

ARTICLE 22 GRIEVANCE PROCEDURES

Section 22.1. Purpose And Definitions

It is the purpose of the Article to outline a procedure for addressing grievances that may arise between the Federation and/or the "Grievant" and the District in order that they may be resolved in the most timely, amicable, and efficient manner consistent with meeting the individual and mutual interests of the parties concerned.

- (a) Grievance: An allegation that there has been a misinterpretation, misapplication, inequitable application, or violation of the terms, provisions, and conditions of the Agreement or of any "Policy of the District" to the extent that the grievant (whether an individual, a group, or the Federation), claims to have been affected adversely, treated unfairly, and/or treated inequitably.
- (b) Policy Of The District: A rule, regulation, or policy adopted by the Board of Trustees.
- (c) Grievant: An individual Faculty Member or a group of Faculty Members, an individual acting on behalf of Faculty Members having the same or similar grievance, or the Federation.
- (d) Mediation: The process by which an impartial third party (the State Mediator) assists the parties involved in a dispute to resolve their differences and arrive at a mutually agreeable settlement.
- (e) State Mediator: The person selected by the California State Mediation and Conciliation Service to implement the mediation process.
- (f) Working Days: Any day (Monday through Friday) that the District is open for business during the Fall and Spring Semester.
- (g) Dean: For purposes of this Article, the term "Dean" refers to the Dean of the Faculty Member's Division or the Dean of another Division, or higher official, or a director or manager, who is the responsible District officer involved in the acts which are the subject of the grievance.
- (h) Federation Representation: Upon their request, the Faculty Member shall be entitled to Federation representation during the grievance process. (See Article 21, ~~Section 2~~ regarding "Right to Representation" and Article 22, ~~Section 8~~ regarding "Federation and District Representation.")
- (i) Signed and dated: A grievant, the Federation, or District officer can substitute an email for a signed and dated paper document.
- (j) The District shall not retaliate against a faculty member, individually or as part of a group, who files a grievance.

Section 22.2. Exclusions

It is expressly understood that the following are specifically excluded:

- (a) Any grievance concerning the provisions of Article 1, Recognition,
- (b) Any grievance arising out of either the existence of, or the exercise of, any of the rights of the District as set forth in Article 2, Rights of the District, or any other rights of the District not expressly limited by the terms of this Agreement,
- (c) Any action taken pursuant to Article 6, ~~Section 3~~, except subsections (f), (g), and (h) and ~~subparagraph (8) of subsection (a) of Article 6, Section 3(a)(8)~~,
- (d) Any grievance arising out of Article 23, Work Stoppage, and
- (e) Such other exclusions, as may be included within this Agreement.

Section 22.3. Informal Grievance Meeting

Prior to filing a written Level 1 Grievance pursuant to Section ~~22.4~~ of this Article, the grievant shall initially discuss the grievance and the remedy sought in person with the appropriate Dean or immediate supervisor within twenty (20) working days after the circumstance or action giving rise to the grievance was discovered or reasonably could have been discovered. Both parties will informally discuss the grievance and make an earnest and good-faith effort to resolve the Informal Grievance. If the grievant is represented by a Federation representative, then an administrative representative may also be present at the Informal Grievance Meeting.

Section 22.4. Level 1 Grievance

- (a) If the grievance is not resolved at the Informal Grievance Meeting, and if the grievant desires to proceed further with the grievance process, then the grievant shall file in writing a Level 1 Grievance with the appropriate Dean or immediate supervisor within twenty (20) working days after the Informal Grievance Meeting. The Level 1 Grievance shall fully state the facts giving rise to the grievance and shall specify the provision or provisions of this Agreement alleged to have been violated or the Policy of the District alleged to have been violated and the remedy sought. The Level 1 Grievance shall be signed and dated by the grievant and shall include a statement that the Informal Grievance Meeting held on (specify date(s)) was not successful in resolving the grievance.
- (b) Upon receipt of the Level 1 Grievance, the Dean or immediate supervisor shall promptly forward a copy of the Level 1 Grievance to the Vice President of Human Resources, who shall in turn promptly forward a copy to the President of the Federation if the Federation has not been involved in the grievance until that point. The Dean or immediate supervisor will promptly schedule a meeting with the grievant to review and discuss the Level 1 Grievance. Such meeting will be scheduled to take place no later than five (5) working days from the date the written Level 1 Grievance is received by the Dean or immediate supervisor.
- (c) The Dean or immediate supervisor will provide the grievant with a written reply to the Level 1 Grievance, by email, within twenty (20) working days following the date of the meeting. Such reply will terminate this Level 1 Grievance procedure

Section 22.5. Level 2 Grievance

If the grievant is not satisfied with the decision at the Level 1 Grievance meeting, the grievant may, within twenty (20) working days of the receipt of the decision from Level 1

Grievance meeting, appeal the decision in writing to the appropriate Vice President. This statement of the Level 2 Grievance shall include a copy of the original grievance and appeal, the decisions rendered, and a clear, concise statement of the reasons for the appeal. A copy of the appeal and supporting documents shall be sent to the Vice President of Human Resources. Both the grievant and appropriate Vice President shall meet to discuss the merits of the grievance at the earliest convenient time. The Vice President shall provide a written decision to the grievant, by email, within ten (10) working days following the Level 2 Grievance meeting.

Section 22.6. Mediation

Any grievance that is not resolved through the Level 2 Grievance process may be pursued by the grievant within twenty (20) working days of the Vice President's response in accordance with the following procedures:

- (a) The grievant shall notify the President of the Federation and the Vice President of Human Resources in writing of the referral of the grievance to Mediation. Such notification shall be accompanied by copies of the grievance and written replies from all prior grievance levels.
- (b) (1) The Office of Human Resources will promptly, within five (5) working days, notify the office of the State Mediation and Conciliation Service of the need for the appointment of a State Mediator. This notification will copy both the grievant and the office of the Federation.

(2) The mediation conference will be held at the College and scheduled at a mutually convenient time per Section 22.9 of this Article.
- (c) The parties shall make a good-faith effort to resolve the issues identified in the grievance through the use of the State Mediator who will assist the parties in their efforts to achieve a mutually satisfactory resolution of the grievance. The State Mediator shall not issue any public statement of fact or opinion concerning the issues or positions under discussion. Similarly, in no instance shall the form or matter of these discussions, including settlement statements, positions, offers, or proposals made during the mediation process be revealed publicly by the parties nor referred to or introduced in any subsequent proceedings except with the written permission of the parties directly involved.
- (d) The mediation conference shall be informal in nature. There shall be no formal rules of evidence. No transcript of the conference, written or verbal, shall be made. Any additional ground rules pertaining to the conduct of the conference shall be agreed upon by the parties. The State Mediator shall attempt to assure that all pertinent and relevant facts, considerations, and concerns are revealed by the parties. The State Mediator shall have the authority to meet with the parties separately and in confidence (caucus), but will have no authority to compel a resolution of the grievance. Any of the parties may request the attendance of one or two other persons of his/her choice in order to provide assistance or support for that party. Witnesses may also be called by the parties, with the permission of the State Mediator in order to clarify the facts involved in the grievance.
- (e) If a satisfactory resolution of the grievance is achieved during the mediation conference, the parties shall sign a written statement to that effect and thus waive the right of the parties to any further appeal of the grievance, unless the terms and

conditions of the agreement are not adhered to. It is understood that a Federation representative has the right to attend the mediation conference.

- (f) If a satisfactory resolution is not achieved during the mediation conference: (1) For grievances involving alleged violation or misapplication of the Policy of the District, the process shall conclude at this point. For all other grievances, the arbitration process is available subject to the provisions in Section 22.13 (Arbitration) of this Article.

Section 22.7. Timely Statement

If a grievance is not processed by the grievant in accordance with the time limits set forth in the Article, the grievance shall be considered settled on the basis of the last decision made. If the District fails to respond to the grievance within the time limits set forth in this Article, the grievance shall be considered settled on the assumption that the remedy being sought by the grievant is acceptable to the District. The time limits specified in the Article are intended to be maximum limits and every effort should be made to expedite the settlement process. However, the time limits set forth in the Article may be extended by written mutual agreement between the District and the grievant or the District and the Federation, as the case may be, provided that the time limits shall be extended if any party to the grievance is incapacitated by virtue of causes beyond that party's control. Time limits will be tolled during non-instructional periods. The participants in a meeting or conference may agree in writing to adjourning and convening at a more convenient time and date.

Section 22.8. Federation and District Representation

The grievant shall be entitled to Federation representation at the informal conference, Level 1, Level 2, and Mediation. If the grievant desires such representation, the Federation shall inform the Dean, or Vice President, as the case may be, of the person selected by the Federation in order that the meeting or conference can be scheduled so as not to conflict with assigned duties.

Similarly, the District may invite an additional management employee to be present at all meetings and conferences. The District and the Federation may also designate a substitute for the person identified as the responsible District and Federation representative in this Article; however, that substitute must possess the authority to resolve the dispute.

Section 22.9. Scheduling

All meetings and conferences will be held during the normal business day and shall be scheduled, where possible, by the Dean, State Mediator, or Vice President at hours that do not conflict with the assigned duties of the Faculty Member(s) involved. In the event that the Dean, State Mediator, or Vice President schedules a meeting or conference which conflicts with the assigned duties of the affected Faculty Member(s), the Faculty Member(s) will not suffer any loss of pay as a result of attending such meeting or conference.

Section 22.10. Federation Grievance

If the Federation has a grievance concerning the application of the provisions of the Agreement or Policy of the District, it shall provide the grievance to the Vice President of Human Resources within ten (10) working days from the date the Federation

discovered or could have discovered the facts giving rise to the grievance. The Federation shall comply with the requirements set forth in this Article commencing with Section 22.3.

Section 22.11. Multi Party Grievance

If a group of Faculty Members has the same or similar grievance, one Faculty Member may file the grievance on that Faculty Member's own behalf as well as on the behalf of the other Faculty Members similarly situated. The Faculty Member who files such a class or group grievance shall first obtain the express consent by email of all the Faculty Members in the class or group who thereby authorize and give their specific approval for the Faculty Member to process the grievance on their behalf. Since all consenting Faculty Members shall be considered parties to the grievance and any settlement that is reached, all of the Faculty Members shall be consulted by the Faculty Member pursuing the grievance prior to the final approval of any agreement. Multi-party grievance meetings shall include no more than four (4) faculty, exclusive of Federation representation.

Section 22.12. Initial Salary Placement

A Faculty Member who has a grievance concerning initial placement on the salary schedule shall first discuss the issue with the Vice President of Human Resources (or designee), commencing with Section 22.3 of this Article, within sixty (60) working days from the beginning of employment, fiscal year or academic year, as the case may be.

Section 22.13. Arbitration

Grievances that are not resolved pursuant to this Article and which the Federation, in its sole discretion and exclusive right, desires to pursue further, shall be submitted for arbitration as provided by this Section. The Federation shall give written notice to the President, with a copy to the Vice President of Human Resources, of its desire to arbitrate the grievance within thirty (30) working days following conclusion of the mediation conference (Section 22.6). Failure to file such a request within these time limits shall terminate this process. The only matters that are subject to arbitration are those which constitute grievances and have been processed in accordance with the previous sections of this Article. Any matter that is excluded under Section 22.2 of this Article is also not subject to arbitration.

- (a) The parties shall agree on an arbitrator no later than ten (10) working days following the District's receipt of the Federation's written notice desiring arbitration of the grievance. If no agreement is reached between the parties within that period, they shall jointly request that the State Mediation and Conciliation Service supply a panel of seven (7) names of potential arbitrators who are members of the National Academy of Arbitrators. The parties shall then alternately strike names of the modified panel list until one name remains. The party who strikes the first name shall be determined by the flip of a coin.
- (b) The function and purpose of the arbitrator is to resolve the disputed interpretation of the terms actually found in this Agreement. Such resolution shall be based on the disputed facts upon which the application of the provisions of this Agreement depend and considering the intent of the parties when such provisions were agreed upon. The arbitrator shall have no authority to alter, amend, add to, or subtract from the terms, conditions, or provisions of this Agreement, and shall determine only whether or not

there has been a violation of such terms, conditions, or provisions as alleged in the grievance and what the appropriate remedy will be.

- (c) The decision of the arbitrator as limited herein shall be final and binding upon the parties to the dispute. No decision rendered by the arbitrator shall be retroactive beyond the occurrence of the event giving rise to the grievance.
- (d) The fees and expenses of the arbitration, including a reporter's transcript if the arbitrator determines that a transcript is desirable, shall be paid equally by the parties. If the arbitrator determines that a reporter's transcript is not desirable, the party ordering the transcript shall pay the cost. Each party shall bear the expense of preparing for and presenting its own case, except that the District shall grant released time without loss of compensation to the grievant(s) and a representative of the Federation at the arbitration hearing. Hearings will be scheduled, if possible, on District premises.

Section 22.14. Confidentiality

All supporting documents, communications, and records dealing with the processing of a grievance, mediation, and arbitration shall be considered confidential and filed separately from the personnel file of the parties involved, and shall not be utilized in any evaluation or in providing any employment reference or recommendation without the written consent of the parties.

Section 22.15. Prohibited Behavior

- (a) All employees of the District are expected and required to conduct themselves in a manner which is appropriate to an academic environment and are not to engage in any prohibited behavior – that is, behavior which is demeaning, offensive, intimidating, or physically threatening to any other employee in the college community.
- (b) A personal complaint against Prohibited Behavior does not constitute a grievance as defined in this Article and such an allegation may not be used as the sole basis for a grievance; however, it may be cited as an aggravating factor to a grievance.
- (c) The District has policies respecting sexual harassment and discriminatory harassment, which policies are the exclusive procedures for allegations of such conduct. Personal complaints pursuant to this Section involve allegations of prohibited behavior which are not of such a nature as to invoke the established procedures of the sexual and/or discriminatory harassment policies.
- (d) If a Faculty Member has a complaint against another Faculty Member or a classified employee of the District that such person has engaged in such prohibited behavior, the Faculty Member shall discuss the matter with the appropriate Dean within ten (10) working days. The Dean is responsible for promptly investigating the matter and taking appropriate action concerning the matter. If either Faculty Member is still not satisfied, the Faculty Member may, within thirty (30) working days of the proposed resolution, meet with the Federation President and the Vice President of Human Resources, or their designees in an attempt to resolve the complaint.
- (e) If the Faculty Member's complaint pertains to a Dean or other member of management, the Faculty Member may discuss the matter with the appropriate Vice President, and/or may file a complaint in writing with the Vice President of Human Resources and the President of the Federation within thirty (30) working days of when the complaint arose.

A meeting will be scheduled within thirty (30) working days with the Federation President and the Vice President of Human Resources, or their designees in an attempt to resolve the complaint.

- (f) It is not prohibited behavior for a Dean to admonish, either verbally or in writing, a Faculty Member due to the Faculty Member's performance (or non-performance) of the Faculty Member's duties and to warn the Faculty Member that continuation of the Faculty Member's conduct may result in disciplinary or other adverse action against the Faculty Member, so long as such statements by the Dean are made in a professional manner.