



## **AP 7216 FACULTY GRIEVANCES**

### **Reference:**

Education Code Section 87610.1

### **General Introduction**

A grievance may arise from action that is perceived as having an adverse effect on a faculty member with respect to his/her individual rights, personnel benefits, working conditions, or tenure. Excluded from the grievance process are any matters where legal remedies take precedence or for which a specified method of review is provided either by law or by board policy.

### **Types of Grievances**

The District recognizes four distinct types of grievance. These are:

- I. General faculty grievance
- II. Grievance process for tenure decisions
- III. Grievance process related to the Faculty Association (FA) Agreement
- IV. Student grievance against faculty

This procedure addresses types I and II. For the grievance process related to the FA Agreement, see the most current version on the District's Human Resources website. For a student grievance against a faculty member, see AP 5530 Student Rights and Grievances.

A faculty member considering a grievance should meet with the Chief Human Resources Officer to obtain information about the faculty grievance policy and process. The Chief Human Resources Officer shall hear the minimal amount of information only to assist the faculty member whether to file a complaint and to distinguish between three procedures:

- 1) complaints concerning allegations covered by statute and for which a separate method of review is required;
- 2) complaints concerning the FA Agreement including delegated items listed in Article 13; or
- 3) complaints concerning allegations of a faculty member or administrator violating board policy, administrative procedure, or code of professional ethics as defined in the American Association of University Professors (AAUP) Statement of Professional Ethics.

An initial report to or consultation with the Chief Human Resources Officer is not considered an actual notification or filing of a complaint with respect to the timelines discussed later in this document (section Level II). A copy of the appropriate board policy shall be given to the inquiring faculty member by the Chief Human Resources Officer. The Chief Human Resources Officer shall recommend the faculty member consider informal



resolution before an actual complaint is filed unless unlawful conduct warrants immediate formal action.

In the case of complaints about alleged violations of the FA Agreement, the FA Grievance Officer shall provide information about the FA Agreement and process but shall not provide legal advice.

In the case of complaints about alleged violations not related to the IA Agreement, the Past President/President Elect of the Academic Senate shall hear information sufficient to assist the faculty member in determining whether to seek Level I informal resolution or to file a complaint. If the alleged violation concerns the Academic Senate President or the Past President/President Elect of the Academic Senate, the Vice President of the Academic Senate shall assist the faculty member.

All information pertaining to the grievance process (inquiry, resolution, appeal(s), final decision) is confidential. All participants in the grievance process at any level shall keep all information and proceedings confidential.

## **I. General Faculty Grievance and Resolution Process:**

### **Definitions**

A “grievance” is an allegation by a faculty member that his/her rights as a faculty member have been adversely affected by a violation of board policy, administrative procedure, and/or code of professional ethics as defined in the AAUP Statement of Professional Ethics.

A “grievant” is any faculty member who alleges that he/she has been adversely affected by a violation of his/her rights.

A “respondent” is the person against whom the grievance is filed.

A “day” is any day in which classes are in session and the central administrative office of the District is open for business. The timeline set forth may be extended by mutual agreement between the parties. A request by either party will not be unreasonably denied.

### **Level 1: Informal Efforts to Resolve Grievance**

Before a complaint is made under this grievance procedure, the complainant shall first attempt to resolve his/her grievance through an informal process that includes the following:

- A. Seek resolution through discussion with the person with whom he/she has a dispute.
- B. In the event that such an effort is unsuccessful, the faculty member is encouraged to seek mediation assistance from his/her department chairperson, area dean, and/or the Past President/President Elect of the Academic Senate.



- C. If A and B above do not successfully resolve the conflict and if the parties to the dispute and the administration agree that outside mediation might be helpful, the Chief Human Resources Officer will arrange for an independent mediator who is knowledgeable, qualified, and acceptable to all parties to be retained at no cost to District employee(s). Within 20 days of the conclusion of such a mediation process, the mediator will notify, in writing, the Academic Senate President that mediation has occurred and whether or not the complaint was successfully resolved. A copy of all written documents from the mediator will be sent to both grievant and respondent within 20 days of the conclusion of the mediation process.

### **Level 2: Formal Hearing**

In the case of a grievance against the Academic Senate President, the Past President/President Elect of the Academic Senate shall replace the Academic Senate President in the steps described below.

#### **A. Submission of Grievance Statement**

If the Level 1 process does not result in a resolution of the matter, the grievant may request the convening of a grievance hearing. This request shall be made within 30 days of the completion of Level I or within 90 days of the alleged violation. The grievant must submit a written statement to the President of the Academic Senate, with a copy to the person against whom the grievance is filed. The statement shall include:

1. The name(s) of the individual(s) against whom the grievance is being filed;
2. The time(s), date(s), and place(s) the alleged grievance occurred;
3. A description of the grievance including reference to the specific board policy, administrative procedure, and/or relevant section of the AAUP Statement of Professional Ethics that is alleged to have been violated, and how the alleged violation(s) has had an adverse effect on his/her individual rights;
4. The resolution/remedy requested; and
5. The signature of the grievant and date that the grievance is filed.

#### **B. Notification**

The President of the Academic Senate will notify the respondent within three days that a formal grievance was filed. The respondent may submit a rebuttal to the grievance statement. This rebuttal must be submitted in writing to the President of the Academic Senate within ten days of notification of the filed grievance. In extenuating circumstances the President of the Academic Senate may extend this deadline for up to ten additional days for a total of 20 days.

#### **C. Hearing Decision**

No sooner than 15 days, nor later than 25 days following the receipt of the grievance statement, the President of the Academic Senate, in consultation with the FA President and Chief Instructional Officer, will decide if the grievance



warrants a formal hearing. This decision will be based on whether a board policy, administrative procedure, or AAUP Statement of Professional Ethics has potentially been violated as alleged. In the event that the President of the Academic Senate, in consultation with the FA President and Chief Instructional Officer, affirms the grievance warrants a formal hearing, a Grievance Committee shall be formed.

A written notification of the decision will be sent by the Academic Senate President to the grievant and respondent within three days of the decision.

In the event the request for a hearing is denied, the grievant may appeal the decision to the Superintendent/President within ten days of notification of the decision. In the case of a grievance against the Superintendent/President, the grievant shall submit the appeal to the Chief Human Resources Officer. The appeal must include a rationale on which the appeal is based and evidence justifying the request. Upon receipt of the appeal, the Superintendent/President or Chief Human Resources Officer shall provide written notification to the respondent and the President of the Academic Senate within three days that the appeal has been received.

Within ten days of receipt of the appeal, the Superintendent/President or Chief Human Resources Officer, shall review the merits of the appeal and shall provide written notification to all parties of the decision to grant or deny the appeal. If the appeal is granted, a Grievance Committee shall be formed.

The decision of the Superintendent/President or Chief Human Resources Officer is final.

**D. Composition of the Grievance Committee**

If it is determined that a hearing will be conducted, the President of the Academic Senate shall convene the session, preside, and be responsible for the proper administration of the grievance procedures and only vote in the event of a tie. If the President of the Academic Senate is an interested party to the grievance, the Vice President of the Academic Senate shall be designated to process the grievance.

1. **Dispute Between Faculty:** Four faculty, but no one from the same department nor any two from the same division as either party to the dispute, selected by the President of the Academic Senate.
2. **Dispute Involving a Faculty Member and a Classified Employee:** Two faculty selected by the President of the Academic Senate and two classified employees selected by the California School Employees Association (CSEA) Chapter 289 President.
3. **Dispute Involving a Faculty Member and an Administrator/Manager:** Two faculty selected by the President of the Academic Senate and two



administrators/managers selected by the Advancing Leadership Committee (ALC) Chairperson.

4. **Dispute Involving a Faculty Member and a Member of President's Cabinet and/or a Confidential Employee:** Two faculty selected by the President of the Academic Senate and two employees selected by the affected group.
5. For all grievance committees, each party to the grievance shall have one peremptory challenge.
6. Before being appointed to the Grievance Committee, each member shall agree to treat all information received in the grievance process confidentially.

#### **E. Conducting the Grievance Hearing**

1. The President of the Academic Senate shall convene the session, preside, and be responsible for the proper administration of the grievance process. The hearing shall take place within 15 days of the announcement to convene a hearing. In extenuating circumstances the President of the Academic Senate may extend this deadline up to 20 days.
2. The President of the Academic Senate shall deliver a written copy of the grievance and any rebuttals together with notification of the time and place of the hearing to each party to the dispute and each member of the grievance hearing committee.
3. All parties to the grievance have the right to be present at the grievance proceedings. All parties to the dispute shall have the right to present statements, testimony, evidence, and witnesses. Each party shall have the right to be represented by counsel and/or a collective bargaining representative, and to question witnesses. In the event a party fails to appear without a valid explanation, the committee may proceed in his/her absence.
4. During the grievance process and afterward, members of the hearing committee shall maintain confidentiality. The hearing shall be closed to the public, unless both parties agree otherwise.
5. The burden of proof rests with the grievant, who must prove the following elements:
  - a. The facts as alleged by the grievant are true;
  - b. That a Board policy, administrative procedure, and/or relevant section of the AAUP Statement of Professional Ethics was violated by the respondent.
6. The committee shall hear testimony, examine witnesses, and receive evidence, following which the committee shall retire to closed session to



consider the evidence and reach a decision. Three members of the committee must concur in any decision reached by the committee. The President of the Academic Senate shall vote only in the event of a tie.

7. The decision of the committee must stipulate whether the allegations were substantiated or not substantiated, and if substantiated, render a decision regarding an appropriate remedy. The committee shall state its findings in writing to both parties and to the Superintendent/President within ten days of the conclusion of the grievance hearing. In the case of a grievance against the Superintendent/President, the committee shall send the findings to the President of the Board of Trustees.
8. Either party may appeal, in writing, the decision of the committee to the Superintendent/President, or in the case of a grievance against the Superintendent/President, the President of the Board of Trustees, within ten days of the notification of the Grievance Committee's decision. The written appeal must include the justification for the appeal, supporting evidence, and may not include additional evidence not previously presented to the Grievance Committee. If the appeal involves the application of the grievance process, the appeal must provide evidence of a violation of this faculty grievance procedure. Any appeal must be submitted to the Superintendent/President, the Academic Senate President, and the other party.

### **Level 3: Superintendent/President's Review of Appeal**

The Superintendent/President will independently review the appeal. The Superintendent/President shall then submit his/her decision regarding the appeal in writing to both parties and to the President of the Academic Senate within ten days of receiving the appeal.

Either party may appeal, in writing, the decision of the Superintendent/President to the Board of Trustees within ten days of the date of the notification of the Superintendent/President's decision. The written appeal must include the justification for the appeal, supporting evidence, and may not include additional evidence not previously presented to the Superintendent/President. If the appeal involves the application of the grievance process, the appeal must provide evidence of a violation of this faculty grievance procedure. Any appeal must be submitted to the Board of Trustees, the Superintendent/President, the Academic Senate President, and the other party.

In the case of a grievance against the Superintendent/President, substitute the President of the Board of Trustees in the review.

### **Level 4: Board of Trustees Review of Appeal**

The Board of Trustees shall, within 20 days of submittal of the appeal, render a final decision in closed session and notify both parties and the President of the Academic Senate in writing of the Board's decision within ten days following the decision.



## **II. Grievance Process Regarding a Tenure Decision**

### **Definitions**

A “grievant” is a probationary faculty member who alleges that he/she has been adversely affected by a violation of his/her rights in the conduct of the tenure review process.

A “day” is any day in which the central administrative office of the District is open for business. The timeline set forth may be extended by mutual agreement between the parties. A request by either party will not be unreasonably denied.

A “grievance” is a formal written allegation by a grievant that the District, in a decision not to offer a probationary faculty member a second or third contract or tenure, acted unreasonably or in a way that violated, misinterpreted, or misapplied its tenure review policies or procedures as per Educational Code Section 87610.1.

A “grievance” is also a formal written allegation that an evaluation finding is substantively in error and has resulted in the denial of a second or third contract or tenure.

“Arbitration” refers to advisory arbitration as well as final and binding arbitration.

### **A. Procedures for a Grievance Regarding a Tenure Decision**

1. A faculty member who has been denied a second or third contract or tenure may submit a written grievance to the President of the Academic Senate within ten days of the receipt of the letter informing him/her of the Board of Trustees’ decision. The grievance shall indicate the specific nature of the complaint and the remedy sought.
2. The Academic Senate President shall convene a Grievance Committee, preside, and be responsible for the proper administration of the grievance process. The Grievance Committee shall consist of two administrators appointed by the Superintendent/President who have not been involved in any of the faculty member’s evaluations and two faculty members appointed by the President of the Academic Senate.
3. The Grievance Hearing shall be conducted in accordance with Level 2 (E) above.
4. The Grievance Committee shall review the grievance and make a written recommendation to the Superintendent/President within ten days following conclusion of the Grievance Hearing. The Superintendent/President shall review this recommendation and communicate his/her decision in writing to the grievant and to the President of the Academic Senate within 20 days following receipt of the Grievance Committee’s recommendation.



5. If the grievant is not satisfied with the decision, the grievant may submit a request for advisory arbitration. This request shall be submitted in writing to the Superintendent/President within ten days following receipt of the written decision of the Superintendent/President.
6. The grievant and the Superintendent/President, or designee, shall attempt to agree upon an advisory arbitrator. If no agreement can be reached, they shall request the State Conciliation Service to supply a panel of five names of people experienced in hearing public education grievances. Each party shall alternately strike a name until only one name remains. The remaining panel member shall be the advisory arbitrator. The order of the striking shall be determined by lot.
7. The fees and expenses of the arbitrator and the hearing shall be borne equally by the District and the grievant. All other expenses shall be borne by the party incurring them. The District shall require the grievant to deposit adequate security to pay the grievant's share of the cost of advisory arbitration with the arbitrator or the Chief Human Resources Officer. In the event that the arbitrator finds in favor of the grievant, his/her share of the expenses shall be reimbursed by the District.
8. In a timely manner, the arbitrator shall hear evidence and submit a written statement of his/her findings and recommendations to the District and the grievant. This statement shall be advisory to the parties. The statement shall set forth the arbitrator's opinion and recommendation on the issues submitted, and it shall be submitted to the Board of Trustees for its determination.

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