October 9, 1969

FSA 69-75

TO: STATE COLLEGE PRESIDENTS
FROM: Mansel Keene, Assistant Chancellor, Faculty and Staff Affairs

SUBJECT: Implementation of Executive Order No. 80 -- Transitional Grievance Procedures for Academic Personnel

The process of developing and implementing local campus procedures, in compliance with the Board of Trustees' minimum standards, has taken longer than anticipated. Many of the colleges have not as yet complied with those provisions of Executive Order No. 56, as implemented by FSA 68-52, which require that the new procedures be operative no later than the close of the spring semester or quarter of 1969.

Therefore, in order to insure that all faculty shall have the benefit of the revised grievance procedures no later than the beginning of the academic year, 1969-70, the Chancellor has issued Executive Order No. 80 on Transitional Grievance Procedures.

These procedures apply to those campuses where the President has not implemented locally developed procedures. We might remind you that concurrent with such implementation copies should be forwarded to the Office of General Counsel and Faculty and Staff Affairs. At such time as the Procedures are so implemented by the President of a college, the Transitional Grievance Procedures shall no longer apply at that college.

Any questions regarding this FSA letter and the attached executive order should be directed to Dr. Lee R. Kerschner, State College Dean, Faculty Affairs.

LRK:bk

attachment

Cc: Vice Presidents or Deans of Academic Affairs
    Vice Presidents or Deans of Administration
    College Business Managers
    College Personnel Officers
    Chancellor's Office Staff
To: State College Presidents

From: Harry E. Brakebill
Executive Vice Chancellor

Subject: Transitional Grievance Procedures for Academic Personnel - Executive Order No. 80

October 7, 1969

I am pleased to transmit a copy of Executive Order No. 80 which contains Transitional Grievance Procedures for use at all California State Colleges which have not yet implemented the Grievance Procedures for Academic Personnel as approved by the Board of Trustees on June 27, 1968.

HEB:fw

cc: Vice Presidents or Deans of Academic Affairs
Vice Presidents or Deans of Administration
College Personnel Officers
Chancellor's Staff
Transitional Grievance Procedures for
Academic Personnel - Executive Order No. 80

This Executive Order is issued pursuant to Section 42701 of Title 5 of the California Administrative Code, the resolution of the Board of Trustees of the California State Colleges on June 27, 1968, establishing a policy for Grievance Procedures for Academic Personnel, and Sections 1 and 2 of Chapter III of the Standing Orders of the Board of Trustees. It modifies Paragraph 4 of Executive Order No. 56, dated September 4, 1968; the remaining provisions of that Executive Order remain in effect.

1. The Interim Procedures for Handling Grievance and Personnel Complaints of Academic and Administrative Personnel, promulgated in August, 1961 are revoked except as to grievances initiated prior to the date hereof.

2. Until such time as the Grievance Procedures for Academic Personnel (hereinafter referred to as "Procedures"), as approved by the Board of Trustees on June 27, 1968, have been fully implemented at a California State College pursuant to Executive Order No. 56, the Transitional Grievance Procedures attached hereto and hereby made a part hereof, shall govern. They do not, however, provide a basis for reopening of grievances previously settled.

3. At such time as the Procedures are so implemented by the President of a college, the Transitional Grievance Procedures shall no longer apply at that college, except as to grievances initiated prior to the date of such implementation.

4. The reason for the adoption of these Transitional Grievance Procedures is to make available to academic personnel the benefits sought to be conferred on them by the Board of Trustees in adopting the Procedures, upon which the Transitional Grievance
Procedures are modeled. Those Procedures were to have been implemented at every California State College no later than the close of the spring semester or quarter of 1969. In most cases, that goal was not achieved, and systemwide implementation has not yet been realized. These Transitional Grievance Procedures have been adopted, with minor changes, from ones developed by a California State College. They have been reviewed by both the Offices of General Counsel and of Faculty and Staff Affairs and completely comply with Board policy.

5. At those colleges to which this Executive Order applies, a copy of it and of the attached Transitional Grievance Procedures shall be published in a college handbook, distributed at the normal time and in the normal manner to each faculty member at the State College, or shall be distributed in any other standard way in which college regulations are made available.


[Signature]
Glenn S. Dumke, Chancellor

GSD:fw
A. Preliminary

In any organization it is recognized that there will occur day-to-day irritations and inconveniences; these may cause dismay to the individuals concerned, but it would be unwise and should be unnecessary to invoke a faculty grievance hearing to deal with such minor abrasions. The college community has a particular responsibility to demonstrate the efficacy of discussion in the resolution of conflict and it is essential that this responsibility be respected. Informal discussion with colleagues, with department chairmen and division heads, with college administrative officers and with the president must be expected to lead to amicable resolution of all but the most severe conflicts. It is intended that the fullest hearings and procedures possible be provided on campus to resolve the situation.

Only in the gravest situations involving serious disability to the functioning of the college or to the continuing effectiveness of a member of the academic profession, may the formal procedures be invoked.

The initiation of a grievance hearing involves considerable sacrifice of time and energy on the part of the faculty called to serve or appear at such a hearing. The secretarial facilities of the college may also be required to stand an extra load. Most important, the experience derived from past grievance hearings is that opinions become polarized into more extreme positions in a formal hearing; while justice may seem to be done, an aftermath of strained relations among faculty often results.

When a grievance hearing is requested, it is therefore possible to assume that a major conflict is manifest. For this reason, the tone of the Transitional Grievance Procedures is deliberately precise. However, it must be emphasized that a faculty grievance hearing is in no sense a trial. Attempts to resolve the areas of discontent by informal discussion shall preface, continue through, and preferably be a reason for terminating a grievance procedure.

B. Definition

1. A "grievance proceeding" means a proceeding brought by an employee who claims that he was directly wronged in connection with his individual rights, benefits, working conditions, appointment, reappoint-
ment, tenure, promotion, reassignment, or the like. Such an action seeks correction of that wrong. Such a wrong may grow out of an arbitrary action, or out of a substantially unfair departure from duly established procedures. It does not arise from an unarbitrary exercise of discretion made pursuant to applicable procedures, nor does it arise from a minor defect in procedure, that is, one which probably did not affect a substantive decision. A grievance proceeding is to be distinguished from a disciplinary action proceeding which does not give rise to correction of the effects of the wrongdoing, but instead looks to the dismissal, demotion, suspension, or some lesser sanctioning of the wrongdoer.

2. The phrase "person(s) directly involved" means the grievant and those who made the decisions about which he is aggrieved. Every effort shall be made toward an equitable solution to the problem(s) before the dispute tends to become polarized and a settlement more difficult to achieve.

C. Informal Solution

1. A grievance proceeding may be initiated only after every effort towards an equitable solution of the difficulty has been made through informal discussions with the person(s) directly involved.

2. A person or persons having a problem or complaint in a personnel matter (appointment, reappointment, tenure decision, promotion, reassignment, individual rights, benefits, working conditions and the like) should discuss informally the problem with the person(s) directly involved with a view to resolving the difficulty.

3. At no time shall any of the persons directly involved in the case or any other persons use the fact of such informal discussion, the fact that a grievance has been filed, or the character of the informal discussions for the purpose of strengthening the case for or against persons directly involved in the dispute or for any purpose other than the settlement of the grievance.
D. Formal Grievance Procedure

1. The following formal grievance procedures are to be utilized only after all reasonable means to solve the existing problem have been exhausted on an informal basis by the persons directly involved. In the event a solution of the problem, as defined in paragraph C above, has not materialized at the informal level within 30 working days following initiation of informal discussions as provided in paragraph C 2, then, and then only, are the following procedures to be activated.

2. If the grievance results from a single event, a grievance proceeding may not be initiated more than one month after the grievant has learned of the event, provided that a grievance proceeding may not be instituted more than one year after the occurrence of such event, regardless of the date of discovery. If a grievance results from a series of events over a period of time, these procedures may not be used later than one month after the grievant has learned of the most recent of these events, provided that a grievance proceeding may not be instituted more than one year after the occurrence of the most recent of such events, regardless of the date of discovery.

3. The person desiring a grievance hearing shall present a formal written request for such a hearing to the president of the college, with copies to:

   (a) other persons directly involved in the grievance,
   (b) appropriate department chairman,
   (c) appropriate Dean,
   (d) Academic Vice-President or Dean of Instruction.

   It is to be understood that notice is served to the office rather than the individual and will be dealt with by the administrative substitute should the regular college officer be inaccessible.

4. Within two working days thereafter, the president of the college shall notify the Chairman of the Academic Senate or Faculty Council, or such person as the Chairman has designated, as Convener of the Grievance Committee (hereinafter Convener) that a hearing has been requested, and instruct him to implement the grievance procedure.
5. Within four working days of notification by the president, the Convener shall convene the Grievance Committee.

6. The following paragraphs detail the membership of the Grievance Panel, the organization of the Grievance Committee and safeguards for the parties in a grievance hearing.

6.1 Grievance Panel and Grievance Committee

6.1.1 The Grievance Panel shall consist of all tenured faculty holding full-time appointments and assigned at least 2/3 time to teaching or research, or both.

6.1.2 The Grievance Committee of three shall be selected by lot by the Convener from the Grievance Panel. Persons directly involved shall be present at the time of selection, if they wish to challenge the persons selected.

6.1.3 No individual who has participated directly in any decision on the issue which has given rise to the grievance shall be eligible to serve on the Grievance Committee hearing the case.

6.1.4 No member shall be selected who is successfully challenged for cause by persons directly involved at the time of the selection by lot provided for in paragraph D 6.1.2 above. The sufficiency of the cause shall be determined by the Convener, and his decision shall be final.

6.1.5 No member shall be selected who disqualifies himself for cause. The sufficiency of the cause shall be determined by the Convener, and his decision shall be final.

6.1.6 At the time of the selection by lot provided for in paragraph D 6.1.2 above, the persons directly involved shall be allowed two peremptory challenges. A grievance against any administrative unit of the college shall be considered a grievance against the college.
6.1.7 The Convener shall immediately arrange with the selected Grievance Committee for a time and place of the first meeting of the Committee. The Convener shall inform the president of the college and the persons directly involved of the selected time and place.

6.2 Grievance Committee Procedure

6.2.1 The Grievance Committee of three shall, at its first meeting, elect one of its number to serve as chairman.

6.2.2 Unless overruled by a majority of the Grievance Committee, rulings of the Chairman shall be final on all questions except those pertaining to the substance of the findings and recommendations of the Committee which are to be sent to the president. The Chairman may establish such other rules, within the general guidelines of this document, as may be necessary.

6.2.3 The Committee, through its Chairman, may obtain advice as needed, from the Office of General Counsel.

6.2.4 The Committee shall also at its first meeting acquaint itself with this document (Transitional Grievance Procedures for Academic Personnel).

6.2.5 The Grievance Committee shall:

(a) determine, normally within 5 working days, whether or not there are sufficient grounds to hear a case, based upon written statements and upon preliminary discussions with the grievant. If there are not sufficient grounds to hear a case, the case shall be terminated and the Committee shall notify the grievant in writing as to the reasons for its action, with copies forwarded to the persons designated in paragraph D 3 above;

(b) schedule a hearing on the grievance, normally within 15 working days, if it is determined that there are sufficient grounds to hear a case;
(c) decide whether or not it shall accept written statements in lieu of personal appearances by witnesses currently on leave or otherwise unavailable to appear in person.

(d) give due regard to the judgments of prior faculty committees on matters of substance as long as those judgments are based on the facts of the case.

6.2.6 The Chairman of the Grievance Committee, unless overruled by a majority of the full Committee, shall:

(a) arrange for either an audio tape recording or minutes which are not a verbatim transcript of the proceedings to be kept of the hearing;

(b) maintain the safeguards spelled out herein;

(c) call witnesses before the Committee;

(d) maintain order during the entire hearing. He may eject and exclude those who refuse to be orderly, except that he may not eject or exclude any member or the Grievance Committee, its advisor, any person directly involved, and the tape recorder operator or secretary, if any;

(e) conduct the hearing as expeditiously as possible.

6.2.7 Throughout the hearing, the following shall apply:

(a) At any point in the proceedings prior to the time that the Committee meets to consider its decision, the grievant may, with the consent of the Grievance Committee, withdraw the grievance.

(b) Normally the hearing will be closed to all persons except the members of the Grievance Committee, its advisor, if any, the persons directly involved, their advisors, if any,
the tape recorder operator or secretary, if any, and witnesses. Witnesses shall be excluded except during the time they give evidence.

(c) The hearing may be opened to members of the faculty upon the advance consent of all persons directly involved in the grievance, and of the Grievance Committee.

(d) Any party to a grievance shall have the right to call witnesses at a hearing. The Grievance Committee shall determine whether or not evidence offered is pertinent to the case, including any written statements introduced under paragraph D 6.2.5(c). Subject to prior recognition by the Chairman, members of the Committee and all persons directly involved may question all witnesses.

(e) No evidence may be used when the person who is the source of the evidence refuses to appear at the hearing and be questioned, except in cases where the Committee has chosen, pursuant to D 6.2.5(c), to accept written statements.

(f) Formal rules of evidence shall not apply.

(g) Each person directly involved may select and have an advisor.

(h) If a person directly involved does not appear, without satisfactory explanation for his absence having been made in advance, or should he leave the hearing before its conclusion, or adjournment, the hearing shall proceed without him, and the Grievance Committee shall render a decision based on the available evidence and make a recommendation to bring the matter to a conclusion just as though the absent party had been present throughout the hearing.

(i) The schedule for completion of a hearing by the Grievance Committee normally shall be no longer than 25 working days.
6.2.8 In reaching its decision, the Committee shall not consider or review any document, testimony or other material to which the persons directly involved are not afforded access with ample time for response.

6.2.9 The Committee's decision shall be reached by majority vote.

6.2.10 At the termination of the hearing, the Committee shall prepare its written report. That report, which shall be submitted to the president of the college within 10 working days following completion of the hearing, with copies forwarded to the grievant and the persons designated in paragraph D 3 above, shall contain:

6.2.10.1 Findings of fact.

6.2.10.2 Recommendations for settlement or solution of the grievance.

6.3 Presidential Action

6.3.1 Upon receipt of the report of the Grievance Committee, the president shall review the findings and recommendations of the Grievance Committee, decide upon the action to be taken in the matter, and then notify the grievant and the persons designated in paragraph D 3 above of his decision. The decision of the president shall concur with the recommendations of the Grievance Committee except in rare instances and for compelling reasons.

6.3.2 In the event that the president's decision is not in accord with the Grievance Committee's recommendations, the compelling reasons for his decision shall be detailed in writing to the grievant, the Grievance Committee, and the persons designated in paragraph D 3 above.

6.3.3 The decisions of the president in each case are final, except when the president does not concur in the recommendations of the Grievance Committee.

7. Appeal

7.1 The grievant may appeal to the Chancellor after the president's decision has been reached if the president does not concur with the recommendations of the Grievance
Committee. Notice of such appeal must be filed within 3 working days of the time the grievant receives notification of the president's decision. If the grievant appeals, the Chancellor shall appoint a Chancellor's Review Committee of three persons from a previously selected panel, which is acceptable to the Chairman of the Academic Senate, CSC; except that, at the option of the grievant, the committee shall be selected by lot from the panel; or, one member shall be chosen by the president whose decision is being appealed, one member shall be chosen by the grievant, and a third member shall be chosen by the two previously selected, all from the previously selected panel, but if the two members are unable to agree, a third member shall be chosen by lot from the panel. This committee shall review the case and arrive at a decision which shall be binding on all parties; provided that no decision may require an action that is beyond the authority of the California State Colleges to take. Following the committee's decision, the grievant shall have no further appeal within the California State College system.

7.2 The previously selected panel referred to in Section 7.1 shall consist of such members as may be necessary, acceptable to the Chairman of the Academic Senate, CSC, drawn from the State Colleges and University of California, with particular consideration to the principle that academic matters are involved.

7.3 The Chancellor's Review Committee will review only claims of material error—that is, errors which may have prevented those at the college level from making an appropriate decision. Errors involving minor technicalities will not be considered sufficient basis for modification of college decisions.

8. Construction of these Procedures

8.1 "Shall" is mandatory and "may" is permissive.

8.2 These procedures shall be considered complied with despite minor departures from them, so long as the minor departures are not substantially prejudicial to a party to a grievance.