
Administrative Procedure
Chapter 7 – Human Resources

AP 7216 ACADEMIC EMPLOYEES: GRIEVANCE PROCEDURE FOR CONTRACT DECISIONS

NOTE: This administrative procedure is **legally required**; however, it is a mandatory subject of bargaining, and must be collectively bargained. Education Code Section 87610.1(a) also requires the union to consult with the academic senate prior to bargaining it. Accordingly, no format is recommended.

In districts that do not have a contractual grievance procedure resulting in either advisory or binding arbitration, probationary faculty members who wish to challenge a decision not to grant a second or third contract proceed to a hearing in accordance with Education Code Section 87740, which is before an Administrative Law Judge appointed by the Office of Administrative Hearings.

Probationary Faculty Grievance Procedure

The grievance procedure for probationary faculty is outlined in Article 24 in the Collective Bargaining Agreement between the Faculty Association and the District.

Reference:

[Education Code Section 87610.1](#)

NOTE: The **red ink** signifies language that is **legally required** and recommended by the Policy & Procedure Service and its legal counsel (Liebert Cassidy Whitmore). The language in **blue ink** is included for consideration. The language in **yellow highlighting** is included to draw the reviewers' attention, and this language will be removed upon final document approval.

Approved:

~~(This is a new procedure)~~

Legal Citations for AR 7216

EDUCATION CODE - EDC

TITLE 3. POSTSECONDARY EDUCATION [66000 - 101060]

(Title 3 enacted by Stats. 1976, Ch. 1010.)

DIVISION 7. COMMUNITY COLLEGES [70900 - 88906]

(Division 7 enacted by Stats. 1976, Ch. 1010.)

PART 51. EMPLOYEES [87000 - 88270]

(Part 51 enacted by Stats. 1976, Ch. 1010.)

CHAPTER 3. Employment [87400 - 87885]

(Chapter 3 enacted by Stats. 1976, Ch. 1010.)

ARTICLE 2. Employment of Faculty [87600 - 87612]

(Heading of Article 2 amended by Stats. 1990, Ch. 1302, Sec. 89.)

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.

(Amended by Stats. 2000, Ch. 124, Sec. 1. Effective January 1, 2001.)