

## Article 5

### GRIEVANCE PROCEDURE

The Faculty Association and the Board recognize that the prompt resolution of differences is essential to sound employer-employee relations. To this end faculty and administrators should seek to resolve issues directly. If satisfactory resolution is not reached through this means, the faculty employee should pursue resolution in accordance with the following procedures. (See Appendix N2 for flowchart of the process.) Grievance is a faculty right under the Government Code and the exercise of grievance rights shall not, in itself, result in adverse consequences.

#### 5.1 Conciliation

- 5.1.1 A conscientious effort shall be made to resolve differences related to the *Agreement* between faculty employees and the Board at the lowest possible administrative level before a grievance may be filed.
- 5.1.2 To encourage informal and confidential resolution of disputes, the Faculty Association shall maintain a conciliation committee to assist faculty employees in resolving potential grievances.
- 5.1.3 Evidence of either party's conduct or statements during conciliation efforts between the faculty employee and the Board shall be inadmissible in any subsequent grievance proceeding.

#### 5.2 Definitions

- 5.2.1 "District representative" means an administrator designated by the Chancellor to represent the Board at all stages of a grievance proceeding.
- 5.2.2 "File" means to deliver either personally or by certified mail, return receipt requested. A document is "filed" on the day it is received.
- 5.2.3 "Grievance" means a written statement by a faculty employee alleging that he or she has been wronged by the Board's violation, misinterpretation, or misapplication of specific provisions of the *Agreement*. "Grievance" also means a written statement by the Faculty Association alleging that the Association itself has been wronged by the Board's violation, misinterpretation, or misapplication of specific provisions of the *Agreement*. "Grievance" also means a written statement by the Faculty Association signed by an individual faculty employee alleging that the employee has been wronged by the Board's violation, misinterpretation, or misapplication of specific provisions of the *Agreement*.
- 5.2.4 "Notice" means a Notice of Grievance on a form (Appendix N1) agreed upon by the Association and the Board.
- 5.2.5 "School day" means any day when the colleges are in session during the regular academic year.

- 5.2.6 “Shall” is mandatory; “may” is permissive.
- 5.2.7 “Working day” means any day during which the central administrative offices of the District are open for business.

### 5.3 Step 1 - Filing a Formal Grievance

- 5.3.1 Who May File. A grievance may be filed by any of the following individuals as long as he or she is not alleging a violation, misinterpretation or misapplication previously and unsuccessfully grieved:
  - 5.3.1.1 Any faculty employee who, at the time of filing, is a member of the bargaining unit;
  - 5.3.1.2 Any former faculty employee who was a member of the bargaining unit during the preceding academic quarter; or
  - 5.3.1.3 An officer of FA who has been authorized to file the grievance on behalf of the Faculty Association by its Executive Council; or
  - 5.3.1.4 An officer of FA who has been authorized by an individual faculty employee to file the grievance on behalf of the employee.
- 5.3.2 Representation. Upon the filing of the grievance and thereafter, the responding administrator may be accompanied by a District representative who shall advise and may act for the administrator. A grievant may be advised and represented by:
  - 5.3.2.1 Representatives of FA;
  - 5.3.2.2 A representative of his or her own choosing other than FA; or
  - 5.3.2.3 Himself or herself.
- 5.3.3 Filing and Time Limits on Filing. A formal grievance shall be initiated by the filing of a written Notice of Grievance on a form (Appendix N1) agreed upon by FA and the Board. The notice shall:
  - 5.3.3.1 Contain a concise statement of the violation, misinterpretation, or misapplication alleged, the circumstance or action of discovery of the circumstance or action;
  - 5.3.3.2 State the remedy sought;
  - 5.3.3.3 State the name, address, and telephone number of the grievant’s representative, if known; and
  - 5.3.3.4 Include the grievant’s name, address, home and work telephone numbers, and signature.

- 5.3.4 The notice shall be filed with the Vice Chancellor of Human Resources with copies to FA and the College President within 50 school days after the grievant discovered or reasonably could have discovered the circumstance or action giving rise to the grievance. Regardless of the date of the discovery, however, a notice shall not be timely if it is filed more than one year after the circumstance or action giving rise to the grievance. Timelines are specified in Appendix N2.
- 5.3.5 Upon receipt of a Notice, the Vice Chancellor of Human Resources shall designate a District representative.

#### 5.4 **Step 2 - Internal Review**

- 5.4.1 Within five school days of the filing of the Notice, the College President shall schedule a meeting with the grievant, the responding administrator and their representatives. This meeting, to afford the parties a reasonable opportunity to be heard, shall occur within twenty school days of the filing of the notice. The nature of the Internal Review is informal, that is, the grievant and the responding administrator shall present their respective views, and the President may question the parties and/or their representatives. The President may also seek additional information about the grievance from any source. Using his or her professional judgment, the President shall make a good faith effort to resolve disputes related to the *Agreement* to the extent practicable and consistent with legal statutes and regulations.
- 5.4.2 Within seven school days following the meeting with the grievant, the President shall make a decision regarding the grievance. The decision shall be in writing and shall be sent to the grievant with copies to the responding administrator, FA, and the Vice Chancellor of Human Resources.
- 5.4.3 The President may designate another employee of the District to conduct the internal review and render a decision under this section, but the President's designee shall, to the extent practical, be someone who has had no previous involvement in the events upon which the grievance is based.

#### 5.5 **Step 3 - Request for Arbitration**

- 5.5.1 If the President denies the grievance or fails to make a timely decision, the grievant may request in writing that FA submit the grievance to arbitration. FA shall have the exclusive right to submit the decision to arbitration. If FA declines to submit the decision to arbitration, the grievant shall have exhausted his or her administrative remedies and is free to pursue other remedies that may be available.
- 5.5.2 If FA chooses to exercise its right to submit the grievance to arbitration, it shall file with the Vice Chancellor of Human Resources a written request for arbitration signed by the grievant and an authorized representative of FA. The request for arbitration shall be filed within ten school days following the date of the President's decision or, in the event the President failed to make a timely decision, within ten school

days following the date on which the President's decision was due under Section 5.4.2.

- 5.5.3 Failure to file a request for arbitration within the time specified in Section 5.5.2 shall terminate the grievance.
- 5.5.4 Unless FA and the Board mutually agree upon an arbitrator within five school days of the filing of a request for arbitration, a representative of FA and a representative of the Board shall jointly request the California State Conciliation Service to submit a list of seven available arbitrators.
- 5.5.5 Within ten school days of the receipt of the list of arbitrators from the State Conciliation Service, the representatives of FA and the Board shall alternately strike names from the list until only one name remains. That person shall serve as arbitrator. A toss of a coin shall determine which representative strikes the first name from the list.
- 5.5.6 The designated representatives shall immediately send a notice of selection to the State Conciliation Service, requesting an arbitration hearing as soon as possible. The notice of selection shall be accompanied by a copy of the *Agreement*, a copy of the Notice of Grievance, and the Notice of Intent to Consolidate Grievances, if applicable.
- 5.5.7 The arbitrator shall establish as early a hearing date as is practical; provided, however, that the arbitrator shall notify the Vice Chancellor of Human Resources and FA of the date, time, and place of the hearing at least twenty school days in advance of the date set for the hearing.
- 5.5.8 If the arbitrator fails to establish a hearing date that is within 90 calendar days of the date of his or her selection, either FA or the Board may request the selection of a new arbitrator pursuant to Sections 5.5.4 through 5.5.8.

## 5.6 **Arbitration Hearing**

- 5.6.1 It shall be the duty of the arbitrator to hold a hearing for the purpose of considering arguments and evidence submitted by parties to the grievance and forming a decision that will conclude the grievance. Irrelevant and unduly repetitious evidence shall be excluded.
- 5.6.2 Except as otherwise provided herein, the voluntary labor arbitration rules of the American Arbitration Association shall govern the arbitration proceedings.
- 5.6.3 Attendance at the hearing shall be limited to:
  - 5.6.3.1 The grievant and the grievant's representative, if any;
  - 5.6.3.2 The responding administrator and a District representative if any;

- 5.6.3.3 The arbitrator;
  - 5.6.3.4 Witnesses, but only while giving evidence;
  - 5.6.3.5 An observer designated by the Faculty Association;
  - 5.6.3.6 The Vice Chancellor of Human Resources or an observer designated by the Vice Chancellor; and
  - 5.6.3.7 A court reporter, if any.
- 5.6.4 At the hearing, only the participants listed in Sections 5.6.3.1 through 5.6.3.4 may participate. The grievant and all necessary witnesses shall be provided release time for the time during which they are needed at the hearing.
- 5.6.5 The grievant shall demonstrate that he or she was wronged by the Board's violation, misinterpretation or misapplication of specific provisions of the *Agreement* as alleged in the grievance.
- 5.6.6 The arbitrator shall, as soon as possible after the conclusion of the hearing, prepare his or her report. The arbitrator's report shall consist of the arbitrator's detailed findings of fact and conclusions. If the arbitrator's findings and conclusions establish that the Board has violated, misinterpreted or misapplied specific provisions of the *Agreement* as alleged in the grievance, the arbitrator's decision shall enforce the terms of the *Agreement* so as to remedy the wrong to the individual grievant, but the arbitrator shall not add to, subtract from, or otherwise modify the terms of the *Agreement*. If the arbitrator's findings and conclusions establish that a monetary award is necessary to enforce the terms of the *Agreement* so as to fully remedy the wrong to the individual grievant, such an award (including interest, if appropriate) shall be made. The arbitrator shall refer all matters on which the arbitrator has no authority to rule, back to the parties without any decision.
- 5.6.7 The decision of the arbitrator shall be final and binding.
- 5.6.8 Each party shall bear the costs of preparing and presenting its own case in arbitration. All fees and expenses of the arbitrator shall be shared equally by FA and the Board.
- 5.7 General Provisions**
- 5.7.1 The time limits specified in these procedures are maximum limits and every effort shall be made to expedite the process. Notwithstanding this provision, any time limit specified in these procedures may be extended by written agreement of the parties.
- 5.7.2 The Notice of Grievance may be reasonably amended at any time prior to the filing of a request for arbitration, as long as the amendment relates directly to the allegations contained in the original Notice of Grievance.

- 5.7.3 Grievances may be consolidated by action of the Executive Council before Step 3 - Request for Arbitration as follows:
- 5.7.3.1 A Notice of Intent to Consolidate Grievances shall be sent to the Vice Chancellor of Human Resources within three school days of the Executive Council's action along with (each) grievant's written consent to consolidation.
  - 5.7.3.2 Unless the Board objects to the joining of grievances in a particular instance, the grievances shall be consolidated in all remaining steps of the grievance procedure.
  - 5.7.3.3 If the Board objects to a particular consolidation of grievances by the Executive Council, each grievance shall be treated separately at all steps of the grievance procedure preceding arbitration but shall be joined at arbitration if the arbitrator rules that consolidation is appropriate.
  - 5.7.3.4 In the event that the Board objects to a particular consolidation of grievances, the Vice Chancellor of Human Resources shall provide FA with a written statement of the Board's objections within three school days of receipt of the Notice of Intent to Consolidate Grievances.
  - 5.7.3.5 The final decision in a consolidated grievance shall be binding upon all parties to the grievance.
- 5.7.4 A grievance may be withdrawn at any time.
- 5.7.5 The parties may, by mutual agreement, proceed immediately to arbitration of any grievance.
- 5.7.6 All documents, communications and records dealing with the processing of a grievance shall be placed in a separate grievance file, except that any document or record removed from a personnel file or any other file for use in a grievance proceeding shall be returned to the original file.
- 5.7.7 FA may provide an annual summary, consistent with applicable confidentiality requirements, of its conciliation and grievance activities to the Chancellor and College Presidents.