

THE CALIFORNIA STATE UNIVERSITY AND COLLEGES
Office of the Chancellor
400 Golden Shore
Long Beach, California 90802
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Code: 301

Date: November 27, 1978

To: Presidents

From: Harry Harmon *Harry Harmon*
Executive Vice Chancellor

Subject: Grievance Procedures for Academic Personnel

I am transmitting to you a copy of Executive Order No. 301 which delegates authority to you regarding Grievance Procedures for Academic Personnel.

It is your responsibility as President to implement Executive Order # 301 where applicable and to maintain the campus repository and index for all Executive Orders.

HH/mm

Distribution:

Chancellor's Staff

THE CALIFORNIA STATE UNIVERSITY AND COLLEGES
Office of the Chancellor
400 Golden Shore
Long Beach, California 90802

Executive Order No.: 301
Title: Grievance Procedures for Academic Personnel of
The California State University and Colleges
Effective Date: November 1, 1978
Supersedes: Executive Order No. 240

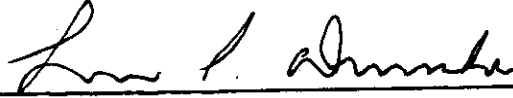
This Executive Order is issued pursuant to Education Code Sections 66600, 66606, 66609, 89030, 89035, 89500, and 89542.5 and Sections 42701 and 43750 of Title 5 of the California Administrative Code.

1. These Grievance Procedures for Academic Personnel of The California State University and Colleges are established effective November 1, 1978 for The California State University and Colleges, and shall govern grievance proceedings for academic employees. On January 1, 1976 when I issued Executive Order 240, I announced the formation of a Grievance and Disciplinary Action Monitoring Committee. These procedures, which represent rather minor modifications and adjustments to Executive Order 240, are the work of the Monitoring Committee. The Monitoring Committee includes representatives of the Academic Senate, The Chancellor's Council of Presidents, campus administration, and the Chancellor's Staff. These representatives worked closely with their respective constituents during the drafting process and during the review of the text as finally proposed by the Monitoring Committee. In addition, two surveys were conducted on every campus which elicited comments about the working of Executive Order 240 from grievance committees, grievance executive committee and from grievants, administrative representatives, and their advisors.

The diligence of the Monitoring Committee and the assistance of those on the campuses are acknowledged with gratitude. Upon issuing Executive Order 240, I commented that the drafting of that document represented the collegial process at its best. The present revision saw a continuation of this process. It is hoped that in the utilization of these Procedures, the same approach to the collegial process will continue and expand, so that these Procedures become a means of improving employment relations and employee morale. A copy of these Procedures is attached to, and made a part of, this Executive Order.

2. These Procedures supersede all other Grievance Procedures for Academic Personnel previously in force in The California State University and Colleges, except that grievance proceedings under any prior grievance procedure for academic employees of The California State University and Colleges, which were commenced but not concluded by the effective date of this Executive Order, may continue under the prior grievance procedures. For those who have filed grievances prior to the effective date of this Executive Order, if their grievance hearings have not yet commenced, they may elect to have them heard pursuant to either the Executive Order specifying grievance procedures for academic personnel in effect on the date of filing of their grievances or this Executive Order. An election once made may not thereafter be changed without the consent of the President of the campus involved.

3. These Procedures shall be made available to all academic personnel covered by its terms.



Glenn S. Dumke
Chancellor

November 20, 1978

Date

**GRIEVANCE PROCEDURES FOR ACADEMIC PERSONNEL
OF THE
CALIFORNIA STATE UNIVERSITY AND COLLEGES**

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1.0 General

- 1.1 These Procedures are intended to implement the provisions of Education Code Section 89542.5 with respect to grievances.

The purpose of these Procedures is to provide an equitable means of correcting actions taken by The California State University and Colleges which directly wrong academic employees. These are formal Procedures which ought to be utilized only when efforts to settle alleged wrongs informally have failed.

- 1.2 This Grievance Procedure is established under the authority separately and in combination, as applicable, of Education Code Sections 66600, 66606, 66609, 89030, 89035, 89500 and 89542.5; Sections 42701 and 43750 of Title 5, *California Administrative Code*, and the Standing Orders, Rules of Procedure and resolutions of the Board of Trustees, and is intended to be applicable to all campuses of The California State University and Colleges.

2.0 Definitions and Construction of Procedures

- 2.1 All time periods specified herein may be extended by agreement of the parties.
- 2.2 In applying the singular language of these Procedures to consolidated hearings, the singular number includes the plural.
- 2.3 Unless otherwise defined herein, all terms used in these Procedures have the definition given them in Sections 40000 and 42700 of Title 5, *California Administrative Code*.
- 2.4 "Academic employee" includes an academic employee in an academic-administrative assignment insofar as the grievance pertains to academic status, but not insofar as the grievance pertains to academic-administrative assignment.
- 2.5 "Academic senate" means campus academic senate or equivalent.
- 2.6 "Action" shall include failure to act in a timely manner.
- 2.7 "Attorney" means a person admitted to the practice of law before any state or federal court.
- 2.8 "Campus representative" means a person designated by the President to represent the campus at all stages of a grievance proceeding.
- 2.9 "Campus working day" means any day during the college year, other than a Saturday, Sunday, or campus academic holiday as the latter term is used in Title 5, *California Administrative Code*, Section 42800.
- 2.10 "Committee" means the Grievance Committee drawn by lot from the Panel.
- 2.11 "Department" means academic department or comparable unit.
- 2.12 "Filing" and "file" mean delivery effected either personally or by certified mail, return receipt requested.

- 2.13 "Grievance" means an allegation by an academic employee (see Section 2.4) that he or she was directly wronged in connection with the rights accruing to his or her job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like. A temporary employee, athletic director, or athletic coach does not have a right to subsequent employment by virtue of having had one or more prior appointments.
- 2.13.1 A grievance does not include matters, such as the salary structure, which require legislative action. "Legislative action" means action of a legislative nature, i.e., rule formulation and adoption, at any level of government and within The California State University and Colleges, the Board of Trustees.
- 2.13.2 A grievance does not include an alleged wrong, the adverse consequences of which are not still in force and directly affecting the grievant at the time the Notice is filed. The decision as to these matters shall be made by the Grievance Committee.
- 2.14 "Notice" means Notice of Grievance.
- 2.15 "Panel" means the campus elected Grievance Panel.
- 2.16 "President" means the President or acting President of a campus or such persons as the President may designate to act for the President.
- 2.17 "Shall" is mandatory and "may" is permissive.
- 2.18 "Supplemental Notice" means Supplemental Notice of Grievance.
- 2.19 "Temporary employee" includes lecturer as "lecturer" is defined in Title 5, *California Administrative Code*, Section 42700.

3.0 Grievance Panel

- 3.1 By agreement of the President and the academic senate, the same panel may be used as the Disciplinary Action Panel and the Grievance Panel.
- 3.2 The Panel shall be elected by the full and part-time members of the campus faculty, as "faculty" is defined by each campus.
- 3.3 The Panel shall consist of full-time, currently employed members of the campus faculty.
- 3.4 The Panel shall consist of 25% of the full-time equivalent faculty (FTEF), except that no Panel shall have a membership of fewer than 40 persons.
- 3.4.1 Each department having at least 4.0 FTEF shall elect from its own members a number equivalent to 25% of its FTEF.
- 3.4.2 Departments of fewer than 4.0 FTEF shall be combined by the campus into new electoral units or with existing units which shall elect from the membership of the combined units a number equivalent to 25% of the FTEF of the combined units.

- 3.4.3 The vote of part-time temporary employees shall be equivalent to that part of a full-time appointment which they hold, e.g., a temporary employee holding a 0.50 appointment would have one-half vote.
- 3.5 Terms of Panel members shall be 2 years, except that half of those elected initially shall have 1-year terms.
- 3.6 Notwithstanding Sections 3.4 – 3.5, each campus by agreement of the President and the academic senate may determine the size of the Panel, the manner of election of its members, or their terms.
- 3.7 Annually, the President and the chief officer of the academic senate shall jointly designate 3 members of the Panel to serve as the Executive Committee of the Panel. In the absence of agreement, then each shall designate one person from the Panel, and those 2 shall designate a third from the Panel. The 3-person Executive Committee shall function by majority vote. Any member of the Executive Committee may perform the functions of Executive Officer, unless otherwise determined by a majority of the Executive Committee. In all cases in which action of the Executive Committee is required, such action shall be by majority vote.
- 3.8 An Executive Officer may abstain from serving in that capacity in a particular case when service in that case would be inappropriate. In such event, if necessary, a substitute Executive Officer for that grievance shall be appointed pursuant to Section 3.7.
- 3.9 Service as a member of the Grievance Panel and of Grievance Committees, if selected, is a normal obligation of each full-time member of the campus faculty during the periods of the year when required to furnish services. (See Section 8.3.)

4.0 Informal Settlement

- 4.1 A good faith effort to settle matters as to which an academic employee feels aggrieved should be made before a grievance is filed. Even after filing, effort should still be made to resolve the matter by extra-procedural settlement at any time.
- 4.1.1 A settlement reached after a grievance has been filed shall be in writing, and shall be signed by the grievant and the campus representative.
- 4.1.2 If a settlement is not honored, a grievance may be filed on the subject of its not having been honored, rather than on the original grievance the settlement purported to resolve. Such filing shall be subject to the time limits specified in Section 7.

5.0 Who May File a Grievance

- 5.1 To be eligible to file a grievance, one must either be:
- 5.1.1 An academic employee of the campus and, if a temporary employee, have served as an academic employee one prior full term at least part of which shall have been during the preceding 36 months; or

5.1.2 A person who, within the past 20 campus working days, had been employed by the campus as an academic employee for at least two previous terms, at least one of which was a full term, within the preceding 36 months;

and, in filing the grievance:

5.1.3 Must be asserting a wrong arising from the taking of a final action or the failure to take a final action in a timely manner;

5.1.4 Must not be asserting a wrong previously grieved or arising out of (as distinguished from "discovered during") a grievance proceeding or disciplinary action proceeding where the academic employee seeking to initiate the grievance was either the person charged or the grievant in the prior proceeding. This provision is subject to the exception respecting grievances arising from failure to honor a settlement entered into pursuant to Section 4.0.

5.2 Questions as to eligibility for filing are jurisdictional questions to be determined as follows:

5.2.1 The President shall make determinations regarding academic employee status (Section 5.1.1).

5.2.2 The President shall make determinations regarding prior academic employee status (Section 5.1.2).

5.2.3 The Executive Committee shall make determinations regarding finality of actions (Section 5.2.1).

5.2.4 The Executive Committee shall make determinations regarding grievances from prior proceedings (Section 5.2.2).

5.2.5 The Executive Committee shall make determinations regarding compliance with the time limits for filing (Section 7.1).

6.0 Representation

6.1 Upon the filing of the Notice, and thereafter, the grievant and the campus representative may each be accompanied by two advisors who may advise, or act for, the party they represent. Only one advisor for each party may be an attorney.

6.2 Unless the grievant is an attorney or has advised that he or she will be accompanied by an attorney, no attorney shall represent the campus or serve as an advisor at any proceeding authorized by these Procedures.

7.0 Filing a Grievance and Time Limit on Filing

7.1 A written Notice of Grievance (Notice) shall be filed within 20 campus working days after the grievant has discovered or reasonably could have discovered the action which is the subject of the grievance.

7.1.1 A Notice shall not be honored, and shall have no effect if it is filed later than the 20 days just specified unless the grievant demonstrates to the unanimous satisfaction of the Executive Committee that the grievant did not discover and could not reasonably have discovered the action grieved or the wrongful

nature of that action earlier than 20 days prior to the date of the filing of the Notice. Failure of the grievant to file a Notice within the 20-day period shall be a waiver of grievance and of all rights under these Procedures.

- 7.1.2 As respects later discovered actions, the alleged adverse consequences of the action grieved must still be in force and directly affecting the grievant at the time the Notice is filed. The decision as to these matters shall be made by the Grievance Committee.
- 7.1.3 A notice shall not be honored, and shall have no effect, if it is filed more than one calendar year after the action being grieved, regardless of the date of discovery.
- 7.2 The Notice shall specify:
 - 7.2.1 That it is a Notice of Grievance;
 - 7.2.2 The action grieved, the wrong alleged with respect to that action, and the date of discovery of the action or of its wrongful nature;
 - 7.2.3 The remedy sought; and
 - 7.2.4 If the hearing is to be open to the public or closed. Failure to specify shall constitute a choice by the grievant of a closed hearing. The grievant's decision on open versus closed hearing shall become irrevocable upon filing of the Supplemental Notice (Section 7.3).
- 7.3 The grievant shall file a written Supplemental Notice giving a more detailed statement of the grievance within 10 campus working days of the date of filing the Notice. At the same time, the grievant shall advise whether he or she will be accompanied at the hearing by an attorney. Failure so to advise shall constitute a waiver of the right to be accompanied at the hearing by an attorney.
- 7.4 The Notice and Supplemental Notice shall be filed with the President, with copies to the Academic Vice President, and the Executive Officer.

8.0 Grievance Committee

- 8.1 Promptly upon being notified of the filing of a Notice, the Executive Officer shall notify the grievant and the campus representative of the date, time and place of selection of a Committee. At Q.S.Y.R.O. campuses, selection dates and hearing commencement dates shall not be set during the quarter off of a grievant who is a full time employee, or during a summer quarter, except by agreement of the grievant and the campus representative.
 - 8.1.1 The matter shall not proceed and selection of the Committee shall not occur until the President's choice of a campus representative and advisors of choice for both parties are available, provided that the period of delay shall not exceed 30 campus working days unless further extended by the Executive Committee.

- 8.2 At the date, time and place specified, the Executive Officer shall cause a Committee of three members to be selected by lot from the Panel. During the selection, the following categories of persons shall be excluded from selection except by agreement of the grievant and the campus representative:
- 8.2.1 The grievant;
 - 8.2.2 Members of the Executive Committee;
 - 8.2.3 Members of the grievant's department;
 - 8.2.4 Persons who made the recommendations as to the action which is the subject of the grievance;
 - 8.2.5 Persons who, by virtue of their rank, would be ineligible to serve on the grievant's initial promotion committee in a grievance involving promotion; and
 - 8.2.6 Probationary and temporary employees in grievances involving retention, tenure, promotion, or subsequent appointment.
- 8.3 The grievant and the campus representative shall each have the right to excuse without cause as many as two persons from those selected. In addition, any person selected shall be excused without cause by agreement of the grievant and the campus representative. Each may challenge for cause any of the persons selected and any person selected may ask to be disqualified for cause. No person may serve on more than one grievance or disciplinary action committee at a time.
- 8.3.1 Challenges for cause or excuses, if any, shall be exercised by the close of the third campus working day following the day of selection.
 - 8.3.2 The Executive Committee shall rule on all disqualifications for cause, and shall grant such disqualifications only when it is made to appear probable that, by reason of bias or prejudice of a person selected, a fair and impartial grievance hearing could not otherwise be had.
- Neither race, color, religion, sex, national origin, age, physical handicap, nor membership in any organization shall constitute grounds for a challenge for cause.
- 8.4 If a member of the Committee, as finally selected, cannot continue, the Executive Committee shall be notified. If the Executive Committee agrees, the Executive Committee shall cause a replacement to be selected pursuant to Sections 8.2 and 8.3, except that the grievant and the campus representative may each excuse only one person without cause. The replacement shall then listen to the entire audio tape made to date prior to a reconvening of the hearing. Once the replacement becomes a member of the Committee, the original member replaced shall take no further part in the grievance proceeding.
- 8.5 After being selected, and before commencement of the hearing, the Committee shall designate its Chair. If at any time before dissolution of the Committee, the Chair is replaced pursuant to Section 8.4, the Committee shall designate a new Chair.
- 8.6 At any time prior to the President's decision on the Committee Report and upon the agreement of the grievant and the campus representative, the Committee shall be discharged and a new Committee selected to conduct a new grievance hearing.

9.0 Pre-Hearing Arrangements, Including Consolidation

- 9.1 Except for confidential materials received in connection with initial employment, the grievant shall have the right to examine the materials, including materials in the grievant's personnel file, which were considered in taking the action which is the subject of the grievance. This section shall not be construed as granting the grievant a right of access to the personnel files of others; or to the proceedings of personnel committees, except in regard to the grievant's own case; or to their evaluations and recommendations with respect to other persons.
- 9.2 The grievant and the campus representative shall inform each other of the names of witnesses they plan to present at the hearing.
- 9.3 To save time at the hearing, the grievant and the campus representative should attempt to agree upon exhibits and factual elements of the case which can be presented without challenge to the Committee.
- 9.4 Consolidated Proceedings
- 9.4.1 When there is more than one grievance arising out of the same set of facts, the Executive Committee may consolidate the hearings of more than one person, except that open hearings shall not be consolidated with closed hearings.
- 9.4.1.1 Any grievant or the campus representative may request such consolidation.
- 9.4.1.2 All parties shall be provided an opportunity to argue for or against consolidation before consolidation occurs.
- 9.4.1.3 Prior to commencement of Committee selection, but not thereafter, the Executive Officer shall exempt from consolidation any grievant who so requests.
- 9.4.1.4 If there is consolidation of grievances wherein one or more of the grievants is an attorney, or has indicated an intention to be accompanied at the hearing by an attorney, the campus representative will be accompanied by an attorney from the Office of General Counsel.
- 9.4.1.5 In the event of consolidation, the campus representative's right to excuse Committee members, without cause, pursuant to Section 8.3 above, shall be two persons per grievant. Each grievant in a consolidated hearing retains the right to excuse two Committee members without cause.
- 9.4.1.6 A majority of the Committee hearing a consolidated case may petition the Executive Officer for severance of a grievance from the consolidated hearing. The Executive Committee shall rule on all such petitions. The severance of one or more grievances from a group of grievances previously consolidated shall not be considered to affect the remaining grievances in the consolidated group.

9.4.2 When there is more than one grievance pending by a single grievant, the Executive Committee may consolidate the hearings of all such grievances.

9.4.2.1 In the event that one or more of the hearings consolidated was to be closed to the public and one or more was to be open, the grievant shall be permitted to choose, prior to the beginning of the consolidated hearing, whether it shall be open or closed.

10.0 Hearing

10.1 The Chair shall make every effort to commence the hearing within 10 campus working days following selection of the Committee and to conclude it at the earliest possible date. It shall be the duty of all persons involved to cooperate in this effort. Acting within the guidelines of these Procedures, in furtherance of a prompt and expeditious hearing, the Chair may establish other necessary rules and may decide issues presented. The hearing shall not be conducted according to technical rules relating to evidence and witnesses. The Chair shall admit the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, but shall exclude evidence that is irrelevant, unduly repetitious or cumulative. Evidence relating to past actions shall be admitted if shown to be relevant. Rulings of the Chair shall be subject to being overruled by a majority of the Committee.

10.2 All members of the Committee shall be present for the transaction of business. Members of the Committee shall not discuss the case with persons who are not members of the Committee, except that the Committee, through its Chair, may obtain advice concerning these Procedures, as needed, from the Executive Committee.

10.3 Arguments concerning the legal applicability or validity of any statute, regulation, resolution of the Board of Trustees, Standing Order, Chancellor's Executive Order, or rule shall be in writing and addressed to the Committee for forwarding to the Office of General Counsel, with a copy to the other party. The Committee may complete the hearing, but shall not complete the drafting of its Report until General Counsel's opinion is received by the Committee. A copy of that opinion shall be provided by the Committee to the grievant and the campus representative.

10.4 At a closed hearing, attendance shall be limited to

10.4.1 The grievant and the grievant's advisors, if any;

10.4.2 The campus representative and campus representative's advisors, if any;

10.4.3 Witnesses while giving evidence;

10.4.4 Members of the Committee;

10.4.5 The tape recorder operator; and

10.4.6 A court reporter, if any.

- 10.5 Confidentiality. The content of the proceedings in a grievance hearing closed to the public, and the Committee Report resulting therefrom shall not be made public by any participant in the hearing, except as any of the foregoing may be filed in court or introduced as evidence in an administrative or court proceeding brought to review an action taken pursuant to these Procedures. In the event these matters should become public, however, such public statements as are appropriate may be made. This policy of confidentiality shall not preclude discussion of the case with others as necessary to prepare for hearings, nor shall it preclude subsequent action following appropriate procedures on the basis of evidence developed at the hearing.
- 10.6 At an open hearing, all witnesses except for the grievant, the campus representative and their advisors, if any, shall be excluded except while giving evidence. Upon the agreement of the grievant and the campus representative, an open hearing may be closed to permit receiving of evidence not otherwise obtainable.
- 10.7 The Committee may receive evidence from a person who has attended the hearing but should have been excluded pursuant to Section 10.6, only if the presenting party's need for that witness is based on surprise.
- 10.8 At a hearing, open or closed, only the persons listed in Sections 10.4.1 – 10.4.4 may participate.
- 10.8.1 Only the grievant, the campus representative, the advisors to each, if any, and the Committee members may address questions to witnesses, subject to recognition by the Chair.
- 10.8.2 The members of the Committee may ask questions as to procedural matters of the grievant, the campus representative, and their advisors, if any. The members of the Committee may ask questions as to evidentiary matters of witnesses called pursuant to Section 10.10.1.
- 10.9 The grievant, the campus representative, and their advisors, if any, shall be present at the hearing whenever any evidence is being presented. If neither the grievant nor the grievant's advisor attends a scheduled hearing, a Committee may terminate the hearing and find against the grievant. The hearing shall be conducted in the following order subject to recognition by the Chair:
- 10.9.1 Opening statements. Both parties may make opening statements. The grievant goes first. The campus representative may reserve the opening statement until the evidence of the grievant has been presented.
- 10.9.2 Presentation of evidence. The case of the grievant shall be presented first; and then, subject to Section 10.13, the case of the campus representative shall be presented. Each witness shall be questioned first by the party presenting the witness; the witness then may be questioned by the other party and then by the Committee. Further questions may be asked by all parties.
- 10.9.3 Presentation of rebuttal evidence. Both parties may present rebuttal evidence. The grievant goes first.

- 10.9.4 Closing arguments. After all evidence has been presented, both parties may make closing arguments. The grievant goes first and shall have a final opportunity to rebut the closing argument of the campus representative. Both parties may also file a written argument with the Committee, simultaneously with the other party, and with a copy to the other party, subject to a time limit established by the Chair.
- 10.10 The Chair shall:
- 10.10.1 Call witnesses to present evidence only as requested by the grievant or the campus representative only if such evidence will not be irrelevant, unduly repetitious, or cumulative. It shall be the duty of all on-duty employees of the grievant's campus, except the President, to appear at the hearing as requested by the Chair;
- 10.10.2 Maintain an orderly hearing and permit no one to be subjected to abusive treatment. The Chair may eject or exclude anyone who refuses to be orderly; and
- 10.10.3 In closed hearings, instruct each witness and participant on the policy of confidentiality stated in Section 10.5 of these Procedures.
- 10.11 The Chair shall encourage all participants to identify themselves for the tape recording at the beginning of the hearing, and when speaking during the hearing. Security and integrity of the tape recording and evidence shall be the responsibility of the Chair.
- 10.12 The grievant shall demonstrate by a preponderance of the evidence that he or she was directly wronged by the action which gave rise to the grievance.
- 10.13 Immediately after the evidence of the grievant has been presented, the campus representative may request the Committee to rule against the grievant and terminate the hearing because the grievance is not supported by the evidence presented. The grievant may argue against this request. If the Committee denies the request, the hearing shall continue. If the request is granted, the Committee shall close the hearing and prepare its Report to the President as provided in Section 11.0, finding against the grievant and recommending denial of the grievance.
- 10.14 The grievance committee shall cause a tape recording of the hearing to be made, which recording shall be the official record. The cost of the recording shall be borne by the campus. Following completion of the hearing, the grievant may purchase a copy of the Committee tape at cost. Either party may make an audio tape recording of a hearing, use of which is subject to the policy of confidentiality stated in Section 10.5. The grievant, the campus representative, or both, may have a court reporter present to record the hearing, on condition that if the court reporter's notes are transcribed, the other party may purchase a copy at cost.
- 10.15 Cameras shall not be permitted at the hearing.

11.0 Grievance Committee Decision and Report

- 11.1 Following conclusion of its hearing, the members of the Committee shall meet in executive session, with all other persons excluded. In this session, the Committee shall consider the evidence, reach its decision, and prepare its Report. The Report shall consist of the Committee's detailed findings of fact, any conclusions respecting those findings, a finding for or against the grievant, its recommendations for resolving or terminating the matter, and the rationale for its findings, conclusions and recommendations. The Report shall state whether the Committee finds for or against the grievant as respects each wrong alleged. If the finding is against the grievant, the Report shall recommend no remedy for the grievant. The Report shall have the concurrence of a majority of the Committee. A minority position may be expressed either as a section in the Committee's report, or as a separate Report.
- 11.2 In reaching its decision and in preparing its Report, the Committee shall consider only the Notice, the Supplemental Notice, evidence received at the hearing, arguments of the parties made in accordance with these Procedures, and any opinions received pursuant to Section 10.3.
- 11.3 The Committee shall determine whether the grievant has demonstrated by a preponderance of the evidence that he or she was directly wronged by the action which gave rise to the grievance. In order to find for the grievant, the Committee must find that the grievant's rights were abridged by, e.g., a procedural violation substantially harmful to the grievant; a failure to take into account substantial evidence favorable to the grievant (as distinguished from considering evidence and evaluating it adversely to the grievant); action which was arbitrary, unreasonable, prejudiced, capricious, or not supported by the evidence; action which was not consistent with appropriate criteria or reasonable standards; and the like. The Committee shall not conclude that a grievant was wronged by an action which resulted from the exercise of reasonable judgment.
- 11.4 In the event the Committee finds for the grievant, the Committee may recommend whatever is deemed necessary and appropriate to remedy the wrong found to exist. The Committee's recommendation need not be limited to the remedy sought by the grievant in the Notice, and shall not:
- 11.4.1 exceed what is necessary to correct the wrong to the individual grievant;
 - 11.4.2 include disciplinary sanctions which are properly the subject of disciplinary action proceedings;
 - 11.4.3 be contrary to law, rule or policy nor include any requirement that changes be made in rules and policies of the campus, of the Office of the Chancellor, or of the Board of Trustees; and
 - 11.4.4 include a reconsideration of the case unless it reasonably appears that a reconsideration is the most appropriate remedy, and that such reconsideration will proceed without the defects found to exist and will secure the right of the grievant to a fair reconsideration.

11.4.4.1 The action resulting from such a reconsideration shall not be subject to the provision of Section 5.1.4, and a new grievance may be filed in the event of a new wrong arising from the reconsideration. The action of the original grievance shall not be subject to a new grievance.

11.5 The Committee shall file its Report with the President, with copies to the grievant and campus representative, within 10 campus working days from the date when the hearing concluded, and shall notify the grievant, the campus representative, and the Executive Officer of the date on which the Report was filed with the President. Such time shall be extended by the time necessary for the Committee to obtain opinions from the Office of General Counsel on matters presented under Section 10.3. Upon the expiration of this time, if no Report is given to the President, the grievant or the campus representative may request the Executive Committee to take appropriate action, which action shall not include making a substantive determination on the grievance.

11.5.1 The Report to the President shall include all those materials which the Committee could consider under Section 11.2, as well as the Committee tape recording of the hearing and court reporter's transcript, if any.

11.5.2 In the case of a grievance hearing open to the public, the policy of confidentiality stated in Section 10.5 shall apply to the Grievance Committee's Report to the President until the President's decision is issued.

11.6 Except as provided in Section 15.7, upon the filing of its report, the Committee shall be discharged of its responsibilities.

12.0 Presidential Action

12.1 The President shall accept the recommendations of the Committee unless:

12.1.1 The Committee findings of fact or conclusions are not supported by a preponderance of the evidence presented at the hearing or are contrary to law; or

12.1.2 The Committee recommendations are not consistent with, and supported by, the findings; or

12.1.3 The Committee has so departed from or erroneously applied these Procedures as to have had a substantially prejudicial effect upon the Committee's findings of fact, conclusions, or recommendations, or all of these; or

12.1.4 The Committee has recommended a remedy or remedies beyond the authority of the President or contrary to the laws of California or the United States; or

12.1.5 Any or all of these.

- 12.2 In arriving at a decision, the President shall consider only the Report of the Committee; a minority report, if any; and those materials which the Committee could consider under Section 11.2 above. If the President disagrees with a recommendation of the Committee, the reasons for that disagreement shall be stated in the decision.
- 12.3 Normally, within 14 calendar days of the date on which the Report was filed, the President shall notify the grievant, the Committee, and the Executive Officer in writing of the decision made on the Committee's recommendations. A grievant who does not receive the President's decision within 14 calendar days of the date on which the Report was filed shall make written inquiry within the next 7 calendar days, and shall advise the President where to deliver the decision. The President shall normally provide the decision, as specified above, within 7 calendar days after the grievant's inquiry, or shall inform the grievant of a reasonable date certain by which the decision will be furnished. If the President fails to send the grievant the decision by that date, the Committee's recommendations shall be deemed accepted by the President, insofar as within the authority of the President and consonant with the laws of California and the United States. If the President does not inform the grievant of a date certain within 7 calendar days after the grievant's inquiry, or furnish a decision to the grievant within 37 calendar days of the grievant's inquiry, the Committee's recommendations shall be deemed accepted by the President, insofar as within the authority of the President and consonant with the laws of California and the United States.
- 12.3.1 The decision of the President shall be mailed by certified mail, return receipt requested, to the last known address of the grievant, or may be delivered to the grievant in person. If the decision is delivered to the grievant in person, the grievant shall acknowledge its receipt in writing. If the grievant refuses to acknowledge receipt of the decision, the person delivering it shall make and file with the President an affidavit of personal service, which affidavit shall be regarded as equivalent to acknowledgement of receipt by the grievant.

13.0 Filing for Arbitration

- 13.1 If there is disagreement between the Committee's recommendation and the President's decision, either the grievant or the President may refer the matter to arbitration by written notification within 7 calendar days of the receipt of the President's decision, as provided in Section 12.3.1. Such written notification shall be filed with the Executive Officer and shall specify the nature of the disagreement between the President's decision and the Committee's recommendation. A copy shall be sent to the other party.
- 13.2 Failure to make such notification within the time specified shall, for all purposes, constitute a waiver by both the grievant and the President of the right to proceed to arbitration under these Procedures and Education Code Section 89542.5. The Executive Committee shall determine whether such notification has been filed within the time specified.
- 13.3 Grievances consolidated pursuant to Section 9.4 shall continue to be consolidated at arbitration except that the arbitrator's jurisdiction shall not extend to those grievants either not eligible to file for arbitration or who do not join in filing for arbitration.

14.0 Pre-Arbitration Arrangements

- 14.1 The President shall file with the Executive Officer a copy of the President's decision, together with all of the materials received from the Committee pursuant to Section 11.5.1. The Executive Officer shall verify these materials at a meeting with the grievant, the campus representative and the Chair of the Grievance Committee.
- 14.2 The Executive Officer shall attempt to obtain written agreement by the President and the grievant upon an arbitrator or committee of arbitrators. If such agreement is obtained, the matter will proceed as specified in Section 14.6 and the sections following it below. The agreement shall be irrevocable once the arbitrator accepts the invitation.
- 14.3 If such agreement is not obtained within five calendar days of the date notification was sent the Executive Officer, the Executive Officer shall attempt to obtain written agreement of the parties to one of the following three listed arbitration agencies:

Federal Mediation Service
State Conciliation Service
American Arbitration Association

If such agreement is obtained, the Executive Officer shall petition the agreed upon agency on behalf of the party seeking arbitration for a list of 7 disinterested persons who are experienced in grievance arbitration. The petition of the Executive Officer shall indicate a preference for persons with experience as faculty or administrators of four-year institutions of higher learning. The agreement shall be irrevocable upon the submission of the petition. Upon receipt of that list, the Executive Officer shall have each party alternate in striking individual names, and the person remaining after six names have been stricken shall be designated as the arbitrator. The determination as to which party shall first strike off a listed name shall be determined by the toss of a coin. The matter shall then proceed as specified in Section 14.6 and the sections following it below.

- 14.4 If agreement on an arbitration agency is not obtained within seven calendar days of the date notification was sent to the Executive Officer, the Executive Officer shall determine by lot which agency shall be used, and shall petition that agency on behalf of the party seeking arbitration for a list of 7 persons with qualifications specified in Section 14.3. Upon receipt of that list, the Executive Officer shall have each party alternate in striking individual names, and the person remaining after 6 names have been stricken shall be designated as the arbitrator. The determination as to which party shall first strike off a listed name shall be determined by the toss of a coin.
- 14.5 If any arbitrator resigns, dies, withdraws, or refuses or is unable or disqualified to perform, the vacancy shall be filled in the manner specified in this Section 14.0, and the matter resubmitted to the new arbitrator.

14.6 Upon designation of, and acceptance by, an arbitrator, the Executive Officer shall transmit to the arbitrator:

14.6.1 A copy of these Procedures;

14.6.2 A copy of the President's decision;

14.6.3 A copy of the Committee's Report; and

14.6.4 The tape recording of the hearing and all exhibits and documents which were received as part of the record of the hearing;

and notify the grievant and the President that this has been done.

14.7 Within 14 calendar days of acceptance of the case by the arbitrator, the grievant and the President may file with the Executive Officer for simultaneous transmission to the arbitrator and the other party written arguments in duplicate, based only upon these Procedures and the record. Within 7 calendar days of filing of the arguments, each party may file one written response in duplicate to the argument of the other with the Executive Officer for transmission to the arbitrator and the other party. There shall be no other communication by, or on behalf of, the parties with the arbitrator.

14.8 By written agreement of the grievant and the President pursuant to Section 4.0, furnished to the Executive Officer, a matter may be settled and withdrawn from arbitration at any time. Such withdrawal shall be final.

15.0 Arbitration

15.1 If the campus grievance hearing was closed, the policy of confidentiality stated in Section 10.5 shall apply at the arbitration level.

15.2 The arbitrator shall not hold a hearing.

15.3 In the preparation of the arbitrator's decision, consideration may be given only to the Report of the Committee, the written decision of the President, the arguments received pursuant to Section 14.7 above, and those materials which the Committee could consider under Section 11.2 above. The arbitrator need not listen to the tape recording of the hearing unless the facts of the case, in his or her opinion, make that necessary.

15.4 The arbitrator shall first determine if there is a disagreement between the Committee's recommendation and the President's decision. If the arbitrator determines that there is no disagreement, the Executive Officer shall be so notified by a written report of decision. Such report shall state the reason for the arbitrator's conclusion. The Executive Officer shall promptly transmit a copy of the report of decision to the President and to the grievant.

15.5 If the arbitrator determines that there is a disagreement, the report of decision ultimately to be written in the matter shall so state, and the arbitrator shall

proceed to decide whether the President's disagreement with the recommendations of the Committee was justified. The disagreement shall be found by the arbitrator to be justified, if:

- 15.5.1 The Committee's findings of fact or conclusions were not supported by a preponderance of the evidence at the hearing or are contrary to law; or
 - 15.5.2 The Committee recommendations were not consistent with, and supported by, the findings; or
 - 15.5.3 The Committee has so departed from or erroneously applied these Procedures as to have had a substantially prejudicial effect upon the Committee's findings of fact, conclusions, or recommendations, or all of these; or
 - 15.5.4 The Committee has recommended a remedy or remedies beyond the authority of the President or contrary to the laws of California or the United States; or
 - 15.5.5 Any or all of these.
- 15.6 Prior arbitration decisions shall not be precedent in any subsequent case.
- 15.7 If the arbitrator does not find the President's disagreement with the Committee recommendation justified, the Committee recommendation shall be adopted as the arbitrator's decision. If the arbitrator finds the President's disagreement justified, the President's decision shall be adopted as the arbitrator's decision. If, however, the arbitrator finds that these Procedures were so departed from, or erroneously applied, as to have had a substantially prejudicial effect upon the Committee's findings of fact, conclusions, or recommendations, or any of these, then the arbitrator may either adopt the President's decision as the arbitrator's decision, or mail to the Executive Officer instructions to reconvene the Grievance Committee partially or fully to rehear the grievance absent the departure from, or erroneous application of, the Grievance Procedures specified by the arbitrator. Following such rehearing, the grievance shall proceed as though it had not previously proceeded beyond the hearing stage, except that if it once again proceeds to arbitration, the same arbitrator shall be utilized as before.
- 15.8 As soon as possible, but normally no later than 30 calendar days of receipt of the arguments pursuant to Section 14.7, the arbitrator shall mail to the Executive Officer a report of decision which shall include reasons for that decision. At the same time the arbitrator shall return all materials submitted. The Executive Officer shall transmit a copy of the decision to the President and to the grievant.
- 15.9 The arbitrator's decision as to matters properly before him or her insofar as consonant with rules and policies of the Trustees, Office of the Chancellor and of the campus, and insofar as consonant with the laws of California and the United States, shall be final. The grievant shall be notified promptly by the President of the planned implementation of that final decision.
- 15.10 Arbitrator's billings shall be submitted to the campus for payment.