

BP 7216 ACADEMIC EMPLOYEES: GRIEVANCE PROCEDURE FOR
CONTRACT DECISIONS

Reference:

[Education Code Section 87610.1](#)

The Chancellor shall ensure that administrative procedures are written regarding District academic employees' grievance procedures for contract decisions. Additionally, the Chancellor shall ensure that the procedures are set forth in detail in the collective bargaining agreements.

❖ ~~From the current CLPCCD Policy 4265 titled Grievances~~

~~The Board of Trustees establishes this grievance policy to provide process for reviewing and resolving grievances promptly, and at the lowest possible management or supervisory level. Further, it is expected that the procedures will incorporate such activities as consultations and data gathering techniques in an effort to achieve a satisfactory resolution of problems.~~

Definitions:

~~**Manager** — A person designated by the Board of Trustees as a manager and paid on the Management Salary Schedule.~~

~~**Grievance** — An allegation of an individual regarding the interpretation, application or enforcement of state or federal laws, board policies, rules and regulations, procedures, or administrative orders regarding the terms and conditions of employment.~~

~~**Grievant** — The employee making the complaint regarding an alleged grievance.~~

~~**Time Limits** — Any grievance not advanced to the next step within the time limits of that step shall be deemed resolved by the answer at the previous step and waive the right to further appeal.~~

~~**Immediate Supervisor** — The individual designated by the Chancellor or College President in any area/office of the District.~~

Grievance Committee — A three-member committee selected to conduct hearings and possibly to make a recommendation to the Chancellor or College President regarding a grievance.

Grievance Officer — The person designated by the Chancellor or College President who is responsible for assuring that grievances are handled with dispatch and in accordance with this policy.

Representative — Another employee of the District, or legal counsel who may be selected by the grievant to appear with him or her in the presentation at any stage of a grievance.

Administrative Channels — In order from the immediate supervisor to each of the next higher managers through the Vice President or Vice Chancellor who has been assigned management responsibility for the employee.

Exclusions — The term "grievance" shall not include:

1. allegations relating to employee performance evaluation or evaluation reports;
2. allegations relating to the merits of appointment, reappointment, termination during probationary period, or granting of permanent status;
3. allegations relating to disciplinary action (suspension, demotion, or dismissal) which matters are governed by other rules and regulations;
4. allegations presented by the public, students or parents against classified employees.

❖ From the current CLPCCD Policy 4165 titled Grievances

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Definitions:

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NOTE: The language in **black ink** is current CLPCCD Policy 4165 titled Grievances adopted on March 19, 1996 and revised on May 20, 2003 and current CLPCCD Policy 4265 titled Grievances adopted on March 19, 1996 and revised on May 20, 2003. The language in **blue ink** is included for consideration.

Date Adopted:

(Replaces current CLPCCD Policies 4165 and 4265)

Legal Citation for BP 7216

Education Code Section 87610.1

87610.1. (a) In those districts where tenure evaluation procedures are collectively bargained pursuant to Gov. Code Section 3543, 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 Chap. 10.7 (commencing with Sect. 3540) of Division 4 of Title 1 of the Gov. **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 Government Code Section 3540.1, 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.