

**AP 7215 ACADEMIC EMPLOYEES: PROBATIONARY CONTRACT
FACULTY**

References:

Education Code Sections 87600 et seq.

NOTE: This procedure is legally advised. Employment of contract faculty is controlled by statute, but the following procedure, which mirrors Education Code requirements, will assure compliance.

The District shall employ a faculty member for the first academic year of his/her employment by contract. Any person who, at the time an employment contract is offered to him/her by the District, is neither a tenured employee of the District nor a probationary employee then serving under a second or third contract shall be deemed to be employed for "the first academic year of his/her employment."

A faculty member shall be deemed to have completed his/her first contract year if he/she provides service for 75 percent of the first academic year.

Before making a decision relating to the continued employment of a contract employee, the following requirements shall be satisfied:

- The employee shall be evaluated in accordance with the evaluation standards and procedures established in accordance with law. [Details regarding the evaluation process are contained in the collective bargaining agreement.](#)
- The Board shall receive statements of the most recent evaluations.
- The Board shall receive recommendations of the Chancellor
- The Board shall consider the statement of evaluation and the recommendations in a lawful meeting of the Board of Trustees.

If a contract employee is working under his/her first contract, the Board, at its discretion, shall elect one of the following alternatives:

- Not enter into a contract for the following academic year.
- Enter into a contract for the following academic year.
- Employ the contract employee as a regular employee for all subsequent academic years.

If a contract employee is working under his/her second contract, the Board, at its discretion, shall elect one of the following alternatives:

- Not enter into a contract for the following academic year.
- Enter into a contract for the following two academic years.

If a contract employee is employed under his/her third consecutive contract, the Board shall elect one of the following alternatives:

- Employ the probationary employee as a tenured employee for all subsequent academic years.
- Not employ the probationary employee as a tenured employee.

The Board of Trustees shall give written notice of its decision and the reasons therefore to the employee on or before March 15 of the academic year covered by the existing contract. The notice shall be by registered or certified mail to the most recent address on file with the District personnel office. Failure to give the notice as required to a contract employee under his/her first or second contract shall be deemed an extension of the existing contract without change for the following academic year.

The Board of Trustees shall give written notice of its decision under Education Code Section 87609 and the reasons therefore to the employee on or before March 15 of the last academic year covered by the existing contract. The notice shall be by registered or certified mail to the most recent address on file with the District personnel office. Failure to give the notice as required to a contract employee under his/her third consecutive contract shall be deemed a decision to employ him/her as a regular employee for all subsequent academic years.

Further information on faculty tenure for represented employees can be found in the collective bargaining agreement.

NOTE: The **red ink** signifies language that is **legally advised** and recommended by the Policy and Procedure Service and its legal counsel. The language in **green ink** was added on July 31, 2013 during the review with David, Lydia, and Kit and on March 28, 2014 with Wyman, David, and Kit.

Date Approved:

(This is a new procedure recommended by the Policy and Procedure Service)

Legal Citations for AP 7215

Education Code Sections 87600 et seq.

87600. The provisions of this article govern the employment of persons by a district to serve in faculty positions and establish certain rights for these employees. Other provisions of the law which govern the employment of community college faculty or establish rights and responsibilities for these persons shall be applied to persons employed by community college districts in a manner consistent with the provisions of this article.

87601. For the purposes of this article:

(a) "Academic year" means that period between the first day of a fall semester or quarter and the last day of the following spring semester or quarter, excluding any intersession term that has been excluded pursuant to an applicable collective bargaining agreement.

(b) "Contract employee" means an employee of a district who is employed on the basis of a contract in accordance with Section 87605, subdivision (b) of Section 87608, or subdivision (b) of Section 87608.5.

(c) "District" means a community college district.

(d) "Positions requiring certification qualifications" are those positions which provide the services for which certifications have been established in this **code**.

(e) "Regular employee" means an employee of a district who is employed in accordance with subdivision (c) of Section 87608, subdivision (c) of Section 87608.5, or Section 87609.

87602. For the purposes of other provisions of law:

(a) A contract employee is a probationary employee.

(b) A regular or tenured employee is a permanent employee.

87603. This article does not apply to the employment of administrators employed by appointment or contract pursuant to Section 72411.

87604. The governing board of a community college district shall employ each academic employee as a contract employee, regular employee, or temporary employee.

87605. The governing board of a district shall employ faculty for the first academic year of his or her employment by contract. Any person who, at the time an employment contract is offered to him or her by the district, is neither a tenured employee of the district nor a probationary employee then serving under a second or third contract entered into pursuant to Section 87608 shall be deemed to be employed for "the first academic year of his or her employment." A faculty member shall be deemed to have completed his or her first contract year if he or she provides service for 75 percent of the first academic year.

87606. An employment contract shall contain such terms and conditions as the governing board and the proposed employee shall agree upon and as are consistent with the provisions of the law.

87607. Before making a decision relating to the continued employment of a contract employee, the following requirements shall be satisfied:

(a) The employee has been evaluated in accordance with the evaluation standards and procedures established in accordance with the provisions of Article 4 (commencing with Section 87660) of this chapter, a fact determined solely by the governing board.

(b) The governing board has received statements of the most recent evaluations.

(c) The governing board has received recommendations of the superintendent of the district and, if the employee is employed at a community college, the recommendations of the president of that community college.

(d) The governing board has considered the statement of evaluation and the recommendations in a lawful meeting of the board.

87608. If a contract employee is working under his or her first contract, the governing board, at its discretion and not subject to judicial review except as expressly provided in Sections 87610.1 and 87611, shall elect one of the following alternatives:

(a) Not enter into a contract for the following academic year.

(b) Enter into a contract for the following academic year.

(c) Employ the contract employee as a regular employee for all subsequent academic years.

87608.5. If a contract employee is working under his or her second contract, the governing board, at its discretion and not subject to judicial review except as expressly provided in Sections 87610.1 and 87611, shall elect one of the following alternatives:

(a) Not enter into a contract for the following academic year.

(b) Enter into a contract for the following two academic years.

(c) Employ the contract employee as a regular employee for all subsequent academic years.

87609. If a contract employee is employed under his or her third consecutive contract entered into pursuant to Section 87608.5, the governing board shall elect one of the following alternatives:

(a) Employ the probationary employee as a tenured employee for all subsequent academic years.

(b) Not employ the probationary employee as a tenured employee.

87610. (a) The governing board shall give written notice of its decision under Section 87608 or 87608.5 and the reasons therefor to the employee on or before March 15 of the academic year covered by the existing contract. The notice shall be by registered or certified mail to the most recent address on file with the district

personnel office. Failure to give the notice as required to a contract employee under his or her first or second contract shall be deemed an extension of the existing contract without change for the following academic year.

(b) The governing board shall give written notice of its decision under Section 87609 and the reasons therefor to the employee on or before March 15 of the last academic year covered by the existing contract. The notice shall be by registered or certified mail to the most recent address on file with the district personnel office. Failure to give the notice as required to a contract employee under his or her third consecutive contract shall be deemed a decision to employ him or her as a regular employee for all subsequent academic years.

87610.1. (a) In those districts where tenure evaluation procedures are collectively bargained pursuant to Section 3543 of the Government **Code**, the faculty's exclusive representative shall consult with the academic senate prior to engaging in collective bargaining on these procedures.

(b) Allegations that the community college district, in a decision to grant tenure, made a negative decision that to a reasonable person was unreasonable, or violated, misinterpreted, or misapplied, any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. Allegations that the community college district in a decision to reappoint a probationary employee violated, misinterpreted, or misapplied any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. If there is no contractual grievance procedure resulting in arbitration, these allegations shall proceed to hearing in accordance with Section 87740.

"Arbitration," as used in this section, refers to advisory arbitration, as well as final and binding arbitration.

(c) Any grievance brought pursuant to subdivision (b) may be filed by an employee on his or her behalf, or by the exclusive bargaining representative on behalf of an employee or a group of employees in accordance with Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government **Code**. The exclusive representative shall have no duty of fair representation with respect to taking any of these grievances to arbitration, and the employee shall be entitled to pursue a matter to arbitration with or without the representation by the exclusive representative. However, if a case proceeds to arbitration without representation by the exclusive representative, the resulting decision shall not be considered a precedent for purposes of interpreting tenure procedures and policies, or the collective bargaining agreement, but instead shall affect only the result in that particular case. When arbitrations are not initiated by the exclusive representative, the district shall require the employee submitting the grievance to file with the arbitrator or another appropriate party designated in the collective bargaining agreement, adequate security to pay the employee's share of the cost of arbitration.

(d) The arbitrator shall be without power to grant tenure, except for failure to give notice on or before March 15 pursuant to subdivision (b) of Section 87610. The arbitrator may issue an

appropriate make-whole remedy, which may include, but need not be limited to, backpay and benefits, reemployment in a probationary position, and reconsideration. Procedures for reconsideration of decisions not to grant tenure shall be agreed to by the governing board and the exclusive representative of faculty pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government **Code**.

(e) Any employees who are primarily engaged in faculty or other bargaining unit duties, who perform "supervisory" or "management" duties incidental to their performance of primary professional duties shall not be deemed supervisory or managerial employees as those terms are defined in Section 3540.1 of the Government **Code**, because of those duties. These duties include, but are not limited to, serving on hiring, selection, promotion, evaluation, budget development, and affirmative action committees, and making effective recommendations in connection with these activities. These employees whose duties are substantially similar to those of their fellow bargaining unit members shall not be considered supervisory or management employees.

87611. A final decision reached following a grievance or hearing conducted pursuant to subdivision (b) of Section 87610.1 shall be subject to judicial review pursuant to Section 1094.5 of the **Code** of Civil Procedure.

87612. Until terminated in accordance with provisions of law, a part-time regular employee shall be assigned, and compensated, for a period of service less than 75 percent of the number of days the colleges of the district are maintained during each academic year. The governing board of the employing district may establish an assignment for any period of days less than 75 percent.

At its discretion, the governing board of the employing district may assign and compensate a part-time regular employee for a period of service of 75 percent or more of the number of days the colleges of the district are maintained during each academic year. Such an assignment shall not change the employee's classification to that of full-time regular employee unless an assignment of this type is made for two consecutive academic years.