other.

Section 4

This Agreement constitutes a contract between the parties which shall be interpreted and applied by the parties and by the arbitrator in the same manner as any other contract under the laws of the State of California. The function and purpose of the arbitrator is to determine disputed interpretation of terms actually found in the Agreement specified in Article XII definition of a "grievance", or to determine disputed facts upon which the application of the Agreement depends. The arbitrator shall, therefore, not have authority, nor shall he/she consider it his/her function, to decide any issue not submitted or to so

interpret or apply the Agreement 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. Past practices of the parties in interpreting or applying terms of their agreement may be relevant evidence, but shall not be used so as to justify, or result in, what is in effect a modification (whether by addition or by detraction) of the written terms of this Agreement. The arbitrator shall not make any decision or award, or fail to make any decision or award, merely because in his/her opinion such decision or award is fair or equitable. The arbitrator shall have no power to grant an award on any grievance based on facts or actions which occurred before or after the term of this Agreement.

Section 5

The findings of the arbitrator which are within the limits herein prescribed shall be final and binding on all parties.

Section 6

All fees and expenses of the arbitration, excluding the costs of a reporter's transcript if either party requests the same, shall be shared equally by the parties (50% District, 50% Association). Each party shall bear the expense of the presentation of its own case.

Section 7

The arbitrator may hear and determine only one grievance at a time unless both parties mutually agree to consolidate similar grievances.