

ARTICLE 7. GRIEVANCE PROCEDURES

The intent of these grievance procedures is to resolve faculty-to-management issues that deal with matters other than sexual harassment, discrimination, and disabilities except for the provision in Article 9M and Article 35. Procedures for dealing with sexual harassment are found in the relevant Government Code and Education Code 200 et seq., and are stated separately in Board of Trustees' Policy 4027. Procedures for dealing with discrimination and harassment due to disabilities are stated separately in Board of Trustees Policy 4029.

7A. Definitions and Provisions

7A.1 Grievance

A grievance is a formal allegation by a unit member who has been adversely affected by an alleged violation or misapplication of ~~the~~ a specific provision or provisions of this Agreement.

7A.2 Grievant

A grievant is any unit member adversely affected by an alleged violation or misapplication of the specific provision(s) of the Agreement. A grievant may be the Faculty Association in a claim relating to the rights of the Faculty Association contained in this Agreement. The Faculty Association may also file class action grievances as provided in [Section 7A.16](#).

7A.3 Day

A "day" is a calendar day.

7A.4 Immediate Supervisor

The "immediate supervisor" is a manager who directly supervises ~~and has direct jurisdiction over~~ a faculty member.

7A.5 Automatic Deadline Extensions

Any deadline date which falls on a Saturday, Sunday or holiday will automatically be extended to the next ~~following~~ day on which the colleges and/or District Office are open for business.

7A.6 Scheduling of Grievance Meetings

Every effort will be made to schedule meetings for the processing of grievances at times which will not interfere with the regular work day of the participants. If any grievance meeting or hearing must be scheduled during the work day, any unit member required by either party to participate as a witness, grievant or representative of the Faculty Association in such meeting or hearing shall be released from regular duties without loss of pay for a reasonable amount of time. The prompt resolution of grievances is encouraged.

7A.7 Representation

Any grievant has the right to be represented at any step in this procedure by the Faculty Association. However, any grievant may at any time before Level IV, present their grievances and have such grievances adjusted without the intervention of the Faculty Association.

7A.8 Deadlines

Failure of the grievant(s) to adhere to the time deadlines shall mean that the grievant(s) is/are satisfied with the previous decision and waive the right to further appeal. In the event that any of the College or District managers fail to respond within the timelines specified at any level, it shall be deemed denied on the last day that the response would have been due, and the grievant(s) may proceed to the next level of appeal within the prescribed timelines. The Faculty Association President and Chancellor or designee may extend any time deadline by mutual written agreement.

Absence of either the grievant(s) or the manager due to illness or emergency constitutes a basis for extension of the timelines. In addition, the parties may agree to grant extensions under other circumstances.

7A.9 Grievance Records

All documents dealing with the processing of a grievance shall be filed in the District's Office of Human Resource Services separately from the Personnel Files of the participants and each grievance shall be given an annual number (~~97-1, 97-2, etc.-~~; (2012-1, 2012-2)). All records regarding the grievance shall be treated as confidential.

7A.10 Non-retaliation

There shall be no retaliation against any grievant(s) for utilizing these grievance procedures. The fact that a unit member has filed a grievance(s) shall not be considered in personnel decisions nor in any recommendations for job placement, nor in decisions of awarding continuous contracts to probationary or Contract members of the bargaining unit.

7A.11 Amendment of Grievance

A grievance may be amended ~~at any time~~ prior to the filing of a request for arbitration, as long as: a) the amendment is based on evidence not known at the time the original grievance was filed; b) the amendment is submitted within twenty-eight (28) days of learning this new information; and c) as long as the new allegations relate directly to the allegations contained in the original Level II written grievance submitted by the grievant(s).

The filing of an amendment shall not have an effect on the timeline or grievance level.

7A.12 Meeting Attendees

Unless it is explicitly stated in these procedures, each party (District and Faculty Association) shall inform the other party, as soon as possible, about who will be attending the meetings in Levels I through III. No attorney for either the District or the Faculty Association shall attend any of the meetings in Levels I through III.

7A.13 Time Line Suspensions

Regarding time limits and deadlines, unless otherwise agreed to by the parties to the grievance, the clock stops during academic year recesses and Summer Session and begins on the first day that the faculty member returns to work.

7A.14 Grievant: Conformance to Original Decision of Supervisor

Until final disposition of a grievance takes place, the grievant is required to conform to the original decision of his/her immediate supervisor.

7A.15 Appropriate Grievance Step by Mutual Agreement

By mutual agreement of the grievant and the Chancellor or his/her designee, a grievance may be moved to an appropriate higher level.

7A.16 Class Action Grievances

Class action grievances may be filed by the Faculty Association as set forth in this Section. It is the intent of this Section to express the agreement that all grievant(s) are required to satisfy all time deadlines and other procedural requirements of this Agreement, including but not limited to, the Faculty Association as the grievant, an individual grievant, or an individual covered within a class action grievance.

- a. If the same alleged violation of this Agreement is made by more than one (1) unit member, then either the Faculty Association or the one (1) unit member may file a class action grievance on behalf of him/herself and all other grievants in the class. The class action grievance shall be subject to all time deadlines and other procedural requirements of this Agreement. The unit members who wish to be joined in the class shall be required to satisfy all time deadlines and other procedural requirements of this Article applicable to individual grievants until such time as when they are identified in writing by the Faculty Association to the District to be a member of the class covered by the class action grievance.
- b. When the Faculty Association files a class action grievance, the District shall provide appropriate requested information to the Faculty Association to help the Faculty Association, identify in writing, to the District the unit members who make up the class covered by the class action grievance. Specifically, if the Faculty Association identifies a class of unit members to the District (e.g., by Department or hire date), ~~than~~ then the District is obligated to provide the names to the Faculty Association. Failure of the District to provide such names shall not result in exclusion of individuals

from the class so long as the affected individual unit member or members have otherwise satisfied all time deadlines and other procedural requirements of this Agreement by (1) filing an individual grievance satisfying such requirements, or (2) as a result of being a member of the class covered by an individual or Faculty Association initiated class action grievance which satisfies such requirements.

- c. The District shall have the burden of proof before the arbitrator to prove that any time deadlines or other procedural requirements of this Agreement have not been satisfied.
- d. The final decision shall apply to all unit members properly joined in the class and to the respondents.

7A.17 Action of Central District Authority

If a grievance alleged by the Faculty Association arises from the action of a central District authority, the Faculty Association and the Chancellor or his/her designee may mutually agree to initiate such a grievance at Level III of the grievance procedure.

7A.18 Access to District Records

The District shall not deny the Faculty Association access to those District records and documents to which the Faculty Association is entitled under the California Educational Employment Relations Act set forth at California Government Code Sections 3540 et seq.

7A.19 Forms

Forms for processing grievances shall be prepared by the District and Faculty Association. The forms shall be printed by the District and made available in the District's Office of Human Resources Services Department.

See Appendices: [Grievance: Tracking Form](#), [Grievance: Level II Form \(President\)](#), [Grievance: Level III Form \(Chancellor\)](#), [Grievance: Level IV Form \(Arbitration\)](#).

7B. Procedure for Grievances

7B.1 Level I - Informal Resolution

Within twenty-eight (28) days of the time the aggrieved person(s) knows of the event or condition which gave rise to the grievance, the aggrieved shall meet to discuss the grievance issue with the immediate supervisor and/or other managers involved. During this meeting, the grievant shall state the specific Article and Section of this Agreement which he/she alleges was violated or misapplied. The aggrieved may have a designated representative of the Faculty Association present as a participating observer at the meeting. The objective is to resolve the matter informally without a permanent record.

The Faculty Association and the District encourage the parties to a potential grievance to resolve their differences informally before entering the formal Levels of this procedure. A decision at Level I shall be provided within fourteen (14) ~~ten (10)~~ working days of the Level I meeting.

7B.2 Level II – College President or Designee, ~~and the Grievance Committee~~

- a. If the aggrieved is not satisfied with the disposition at Level I and wishes to pursue the grievance, the grievant aggrieved must submit a written grievance to the appropriate College President or designee within ~~thirty-five (35)~~ twenty-one (21) days following the informal discussion provided at Level I. If the grievant is assigned to the District Office, he/she must submit the Level II grievance to the administrator directly above the manager who heard the grievance at Level I. This document shall contain clear, concise statements of the grievance, the alleged violation with specific reference to Article, Section, and page of this Agreement, the results of the informal meeting, and the remedy desired by the grievant(s).

Concurrently, the President of the Faculty Association may appoint a Grievance Committee of from one to three unit members to investigate the grievance. The written results of this investigation, if it occurs, will be given to the College President or designee along with the written grievance submitted by the grievant(s).

- b. Within ~~twenty-one (21)~~ fourteen (14) days of the receipt of the written grievance the College President or designee shall meet with the aggrieved grievant, the Grievance Officer, and one member of the Grievance Committee (if one was created) who will be selected by the Grievance Officer, in an effort to resolve the grievance. A second person selected by management may also attend this meeting. ~~A note taker can be present at this meeting for each side.~~ Notes may be taken but no recording device will may be used.
- c. A written decision by the College President or designee (or administrator directly above the manager who heard the Level I grievance, if the grievant is assigned to the District Office). The written decision shall include the ~~which includes~~ stated reasons for said decision shall be presented to the grievant(s), aggrieved person(s), the Grievance Officer, and the Faculty Association President or designee within fourteen (14) days following the meeting ~~at Level II.~~ with the grievant and the Grievance Officer or designee.

7B.3 Level III – Chancellor or Designee

If the grievant aggrieved is not satisfied with the resolution of the grievance at Level II and wishes to pursue the grievance further, the aggrieved must within seven (7) days of receipt of the written decision of Management in Level II, appeal the decision in writing to the Chancellor or designee. The written appeal

shall include a copy of the original grievance and a clear and concise statement of the reason for the appeal.

~~request a meeting. In addition to the grievant, this meeting will include the Grievance Officer, Faculty Association President or designee and the Chancellor or designee. It may also include a member of the Level II Grievance Committee selected by the Grievance Officer and a second person selected by Management. The meeting shall take place no more than ten (10) days after the Chancellor has been notified. A note taker can be present at this meeting for each side. No recording device shall be used. The Chancellor or designee shall communicate a decision, in writing, to the aggrieved person(s), the President and Grievance Officer of the Faculty Association within ten (10) days following the meeting.~~

A meeting shall take place within twenty (20) days after the Chancellor has received the written appeal. In addition to the grievant, the meeting will include the Grievance Officer, the Faculty Association President or designee, the Chancellor or designee, the grieved person, if applicable, and a second member selected by Management, if desired. Notes may be taken but no recording devices shall be used.

The Chancellor or designee shall communicate a decision, in writing, to the grievant(s), and the President of the Faculty Association or designee within fifteen (15) days following the meeting. The written decision shall include stated reasons for the decision.

7B.4 Level IV - Arbitration

If the Faculty Association is not satisfied with the disposition of the grievance at Level III, it must, within twenty (20) days of receipt of the written decision of the Chancellor or designee in Level III, send a written notice to the Chancellor that the matter is being submitted for arbitration.

- a. Either the Faculty Association or the District will request the California State Conciliation Service to provide a list of seven (7) names of persons experienced in hearing grievances in the public schools. The arbitrator shall be selected within fourteen (14) days following receipt of the list, by alternately striking names until only one (1) name remains. The party with the right to first strike shall be determined by a flip of the coin. In the event that the arbitrator is unable to serve, the parties shall request an arbitrator through the American Arbitration Association (A.A.A.) or may select a mutually agreed upon individual from the original list of seven (7) submitted by C.S.C.S.
- b. The parties shall each bear the burden of one half of the Arbitrator's cost, and shall each bear their own separate legal and research costs.

- c. The hearing shall proceed under the Voluntary Labor Rules of the A.A.A. or under the Expedited Rules of the A.A.A. if agreed to in advance by both parties.
- d. The Arbitrator will hear evidence on issues of arbitrability and the substantive issues at the same arbitration hearing.
- e. After an investigation and hearing, it shall be the function of the arbitrator as empowered except as those powers are limited by the provisions of this Article and the applicable A.A.A. rules, to make a decision in cases of an alleged violation(s) or misapplication of the specific Article(s) and Section(s) of this Agreement.
- f. The arbitrator shall have no power to add, subtract from, disregard, alter or modify any of the terms of this Agreement and shall not consider or include issues in the decision that are not directly involved in the case as submitted. The arbitrator shall not deprive the District or the Faculty Association of any rights expressly or implicitly reserved herein.
- g. The arbitrator shall make no retroactive award to the grievant(s) which would pre-date the effective date of this Agreement. The arbitrator will be without the power or authority to make any decision which would require the commission of an act prohibited by law.
- h. The award or decision of the arbitrator shall be final and binding on all parties subject to the arbitration. ~~All decisions involving the discipline (including the discharge) of any employee shall be governed by the Article in this Agreement entitled "Discipline".~~
- i. The arbitrator's award shall be in writing and shall set forth his/her determination of the issue(s), findings of fact and conclusions.