ARTICLE 5: GRIEVANCE AND ARBITRATION

A. Definitions

1. A grievance is hereby defined to mean a dispute concerning the meaning, interpretation, or application of any of the provisions of this Agreement, except where this Agreement states otherwise.

2. A grievant is the person or persons making the claim.

3. A party in interest is either the person or persons making the claim and any person who might be required to take action or the person or persons against whom action might be taken in order to resolve the claim.

1. Grievance: The term “grievance” refers to any complaint brought forward by an impacted employee in a MCEA unit position, or by MCEA, concerning any matter relating to the employment of the impacted employee or employees; the effect or interpretation or a claim of a breach of a collective bargaining agreement; or, any claimed violation, misinterpretation or misapplication of any law, rule, or regulation affecting conditions of employment. A grievance is also defined as any claimed violation or misapplication of an Employer policy that impacts the working conditions of those in MCEA unit positions.

2. Class Action Grievance: A class action grievance shall mean a grievance with a specific issue(s) as described above, which affects more than one (1) employee in an MCEA unit position at more than one (1) MCPS worksite. An individual unit member may not file a class action grievance.

3. Grievant: The Grievant is the moving party, making a claim as described above. Individual employees are permitted to file level one grievances;
however, MCEA functions as the sole moving party and makes all determinations concerning grievances once level one has been exhausted.

B. Purpose and Objectives

1. The purpose of this procedure is to secure, at the lowest possible administrative level, equitable solutions to the problems that may occur in the administration of the Agreement. Both parties agree that these proceedings will be kept informal and confidential at all levels of the procedure.

2. Nothing herein contained shall be construed as limiting the right of any unit member having a grievance to discuss the matter with any appropriate member of the administration. Such grievance may be adjusted without intervention of the Association, providing that the adjustment is not inconsistent with the terms of this Agreement. The Association shall be notified and/or provided the right to be present any time an adjustment is made as a result of the informal level discussion to ensure consistency with the Agreement.

3. The Association can grieve on matters with respect to the general application of any clause in the Agreement to the unit as a whole or with respect to association rights and privileges as set forth in Article 3.

1. The Employer and MCEA recognize and endorse the importance of addressing employee concerns through the negotiated grievance procedure promptly, and, whenever possible, informally. Use of the informal resolution process is optional, and not a prerequisite for filing a grievance. If an employee or MCEA chooses to attempt to informally resolve a workplace concern, an MCEA representative may be present at this informal level of the procedure.

2. The purpose of this article is to provide an orderly method for the disposition and processing of grievances.
3. MCEA will submit all Contract-related matters to the negotiated grievance procedure for final disposition, may elected to use unfair labor practice procedures concerning Contract-related issues, which may occur in the day-to-day administration of the agreement.

4. Nothing herein contained shall be construed as limiting the right of any unit member having a grievance to discuss the matter.

5. The Association can grieve on matters with respect to the general application of any clause in the Agreement to the unit as a whole or with respect to association rights and privileges as set forth in Article 3.

6. The parties agree to implement a joint training program on the grievance process, grievance assessment, grievance resolution and contract interpretation. The purpose of such training is to encourage grievance resolution at the lowest level possible. The parties will meet within 60 days to confirm details of such training to include but not limited to program design, process and implementation.

C. Procedure

1. Since it is important that grievances be processed as rapidly as possible, the number of days indicated at each level should be considered as a maximum and every effort should be made to expedite the process. The time limits specified may, however, be extended by mutual agreement between the superintendent and the Association and shall be stated in writing.

In the event a grievance is filed at such time that it would not normally be processed through all the steps in this grievance procedure by the end of the school year, the parties shall attempt to process such grievance prior to the end of the school year.
1. Grievances may be initiated by employees at the unit, but only at level one and employees are not permitted to represent themselves after level one has been completed. Grievances may also be initiated by MCEA on behalf of employees.

   a. Where an employee has initiated a grievance and does not elect to be represented by MCEA at level one, MCEA will have a right to be present at all formal and informal discussions between the employee and the Employer concerning the grievance.

   b. The Employer will resolve all grievances presented under such circumstances consistent with the terms and conditions of this Agreement.

   c. MCEA will be provided a copy of the grievance response one full duty day before it is given to the grieving employee.

2. The parties jointly recognize the importance of processing grievances as rapidly as possible, and the time limits indicated at each level can only be extended by mutual written agreement. If the Employer fails to meet the time limits indicated at each level for two consecutive levels, the grievance will be sustained.

2. 3. No grievance shall be initiated more than 15 duty days either after the cause thereof has occurred or been discovered, or 15 duty days after the parties have exhausted informal resolution attempts.

3. The grievant may be represented by himself/herself at the informal level or may request that MCEA (MCEA staff or building representative) be his/her representative. The grievant shall be represented by an MCEA representative at Level One and above.

4. Forms for filing grievances, serving notices, taking appeals, making reports and recommendations, and other necessary documents will be prepared jointly by the
superintendent and the Association, and will be given appropriate distribution so as to facilitate operation of the grievance procedure.

5. Grievance meetings and/or hearings shall normally be scheduled before or after the unit member's duty day unless otherwise agreed to by the parties.

6. When it is necessary for a party in interest to attend a grievance hearing during the school day, the Association will assume one-half the cost of a substitute if one is employed.

6. The parties shall develop a set of procedural guidelines for the conduct of arbitration and grievance hearings.

D. Informal Process

A unit member with a grievance will first discuss it with his/her principal or immediate supervisor. The objective of this first meeting will be the informal resolution of the matter. An Association representative may be present at this informal level of the procedure and if chosen as his/her representative under Article 5, Section C.3, shall represent the grievant.

E. Formal Process

D. Negotiated Grievance Process

A. Class Action Grievances

1. MCEA shall file any intended class action grievance with the MCPS Office of Employee Engagement and Labor Relations, and the Superintendent shall then rule on the grievance in writing within ten duty days, and shall submit the decision by email to the designated MCEA representative. If the Superintendent chooses to designate another party to rule on matter, MCEA will be informed within five duty days, and that designee shall respond to the grievance within 10 duty days from the date the grievance was filed.
2. Once the grievance response is received or ten duty days have elapsed without a response to the grievance, MCEA shall be able to, at its election, invoke arbitration in the grievance, appealing it to level four.

3. The time limits described above can only be modified by the written agreement of both parties.

E. Employee(s) Grievances

1. Level One—If the grievance cannot be resolved informally, the grievant will be required to present to the principal or other appropriate official his/her grievance in writing on the proper form within 15 duty days after the cause thereof has occurred or been discovered. If the grievance is not presented within the above-stated time limit, the grievance shall be deemed to be waived and shall not be subject to further discussion or appeal. The principal shall have five duty days to respond.

1. Level One: A grievance is required to be presented in writing to the Grievant’s immediate supervisor, such as a school principal or other appropriate party, using the Grievance Form designed by the parties.

a. The immediate supervisor will have five duty days to issue a written response to the grievance.

b. If a written grievance response is not received within five duty days, MCEA has the right to appeal the matter to the next level.
2. Level Two—If the aggrieved person is not satisfied with the written disposition of his/her grievance at Level One, he/she may file the grievance in writing with the Association within 10 duty days after the grievance was presented. Within five duty days after receiving the written grievance, the Association will review the merits of the grievance and counsel the grievant, referring the grievance to the appropriate associate/community superintendent if the Association determines that the grievance is meritorious. If the grievance is not referred to the appropriate associate/community superintendent within the above-stated time limit, the grievance shall be deemed to be waived and shall not be subject to further discussion or appeal. Within seven duty days after receiving the written grievance from the Association, the associate/community superintendent will meet with the aggrieved person for the purpose of resolving the grievance. The associate/community superintendent shall render a decision in writing within five duty days of the meeting held with the aggrieved person.

2. Level Two: If the issue remains unresolved, MCEA may elect to appeal the grievance to level two within 10 duty days after the grievance response was received, or 10 duty days after the level one timeframe elapsed without a response. The level two grievance will be filed with the second-line supervisor, such as the Area Director or the appropriate Associate Superintendent.

   a. Within seven duty days, the second-line supervisor will contact MCEA to schedule a grievance hearing. The second-line supervisor shall render a decision in writing within five duty days of the grievance hearing.

   b. The written decision shall be shared with MCEA within five duty days of the decision being rendered.

3. Level Three—If the aggrieved person is not satisfied with the disposition of his/her grievance at Level Two, he/she may again file the written grievance with
the Association within five duty days after a decision by the aforesaid administrator or 10 duty days after the grievance was referred to the aforesaid administrator. Within five duty days after receiving the written grievance, the Association will review the merits of the grievance and counsel the grievant, referring the grievance to the superintendent if the Association determines that the grievance is meritorious. If the grievance is not referred to the superintendent within the above-stated time limit, the grievance shall be deemed to be waived and shall not be subject to further discussion or appeal. Within 10 duty days after receiving the written grievance from the Association, the superintendent shall review the record and render a decision in writing. The superintendent, or designee, may request information directly from any party of interest in the grievance if he/she felt that additional information was needed. Any such written information shall be shared with the other party.

3. Level Three: If the issue remains unresolved, MCEA may elect to appeal the grievance to level three within 10 duty days after the grievance response was received, or 10 duty days after the level two timeframe elapsed without a response.

   a. If this is the second time that MCPS has failed to issue a written response to the grievance, MCEA’s grievance is duly sustained, and the requested relief will be provided to the impacted employee or employees.

   b. To appeal the grievance to level three, MCEA will contact the Office of Labor Relations and request an appeal with the office.

   c. Within ten duty days, MCPS will reach out to MCEA to schedule a grievance hearing, and a written decision will be rendered within ten duty days of the grievance hearing.

   d. This written decisions will be shared with MCEA within five duty days of the decision being rendered.
4. Level Four/Arbitration:

a. If the aggrieved person is not satisfied with the disposition of his/her grievance at Level Three, he/she may, within five duty days after a decision by the superintendent, request in writing that the Association submit his/her grievance to arbitration. If the grievance is not submitted to arbitration within the above-stated time limit, the grievance shall be deemed to be waived and shall not be subject to further discussion or appeal. If any question arises as to whether a grievance involves the interpretation, meaning, or application of any of the provisions of this Agreement, such question will be ruled upon by the arbitrator before hearing the case.

A. If the issue remains unresolved, MCEA may elect to invoke arbitration and appeal the decision to level four.

a1. MCEA will have 10 duty days after the grievance response was received, or 10 duty days after the level three timeframe elapsed without a response to notify the Office of Labor Relations in writing to request to appeal the grievance to arbitration.

a2. The parties shall agree to a standing panel of arbitrators who are mutually acceptable and who agree to be readily available. Cases appealed to arbitration shall be submitted to one of those arbitrators mutually agreed to by the parties, on a rotating basis.

c. If agreement on selection of a panel arbitrator cannot be reached, then, within 10 duty days after such a written notice of a failure to agree, a request for a list of arbitrators may be made to the American Arbitration Association by either party. The parties will then be bound by the rules and procedures of the American Arbitration Association.
a3. The parties will work together to fill arbitrator vacancies on the panel. Either party can strike one arbitrator from the mutually determined panel each calendar year should they choose to do so.

a3a. To decide to add an arbitrator to the panel, the parties will request for a list of arbitrators from the American Arbitration Association (AAA) and will alternate striking arbitrators from the panel until they arrive at one.

B. The cost for obtaining a list of arbitrators from AAA will be split evenly amongst the parties.

d. The arbitrator so selected will confer with the representatives of the superintendent and the Association and hold hearings promptly and will issue his/her decision not later than 10 days from the date of the close of hearings, or, if oral hearings have been waived, from the date the final statements and proofs are submitted to him/her. The arbitrator’s recommendations will be in writing and will set forth his/her findings of fact, reasoning, and conclusions on the issues submitted. The arbitrator will be without authority to make any recommendation beyond the terms of this Agreement. The recommendation of the arbitrator shall be binding upon both parties.

3. The arbitrator shall hold hearings promptly and will issue a decision not later than 10 days from the date of the close of hearings, or, if oral hearings have been waived, from the date the final statements and proofs are submitted to him/her, absent a contrary agreement with the parties. The arbitrator’s recommendations will be in writing and will set forth findings of fact, reasoning, and conclusions on the issues submitted. The recommendation of the arbitrator shall be binding upon both parties.

e. The costs for the services of the arbitrator, including per diem expenses, if any, and actual and necessary travel and subsistence expenses, and the cost of any hearing room, will be borne equally by
5. The following procedures apply to all arbitrations:

a. The parties will each pay one-half (1/2) of the regular fees and expenses including travel expenses of the arbitrator hearing a case unless the grievant substantially prevails as determined by the arbitrator.

b. In such cases, the Employer shall pay seventy-five percent (75%) of the regular fees and expenses including travel expenses of the arbitrator hearing the case.

c. Arbitration hearings will be held on the Employer’s premises or at any site agreed to mutually by the parties.

d. Consistent with the right to assign work, the grievant, the grievant’s representative and all bargaining unit employees who are called as witnesses will be excused from duty to participate in the arbitration proceedings without loss of pay or charge to annual leave, and will be excused up to four hours from duty to prepare for the arbitration hearing.

   d1. The employer will be responsible for locating and providing coverage during this time.

e. It shall be the sole discretion of the arbitrator to determine who may testify, and what evidence will be admitted to the record.

6. Except in emergency situations, the arbitrator will not have the authority to keep the record open in order to hear testimony of additional witnesses or to accept additional evidence. Each party has the responsibility and obligation to produce, its witnesses on the day of the hearing.
7. The arbitrator shall have the authority to make all arbitrability and/or
grievability determinations. The arbitrator shall make grievability and/or
arbitrability determinations prior to addressing the merits of the original
grievance.

8. Procedural arbitrability issues, such as timeliness and failure to adequately
state a claim, must be raised by the Employer no later than the last grievance
response.

9. The arbitrator’s decision shall be final, binding and precedential, and the
arbitrator shall possess the authority to make an aggrieved employee whole to
the extent such remedy is not limited by law, including the authority to award
back pay and interest, reinstatement, retroactive promotion where appropriate,
and to issue an order to expunge the record of all references to a disciplinary,
adverse if appropriate. For the purposes of this Agreement, “precedential”
means an interpretation of this Agreement that is binding on the bargaining unit
to the extent not contrary to law and the interpretation may be given due
weight by an arbitrator hearing subsequent related matters.

10. The arbitrator will set the date of the hearing with the concurrence of the
representatives of the parties. Once that date has been established, a party may
unilaterally request that the arbitrator postpone, delay or reschedule the
hearing. If the arbitrator elects to do so, the requesting party shall pay any and
all fees. The hearing will normally begin at 8:30 a.m. and end at 5:00 p.m.,
unless mutually agreed otherwise.

11. Bargaining history may not be used in an arbitration hearing unless the party
proposing to use it has notified the other in writing at least thirty (30) days prior
to the hearing. If a party gives notice of intent to use bargaining history, the
other party may use it without providing notice. The parties should attempt to
stipulate the bargaining history of each side and bargaining history testimony may be provided via the telephone.

12. The strict rules of evidence are not applicable, and the hearing shall be informal.

13. The parties have the right to present and cross examine witnesses and issue opening and closing statements.

14. The arbitrator may exclude testimony or evidence which is determined to be irrelevant or unduly repetitious.

15. Testimony shall be under oath or affirmation.

16. The arbitrator may draw an appropriate inference when either party fails to present facts or witnesses that the arbitrator deems necessary and relevant. If information was requested under the Contract or Statute as part of the grievance, but the information was not provided, the failure to provide the requested information will be joined as an issue in the arbitration case. The Union may ask the arbitrator to address the issue before the hearing or as part of the arbitration decision, unless the Union has previously filed a ULP over the failure to provide the information. However, nothing in this Article entitles either party to discovery, unless such discovery is authorized by law (excluding FOIA requests).

17. The Employer will make employees available as witnesses when requested by the Union. If the Employer determines it is not administratively practicable to comply with the Union’s request, and the arbitrator determines the employee’s testimony is relevant, then the hearing may be postponed. However, the Union may agree to submit an affidavit in place of the direct testimony of the employee.
F. Voluntary Pre-Arbitration Mediation

Either party may request grievance mediation when a case is appealed to arbitration. If both parties agree, the Federal Mediation and Conciliation Service's Grievance Mediation Program may be used. If the mediation does not result in a mutually satisfactory resolution, the case may proceed to arbitration.

G. Miscellaneous Hearing Officers

1. Hearing Officers will receive training designed jointly by MCPS and MCEA regarding their role and regarding hearing protocol before they can serve as Hearing Officers in either grievances or administrative complaints.

2. The parties recognize the importance of the Hearing Officer’s objectivity and neutrality. Hearing Officers are precluded from talking with the parties to the grievance about the grievance outside of a hearing, or collecting evidence from either party outside of the hearing. The parties recognize an absolute prohibition on ex parte contact. No evidence will be collected after the conclusion of a grievance hearing, as, at the end of each level of the grievance, the evidentiary record has closed.

3. MCPS and MCEA will collaboratively establish a rotating panel of Hearing Officers for the purpose of hearing grievances in an effort to efficiently, effectively and equitably move grievances forward.

FH. Anti-Reprisal Declaration

1. No reprisals of any kind shall be taken by any party to this Agreement against any party in interest or any grievant.

2. All documents, communications, and records dealing with the processing of a grievance will be filed in a separate grievance file and will not be kept in the personnel file of any of the participants.
3. All decisions rendered at all levels of the grievance procedure will be in writing, setting forth the decision and the reasons therefore, and will be transmitted promptly to all parties in interest and to the Association MCEA.

4. The grievant shall be permitted to present evidence and witnesses and to cross-examine all witnesses whenever a hearing is held. When a unit member is not represented by the Association MCEA, the Association MCEA will have the right to be present and to state its views at all stages of the grievance procedure.

5. The Association may submit any intended class action grievance to the superintendent or designee and the superintendent shall rule, within five duty days, if any other administrator has the authority to resolve the grievance. If no other administrator has the authority to resolve the grievance, the superintendent or designee shall, within 10 duty days from the initial submission of the grievance, respond or the Association shall be free to seek arbitration of the grievance.

6. The parties shall develop a set of procedural guidelines for the conduct of grievance hearings.

**H. I. Administrative Complaint Procedure**

The administrative complaint procedure currently in use to process and resolve unit member complaints pertaining to matters not covered by this Agreement shall be continued.

**Employees can elect to use the administrative complaint procedure to address complaints, or can elect to use the negotiated grievance procedure but not both. Forum selection occurs at the time the employee files a grievance at level one, or files an administrative complaint.**