

## **NEGOTIATIONS UPDATE**

### **Escondido Union High School District & CSEA**

**November 1, 2017**

#### **District Team:**

1. Olga West, Assistant Supt, HR
2. Mike Simonson, Asst. Supt., Business
3. Charan Kirpalani, Dir. HR
4. Jerry Conradi, Legal representative

#### **CSEA Team:**

1. Bev Berk, President
2. Charlene Marie, Bargaining Chair
3. Rachel Macias
4. Julio Macias
5. Adam Chavez
6. Chris North
7. Janett Roberts
8. Michael Breyette, CSEA Sr. Labor Representative

CSEA and the District began bargaining this year on September 20, 2017 on AB119 New Employee Orientations. This assembly bill was signed in to law in June of 2017. The reopeners by both parties for the 2017-18 school year were presented at the governing board meetings in September and October. We look forward to working together and beginning a collaborative bargaining process.

November 1, 2017 was the second negotiation session for AB 119, the new legislation for new employee orientations. We started with introductions of each team as there were new participants on the CSEA team. We set the agenda topics for the day. This included AB119 counter proposals and an initial reopener proposal by CSEA.

CSEA wanted clarification on the District proposal presented previously. They then caucused at 9:50 a.m. to write their counter proposal on AB119 as well as their proposal on their reopeners. We returned together at 11:00 a.m. CSEA reviewed their proposals for new employee orientations (AB119). They then presented their proposal on their reopeners. The District asked clarifying questions. The District will review each and provide a response at the next session.

We set dates for the next negotiation sessions.

Nov. 29, 2017	8:00 a.m.-3:00 p.m.
Dec. 11, 2017	12:00 p.m.-4:00 p.m.

#### **Documents included:**

Current contract language on Orientation for New Employees  
FAQs on AB119  
District Proposal presented 9/20/2017  
CSEA Proposal presented 9/20/2017

19. Day

Except where indicated otherwise, a 'day' is any day in which the district office is open for business.

9/20/17  
should  
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lang.

**B. HIRING AND PROMOTION OF EMPLOYEES:**

**1. Job vacancies not filled through Article II.C (transfer) shall be filled according to the following procedure:**

a. Announcement of Vacancies:

The District will electronically send notices of all job vacancies for positions covered by this Agreement to all classified employees and each job site to be posted on bulletin boards in prominent locations. The vacancy announcement shall be posted on Edjoin/or equivalent for a minimum of six (6) working days during which time employees may complete an application on Edjoin/or equivalent for the vacancy.

b. Content of Vacancy Announcement:

The job vacancy notice shall include: the job title, a summary of duties and responsibilities, minimum qualifications, assigned job site, number of hours per day including expected starting and ending times, days per week, months per year, salary range and the deadline for applying for the position.

c. Selection Process:

Paper screening shall include bonus points for current employees according to years of service with the District (1-5 years = 5 points; 6-10 years = 10 points; 11 plus years = 15 points). All candidates, both current employees and new potential applicants, must achieve a qualifying score on the appropriate screening examination for the open position. In the event a vacancy is not filled by an in-house applicant, the Association may request a response in writing from the District as to why the position was not so filled.

d. Voluntary Demotion Applications:

An employee may apply for a position at a lesser range than the current position he or she currently holds and the employee will be considered in the regular selection process as defined in Sections 'a' and 'c' above.

e. Notification of Positions During Summer Recess:

Employees wanting to be notified of openings announced during Summer Recess may submit a written request to the Human Resources Department prior to the end of the school year.



**f. Orientation for New Employees**

The CSEA Union president or designee shall be notified of the dates for the District's new employee orientations. CSEA shall be accorded an opportunity to make a brief presentation at the conclusion of the District's orientation session.

9/20/17

background info

## FAQs on AB 119 – California's New Employee Orientation Law (Part I)

July 24, 2017 at 10:06 am

By now you've heard of the passage of AB 119 which mandates union access to new employee orientations. There is a lot of information out there about this bill, but I know that there are still many questions. I'm going to try to cover some of the most frequently asked questions in a series of posts.

**When do I need to begin complying with AB 119?** Now. Most bills take effect on January 1<sup>st</sup>. However, AB 119 is part of the "Budget Bill" (Cal. Const. , Art IV, §12) which means it takes effect immediately.

**What does my agency need to do?** AB 119 places an affirmative burden on public agencies to immediately begin doing three things (Gov. Code sections 3555-3559):

1. Providing 10 days' advance notice of any new employee orientation (Gov. Code §3556);
  2. Providing to the union the name, job title, department, work location, work, home, personal cellular telephone number, personal email address, and home address of any new employee within 30 days of hire or by the first pay period of the month following hire (Gov. Code §3558); Oct.
  3. Providing to the union the information in #2 every 120 days for all employees (Gov. Code §3558).
- If you haven't already, then your agency should put into place procedures to comply with these three requirements.

AB 119 also has a requirement that, *upon request*, the parties bargain over the structure, time, and manner of access of the union to a new employee orientation. But again, this is only upon request.

**How does the notice requirement work if my agency's orientations are individualized and not in a group setting?** The bill leaves such details for negotiation between the parties. Getting clarification on this issue *might* be one reason a public agency would want to request to bargain over these issues affirmatively, as opposed to waiting for a request from the union. But in the meantime, my advice is to comply by providing the union ten day's advance notice of all orientations, even individualized employee orientations. This assumes that the individualized employee orientation is the only one conducted by the agency. If the agency conducts a group orientation and also an individualized one, I think giving notice of the group orientation is sufficient.

**What if my agency's orientation is exclusively online, and conducted at the leisure of the employee?** The bill expressly provides that online employee orientations are covered, but beyond that, the bill leaves details of compliance subject to negotiation between the parties. Again, getting clarification on this *might* be one reason a public agency would want to request to bargain over these issues affirmatively. But until then, my advice is to comply by providing the ten day's advance notice if you know the date of the online orientation. What if the online orientation is done by the employee at his or her leisure? For example, the employee is given a link and told to complete the orientation within a certain amount of time. My advice is to try to comply as much as possible. In this example, you can notify the union that a new employee has been hired, that the employee has been told to complete online orientation, and remind the union that the employer is willing to meet and confer over further details upon request.

**With respect to providing home addresses, email addresses, and telephone numbers, what about an employee's right to privacy?** The bill makes mention that the provision of such information shall be consistent with the privacy requirements in *County of Los Angeles v. Los Angeles County Employee Relations Com.* (2013) 56 Cal.4<sup>th</sup> 905. In that case, the California Supreme Court held that under the MMBA, a union has a presumptive right



to employee contact information such as home addresses and telephone numbers. (Notably, personal email addresses and personal cell phone numbers were not an issue in the *Los Angeles* case.) The Court also held that with respect to the right of privacy, the balancing of interests favors disclosure to the union. But the Court did allow that the balancing of interests may “in some cases, tip in favor of privacy when an individual employee objects and demands that home contact information be withheld.” So what’s the bottom line? I think that there can be an opt-out process put in place to prevent some of this information from being provided to the union if the employee objects. The opt-out process, or at least some aspects of it, will likely be subject to negotiations with the union. It’s a delicate balance and an area where legal counsel should probably be consulted.



This entry was posted in Legislation, News, PERB News. Bookmark the permalink.

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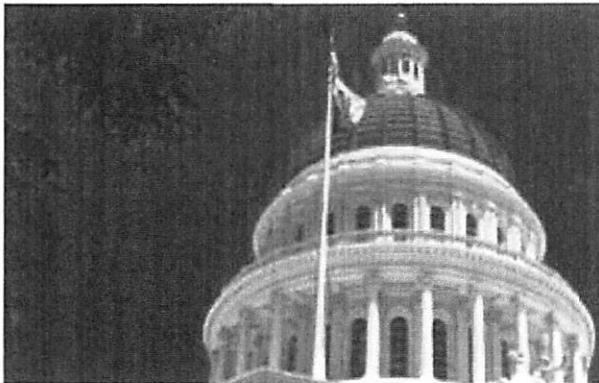
350 Sansome St., Suite 300, San Francisco, CA 94104

555 Capitol Mall, Suite 600, Sacramento, CA 95814

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# Legislature Passes Employee Orientation Bill (AB 119) – What Do Public Employers Need to Know?

By Guest Author on July 5, 2017



*This post was authored by Ashley Bobo*

On Tuesday, June 27, 2017, Governor Brown signed Assembly Bill 119 into law. The law applies to public agencies including cities, counties, special districts, trial courts, state civil service agencies, the Los Angeles County Metropolitan Transportation Authority, public schools (K-12), community colleges, California State Universities, Universities of California and school districts. AB 119 adds Section 3555 to 3559 to the California Government Code to amend the labor relations statute to the jurisdictions listed above.

Additionally, it amends Sections 6253.2 and 6254.3 of the California Public Records Act. The law requires that 1) an exclusive representative (e.g., recognized public employee unions, employee associations) be provided the right to access new employee orientations and to compel collective bargaining processes related to the structure, time and manner of such orientation access and 2) exempts public employees' personal email addresses from disclosure under the California Public Records Act. The law went into effect immediately upon the Governor's signature.

## 1. Exclusive Representative Access to New Employee Orientation

AB 119 states that "the ability of an exclusive representative to communicate with the public employees it represents is necessary to ensure the effectiveness of state labor relations statutes, and the exclusive representative cannot properly discharge its legal obligations unless it is able to meaningfully communicate through cost-effective and efficient means with the public employees on whose behalf it acts. In most cases, that communication includes an opportunity to discuss the rights and obligations created by the contract and the role of the representative, and to answer questions."

The law requires each public employer to provide the exclusive representative mandatory access to the new employee orientations of the employees it represents.

## Questions and Answers Regarding the New Law:

**Q: What is a “new employee orientation”?**

A: “New employee orientation” means the onboarding process of a newly hired public employee in which employees are advised of their employment status, rights, benefits, duties and responsibilities, and any other employment related matters. It does not matter which medium the orientation takes place in, whether it is in person, online, or through other mediums.

**Q: Who is considered a newly hired public employee?**

A: The definition includes any new employee regardless of whether they are being hired to a permanent, temporary, full time, part time, or seasonal position. However, the right to access new employee orientations is limited to bargaining unit employees represented by that exclusive representative only.

**Q: Does the employer need to provide the exclusive representative with any information about the newly hired public employees before the orientation?**

A: Yes. Within 30 days of hiring the employee, the employer must provide the representative with the name, job title, department, work location, work, home, and personal cellular telephone numbers, personal email addresses on file with the employer, and the home address of the new hire. The employer must also provide the representative with a list of all of that information for all employees in the bargaining unit at least every 120 days unless more frequent or more detailed lists are required by an agreement with the exclusive representative.

**Q: How far in advance does an employer need to let the exclusive representative know about the orientation?**

A: Employers are required to provide the exclusive representative with at least 10 days notice of the orientation. Employers do not have to give 10 days notice of an orientation if there is an urgent need that is critical to the employer’s operations that was not reasonably foreseeable. The purpose of this notice period is to give the employer and representative an opportunity to negotiate over the details of the new employee orientation.

**Q: In what way does an employer have to provide the exclusive representative access to new employee orientations?**

A: The new law requires that a public employer and the exclusive representative negotiate over the “*structure, time, and manner*” of the access of the exclusive representative to a new employee orientation. Generally speaking, this would encompass the following issues:

- At what time during the employee orientation an exclusive representative will be provided access to new employees (beginning, middle, end, etc.).
- How much time the exclusive representative is provided to meet with the new employees.
- The content of what the exclusive representative will discuss with new employees.
- Whether new employees are required to attend the part of the orientation with the exclusive representative.
- How to address exclusive representative access where new employee orientations include employees from multiple bargaining units.

**Q: What happens if the employer and the exclusive representative can not come to an agreement about the structure, time, and manner of access to the representative to the new employee orientation?**

As If an agreement is not reached either party can make a demand to participate in binding interest arbitration. Binding interest arbitration under this bill provides that the dispute be submitted to a third-party arbitrator who is then authorized “to approve either party’s proposal in its entirety, to approve a proposal using both the employer’s and exclusive representative’s final proposals, or to modify the proposals by the parties.” The decision of the arbitrator is binding. The parties will equally share all costs of arbitration.

## **2. Exemption of public employees’ personal email addresses from disclosure under the California Public Records Act**

The fundamental principle of the Public Records Act is that governmental records shall be disclosed to the public, upon request, unless there is a specific reason not to do so. Even though the law strongly emphasizes the need for the public to have access to governmental records, the law still recognizes that an individual’s privacy is of utmost importance. Where personal or intimate information is extracted from a person employed by the government (e.g., a government employee or appointee, or an applicant for government employment/appointments a precondition for the employment or appointment), a privacy interest in such information is generally recognized.

The Public Records Act already allows agencies to withhold the home addresses, home telephone numbers, personal cellular telephone numbers, and birthdates of all employees of a public agency. This information is not considered public records. The new law now adds employees’ personal email addresses to the list of information that may be withheld by the employer unless the employee uses the email address to conduct public business, or necessary to identify a person in an otherwise disclosable communication.

Given that the California Supreme Court, in *City of San Jose v. Superior Court (Smith)*, recently held that communications by a public employee concerning public business on a personal account, such as email, is subject to disclosure under the California Public Records Acts, it is important that public agencies develop proper policies and procedures regarding the use of personal devices by employees and officials to conduct public business. In addition to developing strong policies, agencies should also provide training to their employees on these policies and document the training.

*AB119 adds Section 3555 to 3559 to the California Government Code and amends Sections 6253.2 and 6254.3 of the California Public Records Act.*

*If you have any questions about this issue, please contact our Los Angeles, San Francisco, Fresno, San Diego, or Sacramento office.*

Liebert Cassidy Whitmore  
California Public Agency Labor & Employment Blog  
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## FREQUENTLY ASKED QUESTIONS – ASSEMBLY BILL 119

Q: What does this bill require public agencies to do?

A: Assembly Bill (AB) 119 requires public agencies to provide unions with access to new employee orientation sessions. It also requires public agencies to provide unions with names and contact information of new employees in bargaining unit positions.

Q: What was the reason for this bill?

A: Unions representing public employees sought this legislation because there is at least one case pending before the United States Supreme Court that could result in the Court ruling that union dues are voluntary, which could greatly reduce revenues for public employee unions. Currently, public employees who opt out of union membership are often required to pay service fees to cover the cost of negotiations and other union-provided services.

Q: When does the bill go into effect?

A: The bill went into effect immediately after the Governor signed it on June 26, 2017.

Q: Does the bill require public agencies to conduct face-to-face orientations?

A: No. Orientations may be conducted in person, online or by other means.

Q: Does the bill spell out when and how access must be provided?

A: No. The structure, time and manner of access are all subject to negotiations. However, the bill does, in the absence of an alternate agreement, require public agency employers to give unions at least 10 days' notice before holding an employee orientation, except in specific instances where there is "an urgent need critical to the employer's operations that was not reasonably foreseeable."

Q: When should negotiations over access take place?

A: Negotiations must take place between the effective date of the bill and the expiration of a union's contract.



Q: What happens if we can't reach an agreement with the union on the structure, time and manner of access?

60 Day Request  
A: If any dispute that occurs during negotiations over access is not resolved within 45 days after the first meeting of the parties or 60 days after the initial request to negotiate, either side may make a demand for compulsory "interest arbitration."

Q: What is "interest arbitration?"

A: "Interest arbitration" is one in which the arbitrator has the authority to determine the terms that will resolve the dispute, i.e. dictate the terms of the resolution to the parties.

Q: Couldn't unions demand to bargain their role in employee orientations prior to AB 119?

A: Yes, unions could bargain their role in employee orientations prior to AB 119 taking the position that such participation was necessary in order to fulfill their representational rights under the EERA and because it impacted terms and conditions of employment.

Q: My agency hires new employees continuously, which will make it difficult to provide the notice and access the bill requires. How can I comply?

A: The bill permits public agencies and unions to reach an agreement that differs from the requirements of the new law. For example, public agencies could seek to negotiate an arrangement with their labor unions to provide access via a video aired at all in-person orientations or provided along with other orientation materials if orientations are conducted online.

Q: What information does the bill require public agencies to provide to unions?

A: Public agencies must provide the union a new employee's name; job title; department; work location; work, home and personal cell phone numbers; personal email addresses on file with the agency; and home address, within 30 days of hire or by the first pay period of the month following the hire, even if the employee previously worked for the district. The bill also requires public agencies to provide the same information about all bargaining unit members every 120 days, though public agency employers can negotiate agreements with their unions to provide more detailed lists of information or different intervals for providing information about new employees and bargaining unit members.

Public agency administrators may wish to work with their human resources departments to find out whether the generation of these lists can be automated to save time and ensure consistent compliance.

Q: What if an employee doesn't want to stay to hear from the union?

A: The law only requires public agency employers to provide unions with access to new employees and to information on new employees and bargaining unit members. It does not require that an employee stay to hear from the union. This would be the employee's choice.

Q: What happens if the union believes the public agency is violating the law?

A: Disputes may be submitted to the Public Employment Relations Board (PERB).

9/20/17

District Proposal  
September 20, 2017

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE ESCONDIDO UNION HIGH SCHOOL DISTRICT ("DISTRICT")**  
**AND**  
**CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION**  
**CHAPTER 219 ("CSEA")**

**NEW EMPLOYEE ORIENTATION**  
**(AB119)**

**1. DISTRICT NOTICE TO CSEA OF NEW HIRES**

- a. The District shall provide at least 10 days' written notice to CSEA of any scheduled orientation meetings for new unit members.

**2. EMPLOYEE INFORMATION**

- a. "Newly Hired Employee" or "New Hire" means any new employee to the District who is hired into a CSEA bargaining unit position.
- b. The District shall provide CSEA with contact information on file with the District for the new hires within 30 days of hire or by their first pay period of the month following their hire.
- c. This contact information on file with the District shall include the following items, unless the unit member has requested the information be withheld to provide personal privacy\*.
  - i. Name
  - ii. Job title
  - iii. Department
  - iv. Work location
  - v. Home address\*
  - vi. Home phone number\*
  - vii. Cell phone number\*
  - viii. Personal email address\*

- d. The District shall provide CSEA contact information for each unit member twice each school year on October 31 and March 31.

### **3. ORIENTATION FOR NEW EMPLOYEES**

- a. CSEA will be notified of the dates for the District's new employee orientations. CSEA will be accorded an opportunity to make a brief presentation at the conclusion of the District's orientation session.
- b. Currently, there are two new orientation sessions scheduled in the school year. For the 2017-18 school year only, we will offer two additional classified orientation sessions. This will allow us to evaluate the needs in the coming year.
- c. At times during the school year when no group orientation meetings for new unit members are scheduled, the District shall provide a packet prepared by CSEA to new unit members containing contact and introductory information about CSEA.

### **4. RELEASE TIME**

- a. Release time for CSEA members to attend new employee orientations will be in accordance with Article XII, Section C.1.f.

The foregoing is agreed to by the parties hereto.

#### **ON BEHALF OF THE DISTRICT**

Dr. Olga E. West  
Assistant Superintendent, Human Resources

\_\_\_\_\_

Date \_\_\_\_\_

#### **ON BEHALF OF CSEA**

Charlene Marie  
CSEA Bargaining Chair

\_\_\_\_\_

Date \_\_\_\_\_

Bev Berk  
CSEA President

\_\_\_\_\_

Date \_\_\_\_\_

CSEA proposal  
9/20/17

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION

and its  
CHAPTER # 219

**Memorandum of Understanding**  
(AB 119)

This Memorandum of Understanding (hereinafter, "MOU") is entered into by and between the Escondido Union High School District (hereafter, "District") and the California School Employees Association and its Escondido Chapter #219 (hereinafter, "Union")

**1. DISTRICT NOTICE TO CSEA OF NEW HIRES**

- a. The District shall provide CSEA notice of any newly hired employee, within ten (10) days of date of hire, via electronic mail which will include the following information:
  - i. Full Legal Name
  - ii. Date of Hire
  - iii. Classification
  - iv. Site

**2. EMPLOYEE INFORMATION**

- a. "Newly Hired Employee" or "New Hire" means any employee, whether permanent, full time, part time, hired by the District, and who is still employed as of the date of new employee orientation. It also includes all employees who are or have been previously employed by the District and whose current position has placed them in the bargaining unit represented by CSEA. For those latter employees, for purposes of this article only, the "date of hire" is the date upon which the employees' employee status changed as such that the employee was placed in the CSEA unit.
- b. The District shall provide CSEA with contact information on the new hires. The information shall be provided to CSEA electronically in Excel format, via a mutually agreeable secure FTP site or service, on the last working day of the month in which they were hired. This contact information shall include the following items, with each field in its own column:
  - i. First Name;
  - ii. Middle Initial;
  - iii. Last Name;
  - iv. Suffix (e.g. Jr., III);
  - v. Job Title / Classification;
  - vi. Department;
  - vii. Primary Worksite Name;
  - viii. Work Telephone Number;
  - ix. Home Street Address (Incl. Apartment #);



**CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION**

**and its  
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**Memorandum of Understanding  
(AB 119)**

- x. City;
- xi. State;
- xii. ZIP Code (5 or 9 Digits);
- xiii. Home Telephone Number (10 Digits);
- xiv. Personal Cellular Telephone Number (10 Digits);
- xv. Personal Email Address of the Employee;
- xvi. Last Four Numbers of the Social Security Number;
- xvii. Birth Date;
- xviii. Employee ID
- xix. CalPERS Status
- xx. Hire Date

This information shall be provided to CSEA regardless of whether the newly hired employee was previously employed by the District.

- c. Periodic Update of Contact Information: The District shall also provide CSEA with a list of all bargaining unit members names and contact information above on the last working day of September, January, and May. The information shall be provided to CSEA electronically in Excel format, via a mutually agreeable secure FTP site or service, on the last working day of the month in which they were hired. This contact information shall include the following items, with each field in its own column:
  - i. First Name;
  - ii. Middle Initial;
  - iii. Last Name;
  - iv. Suffix (e.g. Jr., III);
  - v. Job Title / Classification;
  - vi. Department;
  - vii. Primary Worksite Name;
  - viii. Work Telephone Number;
  - ix. Home Street Address (Incl. Apartment #);
  - x. City;
  - xi. State;
  - xii. ZIP Code (5 or 9 Digits);
  - xiii. Home Telephone Number (10 Digits);
  - xiv. Personal Cellular Telephone Number (10 Digits);
  - xv. Personal Email Address of the Employee;
  - xvi. Last Four Numbers of the Social Security Number;
  - xvii. Birth Date;
  - xviii. Employee ID

**CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION**

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(AB 119)**

- xix. CalPERS Status
- xx. Hire Date

**3. NEW EMPLOYEE ORIENTATION**

- a. "New Employee Orientation" means the onboarding process of a newly hired public employee, whether in person, online, or through other means or mediums, in which employees are advised of their employment status, rights, benefits, duties, and responsibilities, or any other employment related matters.
- b. The District shall provide CSEA mandatory access to its new employee orientations. CSEA shall not receive less than ten (10) days' notice in advance of orientation, except that a shorter notice may be provided in a specific instance where there is an urgent need critical to the District's operations that were not reasonably foreseeable.
  - i. In the event the District conducts a group orientation, CSEA shall have up to (1.5) hours of paid release time for two (2) CSEA representatives, including the Chapter President or designee. The CSEA Labor Relations Representative may also attend the orientation.
  - ii. In the event the District conducts one-on-one orientations with new employees, CSEA shall have thirty (30) minutes of paid release time for one (1) CSEA representative to conduct the orientation session. The CSEA Labor Relations Representative may also attend the orientation.
- c. The District shall include the CSEA membership application (and a CSEA provided link for an electronic application where applicable), in any employee orientation packet of District materials provided to any newly hired employee. CSEA shall provide the copies of any CSEA literature/membership applications to the District for distribution.
- d. The orientations session shall be held on District property, during the workday of the employee(s), who shall be on paid time.
- e. During the CSEA's orientation session, no District manager or supervisor, or non-unit employee shall be present.

**4. GRIEVANCE PROCEDURE**

**CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION**

**and its  
CHAPTER # 219**

**Memorandum of Understanding  
(AB 119)**

- a. Any alleged violation, misinterpretation, or misapplication of the terms of this agreement shall be subject to the grievance provisions of the Collective Bargaining Agreement, except as follows:
  - i. Only CSEA and its Chapter 219 can grieve this agreement.
  - ii. Any alleged violation, misinterpretation, or misapplication of the terms of this agreement shall be resolved in expedited arbitration before a mutually agreeable arbitrator. If the parties are unable to mutually agree within thirty (30) days, a list will be requested from SCMS for the parties to alternatively strike names until one remains.
  - iii. The arbitrator's decision shall be final and binding on the parties.
  - iv. The cost of the arbitrator shall be borne equally between the parties.

**5. DURATION**

- a. This agreement shall become effective July 1, 2017, and shall continue in effect up to and including June 30, 2020, and renew automatically if not reopened in writing by either party prior to renewal.

Signed this 20th day of September, 2017.

**CSEA**

**DISTRICT**

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