Memorandum

 Presidents

Date: June 20, 1974

From: C. Mansel Keene, Vice Chancellor
Faculty and Staff Affairs

Subject: Executive Order 201, Grievance Procedures for Academic Personnel of The California State University and Colleges

In the recent duplicating of the subject Grievance Procedures, two typographical errors were made, involving Sections 3.2 and 13.1.

In your copy of the Procedures, ten words were omitted from Section 3.2. In its complete form, it should read:

3.2 A grievance proceeding may not be initiated for an asserted wrong arising out of either a disciplinary action proceeding or a grievance proceeding where the academic employee seeking to initiate the grievance was either the person charged or the grievant in the prior proceeding.

In Section 13.1, the last line should read: "...Committee shall be bound by his [rather than "its"] findings and conclusions."

Please make the necessary corrections in the copies of Executive Order No. 201 disseminated on your campus.

CLS:at1
To: Presidents  
From: Glenn S. Dumke, Chancellor  
Subject: Executive Order No. 201, Grievance Procedures for Academic Personnel of the California State University and Colleges

Attached please find five copies of Executive Order No. 201, revising the Grievance Procedures for Academic Personnel.

The revision affects three sections:

Section 16.0 is amended to provide that an academically oriented, legally trained arbitrator selected by the American Arbitration Association will exercise the functions previously performed by the Chancellor, his designee and the Chancellor's Review Committee.

Section 17.0 deleted. This section had provided that on its own motion, the Board of Trustees could review a grievance. This provision essentially duplicated Section 43750 of Title 5 of the California Administrative Code. The Trustees continue to have review authority, so the deletion has no substantive effect.

Section 18.0 renumbered 17.0.

Typographical errors in Executive Order No. 180 have been corrected.

As you know, study of possible further revisions is continuing, involving consultation with both the Presidents and the Academic Senate of the California State University and Colleges.

Please arrange distribution to the various areas concerned with this subject.

GSD/ec

Enclosure

Copies to: Chancellor's Staff
This Executive Order is issued under the authority, separately and in combination as applicable, of Education Code Sections 22600, 22604, 22607, 23604, 23605 and 24201, Sections 42701 and 43750 of Title 5 of the California Administrative Code, and the Standing Orders, Rules of Procedure and resolutions of the Board of Trustees.

1. Except as provided in this Executive Order, the Grievance Procedures for Academic Personnel of The California State University and Colleges are established, effective this date, for The California State University and Colleges, and shall govern grievance proceedings with respect to academic employees according to its terms. A copy of these Procedures is attached to, and made a part of, this Executive Order.

2. As provided in these Procedures, they supersede other procedures previously in force in The California State University and Colleges.

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

4. If, in the judgment of the President of a new or small campus of The California State University and Colleges, there are particular provisions in these Procedures which appear impractical to institute during an identified period of time, he or she may request the Chancellor to waive such requirements in the case of the particular campus. The Chancellor shall review such requests and take action as appropriate.

Dated: June 10, 1974

Glenn S. Dumke, Chancellor
Grievance Procedures for Academic Personnel of The California State University and Colleges

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1.0 **Purpose and Scope**

1.1 All grievance procedures previously adopted for faculty members and academic employees are hereby revoked except as provided in Section 1.3.

1.2 The Grievance Procedures herein provided are established under the authority, separately and in combination, as applicable, of Education Code Sections 22600, 22604, 22607, 23604, 23605 and 24201, 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 are intended to be applicable to all campuses of The California State University and Colleges.

1.3 Grievance proceedings under the Interim Procedures for Handling Grievances and Personnel Complaints of Academic and Administrative Personnel (issued in 1961) or under Executive Orders 56, 80, 112, 150 or 173 which were commenced but not concluded by the effective date of this Executive Order, may continue under the procedures of the respective Interim Procedures or Executive Order, except that there shall be no review by the Chancellor and no Chancellor's Review Committee. Instead, Sections 15.0 through 17.0 of these Procedures shall apply. For those who have filed grievances prior to the effective date of this Executive Order, if their grievances have not yet been heard, 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.

1.4 It shall not be the function of any Hearing Officer or Grievance Committee to act as an appellate personnel committee. If a finding is made that a prior committee or administrator substantially departed from required procedures, and such departure was substantially prejudicial to the grievant, or that substantial evidence favorable to the grievant was ignored, or that under the circumstances, it was arbitrary to take the action of which the grievant complains, the Committee shall recommend to the President either:

1.4.1 that the appropriate faculty committee or administrator reconsider the matter and make a recommendation to the President in accordance with established procedure; or

1.4.2 that such action as the Committee specifies be taken by the President.
1.5 These Procedures may be utilized by all full-time academic employees, both tenured and probationary of The California State University and Colleges, including those on leave of absence with or without pay.

1.6 The purpose of these Procedures is to provide an equitable means of correcting actions taken by The California State University and Colleges which directly aggrieve academic employees. It is intended that a grievance proceeding be initiated only in the gravest situations involving serious injustice to an academic employee.

When a grievance hearing is initiated, it thus may be assumed that a major problem is manifest. For this reason, the Grievance Procedures are deliberately precise. Attempts to resolve the areas of discontent by informal discussion shall precede, continue through, and preferably be a reason for terminating a grievance proceeding.

2.0 Authority of the President

2.1 All determinations and findings under these Procedures made at the campus level by anyone other than the President are in the nature of recommendations to the President, who shall have final authority at the campus level.

2.2 The functions of the President as described in these Procedures, may be delegated by him to designees who are employees of the campus, and who shall exercise those functions in his name. However, the President shall be responsible for any action taken under his authority. All references in these Procedures to the "President" mean the President of the campus at which the grievant is employed and include such designees.

3.0 Definition and Grounds for Grievance

3.1 As used in these Procedures, a "grievance proceeding" is a proceeding initiated by an academic employee who claims that he was directly wronged in connection with the rights accruing to his job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like. Such an action seeks correction of that asserted wrong. Such an asserted wrong may grow out of an arbitrary action, out of a substantial departure from required procedures when such departure was substantially prejudicial to the grievant, or because substantial evidence favorable to the grievant was ignored. 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 an ultimate substantive decision. A grievance complains of a campus decision or action; it does not lie against any individual. 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 a dismissal, demotion, or suspension, or the imposition of some lesser sanction upon the wrongdoer.

3.2 A grievance proceeding may not be initiated for an asserted wrong arising out of either a disciplinary action proceeding or a grievance proceeding where the academic employee seeking the grievant in the prior proceeding.

3.3 Only final decisions are subject to review by a grievance proceeding; grievance proceedings may not be brought to review recommendations of faculty committees or of administrators. A final decision may be the subject of only one grievance proceeding by any grievant. The President or his designee shall determine whether a particular decision complained of is a final decision, and whether it was the subject of a previous grievance proceeding commenced by the same grievant. A grievance proceeding may not be brought to review such determinations of the President or his designee.

3.4 As used in these Procedures, "college working day" shall mean any day during the college year, other than a Saturday, Sunday, or campus academic holiday as that term is used in 5 CAC 42800.

3.5 As used in these Procedures, "campus" shall mean any of the institutions included within The California State University and Colleges as specified in Section 23601 of the Education Code.

4.0 Informal Solution

4.1 The grievant is urged to make a reasonable attempt to resolve the problem amicably on an informal basis.

4.2 Any statements made in the course of such informal discussions shall not be admissible in the subsequent grievance proceeding, should it be initiated.
5.0 Initiation

5.1 A grievance proceeding shall be initiated by written Notice of Grievance sent by the grievant or grievants to the President. Such notice shall:

5.1.1 Contain a concise statement of the facts giving rise to the grievance.

5.1.2 State the relief sought.

5.1.3 If the grievant wishes that his hearing not be conducted by a Hearing Officer, and if he does not wish to have a person represent him at the grievance hearing, he may waive a hearing by a Hearing Officer and representation, by including in the Notice of Grievance a request that his hearing be conducted by a grievance committee.

5.1.4 If the grievant wishes to have a person represent him at the grievance hearing, the Notice of Grievance shall include a statement to that effect, stating the name, address and telephone number of that person.

5.2 On the same date the Notice of Grievance is sent to the President, a copy of the notice shall be sent to:

5.2.1 The appropriate Department Chairman,

5.2.2 The appropriate Dean,

5.2.3 The Academic Vice President or equivalent officer,

and the President shall be so notified.

5.3 A more detailed written statement of the case may be sent by the grievant or grievants to the President with copies to the persons designated in Section 5.2 of these Procedures within 10 college working days of the date on which the Notice of Grievance was sent.

6.0 Period of Limitation

6.1 If the grievance results from a single event, a grievance proceeding shall not be initiated more than 20 college working days after the grievant has learned of the event, provided that a grievance proceeding may not be instituted more than one calendar year after the occurrence of such event, regardless of the date of discovery. A grievance may result from a series of events over a period of time. In such case, these Procedures may not be used later than
20 college working days after the grievant has learned of the most recent of these events, provided that a grievance proceeding may not be instituted more than one calendar year after the occurrence of the most recent of such events, regardless of the date of discovery.

6.2 For those who deferred filing a grievance during the operative period of Executive Order No. 173, the 20-day time limit specified in Section 6.1 shall not include the period from and including March 5 to and through the effective date of this Executive Order.

7.0 Grievance Panel

7.1 Each campus shall have a Grievance Panel.

7.2 The Grievance Panel shall consist of all tenured academic employees of the campus holding the rank of professor or associate professor, holding full-time appointments, and assigned at least two-thirds time to teaching or research, or both.

8.0 Selection of Grievance Committee

8.1 Within three college working days following the day of receipt of the Notice of Grievance, the President shall cause a Grievance Committee of three members to be selected by lot from among the members of the Grievance Panel. The grievant, members of his department or equivalent administrative unit, and persons directly involved in the action or decision which is the subject of the grievance as well as persons who made recommendations as to such actions or decisions shall be excluded from membership in the Panel during this selection.

The grievant and the persons receiving notice pursuant to Section 5.2 of these Procedures shall be notified in advance of the date, time and place of selection and may be present at the time of selection if they wish to excuse or challenge any persons selected.

8.2 Service as a member of the Grievance Panel, as a member of the Grievance Committee, and as a member of the ad hoc panel described in Section 8.4 of these Procedures, unless excused by the President for good cause, is part of the normal and reasonable duties of each employee designated in Section 7.2 of these Procedures during the periods of the year when he is required to furnish services to the college.
8.3 The grievant and those persons listed in Section 5.2 of these Procedures may excuse up to two persons from those selected for the Committee without cause. Each may challenge any person selected for membership on the Committee because he is related to the grievant or to any person directly involved in the action or decision which is the subject of the grievance or to any person who made recommendations as to such actions or decisions, or because of past association with such persons which would prejudice his judgment to the degree that it appears that a fair hearing could not be had. The President shall determine whether the facts present grounds for disqualification and his decision shall be final.

8.4 If the list of Panelists becomes exhausted before all three members of the Committee can be appointed, the President of the closest neighboring campus of The California State University and Colleges to the campus attempting to select a Committee shall, upon request by the President of the campus where the grievance has been filed, select by lot from the Grievance Panel at that neighboring campus an ad hoc panel of 20 persons. Utilizing this panel, the procedures provided in Sections 8.1-8.3 of these Procedures will be implemented by the President of the campus where the grievance has been initiated. Should this ad hoc panel become exhausted, it shall be replenished by the means by which it was established.

9.0 Initial Determination

9.1 The Grievance Committee shall determine on the basis of the Notice of Grievance and any written statement of the case submitted pursuant to Section 5.3 of these Procedures whether there are sufficient facts asserted to make it appear that grounds for a grievance proceeding exist, and that a hearing should be held. An affirmative determination shall be made only if all criteria and procedural requirements stated in Sections 1, 3, 5 and 6 of these Procedures have been fully met.

9.2 The initial determination shall be made by majority vote of the Grievance Committee and written notice thereof sent pursuant to Section 9.4.3 of these Procedures within five college working days of the appointment of the third member of the Grievance Committee. Should that fifth day end without such determination and written notice having been made, the President shall make the initial determination and send notice thereof pursuant to Section 9.4.3 of these Procedures within the next two college working days. Should the President not make and announce such decision within the allotted time, the matter shall proceed to
hearing as though an affirmative determination had been made and announced on the seventh college working day after appointment of the third member of the Grievance Committee.

9.3 If the initial determination is negative, the Notice of Initial Determination shall state the reasons for that negative decision, and there shall be no further proceedings under these Procedures.

9.4 Where the initial decision is affirmative, two kinds of hearings are available:

9.4.1 If the grievant waives representation by another person and having his case heard by a Hearing Officer, the hearing shall be conducted by a Grievance Committee. The date selected for the hearing shall be within fifteen college working days of the date of the Notice of Initial Determination (Section 9.4.3 below). Once set, it may only be extended by the Chairman of the Grievance Committee (see Section 12.3 of these Procedures) for reasons which, in his opinion, are compelling. In setting the date, and granting extensions, the time restriction in Section 13.3 of these Procedures should be kept in mind.

9.4.2 If the grievant does not waive representation by another person and having his case heard by a Hearing Officer, the campus administration shall arrange for a Hearing Officer to conduct the grievance hearing. This arrangement shall be made with the nearest office of the Office of Administrative Hearings or with a Hearing Officer appointed for the purpose. If the grievant's representative is to be a person admitted to the practice of law before any state or federal court, the campus administration shall notify the Office of General Counsel. The hearing date, once set, may only be extended by the Hearing Officer assigned to the case for reasons which, in his opinion, are compelling.

9.4.3 The grievant, the President, and those persons listed in Section 5.2 of these Procedures shall be sent an appropriate Notice of Initial Determination, and shall be advised of the date, time and place of the hearing.

10.0 Procedural Rules for Hearings (Hearing Officers)

10.1 The rules in this Section 10.0 shall apply to hearings conducted by a Hearing Officer.
10.2 No later than the time when arrangements are made for a Hearing Officer to hear the case, if the grievant's representative is to be a person admitted to the practice of law before any state or federal court, the campus administration shall notify the Office of General Counsel that such arrangements are being made. That Office will provide an attorney to represent the campus at the hearing.

10.3 Once a Hearing Officer has commenced to hear the case, the grievant may not thereafter elect to have the case heard by a Grievance Committee.

10.4 A grievant may challenge the Hearing Officer for cause by submitting a written statement to the Chancellor, with a copy to the President setting forth facts which establish that:

10.4.1 The Hearing Officer was a participant in the events out of which the action arose, other than events connected with the conduct of a hearing.

10.4.2 The Hearing Officer is related to or has had past association with any person affected by the events giving rise to the action, which past association is of a kind which would prejudice his judgment to the degree that it appears that a fair hearing could not be had. "Past association" does not include an association acquired in connection with a previous hearing.

The President shall determine whether the facts present grounds for disqualification and his decision shall be final. The Hearing Officer may disqualify himself on his own motion. No peremptory challenges may be made.

10.5 The Hearing Officer may obtain advice, as needed, from the Office of the Chancellor.

10.6 The campus shall arrange for making an audio tape of any and all proceedings conducted by the Hearing Officer. No recording by the grievant or by other persons at the hearing will be permitted, but the grievant, at his own expense, may furnish a certified court reporter provided that a copy of the transcript made is promptly furnished to the President at no cost to the campus, and that use of such transcript shall be limited to this or subsequent administrative and judicial proceedings held in connection with the matter.
10.7 At the hearing, the grievant shall present his evidence, following which other evidence shall be received. The grievant shall have the burden of persuading by a preponderance of the evidence.

10.8 Consolidated Hearings

10.8.1 Where more than one grievant complaining of a wrong arising out of the same set of facts has a hearing pending, the hearings may be consolidated with the approval of all such grievants and of the Hearing Officer first designated to hold such hearings. The consolidated hearing shall be conducted by that Hearing Officer.

10.8.2 If a grievance to be conducted by a Hearing Officer is consolidated with a hearing to be conducted by a Grievance Committee pursuant to Section 12.11, the consolidated hearing shall be conducted by a Hearing Officer.

10.8.3 The separation of one or more cases from a group of cases previously set for a consolidated hearing shall not be considered to affect the remaining cases in the group.

10.8.4 If there is a consolidation of cases wherein one of the grievants is represented by an attorney admitted to practice law before any state or federal court, an attorney from the Office of General Counsel will represent the campus at the consolidated hearing.

10.9 The Hearing Officer:

10.9.1 Shall make all rulings on matters relating to the conduct of the hearing, including matters regarding admission of evidence.

10.9.2 Shall request attendance of witnesses as requested by or on behalf of the grievant and on behalf of those persons listed in Section 5.2 of these Procedures.

10.9.3 Shall maintain an orderly hearing and permit no person to be subjected to abusive treatment. He may eject or exclude anyone who refuses to be orderly. Should he exclude the grievant, he shall make such provision as is practical in his behalf.
10.9.4 May recognize the representative of the grievant and the representative of the campus for the purpose of questioning witnesses or presenting argument, evidence or requests to the Hearing Officer. The Hearing Officer may also question witnesses.

10.9.5 Shall instruct each witness and other participants and observers on the policy of confidentiality contained in Section 10.11 of these Procedures.

10.9.6 Shall make such further rules for the conduct of the hearing as he deems appropriate, not inconsistent with these procedures.

10.10 Persons Who May Attend Hearings; Confidentiality

10.10.1 Hearings shall be closed to everyone other than the person conducting the hearing, the grievant, his representative, if any, those persons listed in Section 5.2 of these Procedures, the representative of the campus, the person designated by the campus to record the hearing pursuant to Section 10.6 of these Procedures, witnesses while they are presenting evidence, and the representatives of not more than two faculty organizations as provided in this Section.

10.10.1.1 The grievant and the President may each authorize one person who is a representative of a professional faculty organization or of the Academic Senate or Council of the College to attend the hearing as an observer.

10.11 It is the policy of The California State University and Colleges that evidence, proceedings, findings and recommendations (but not the final decision of the President) are confidential and shall not be made public by the campus or by any participant in a hearing, including the faculty organization or Senate or Council observers, 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, the President may authorize such public statements as are appropriate. This policy of confidentiality shall not preclude the campus from taking any action following appropriate procedures against any person or entity on the basis of evidence developed at the hearing.
10.12 Evidence

10.12.1 Formal rules of evidence shall not apply.

10.12.1.1 Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that there are statutory bases for their application and irrelevant and unduly repetitious evidence shall be excluded.

10.12.2 No evidence other than that received at the hearing shall be considered by the Hearing Officer.

10.13 Arguments by the grievant concerning the legal (as distinguished from factual) applicability, or legal validity of any statute, regulation, resolution of the Board of Trustees, Standing Order, or Chancellor's Executive Order, shall not be addressed to the Hearing Officer, but to the President, as soon as the hearing has concluded. The President shall seek advice on the matter from the Office of General Counsel. The advice received from that office shall be considered by the President before a final campus decision is rendered.

10.14 Unless a longer period of time is agreed to by the grievant, the President must normally receive the Hearing Officer's report within 30 college working days from the commencement of the hearing by the Hearing Officer.

10.14.1 Other than as required for the convenience of the Hearing Officer, extensions of time for hearings shall be authorized only for good and compelling reasons.
11.0 Findings and Conclusions of the Hearing Officer

11.1 Following presentation of evidence, the Hearing Officer shall privately consider the evidence and shall prepare written findings of fact and conclusions. He may review the audio tape as needed.

11.1.1 In deciding upon his findings and conclusions, the Hearing Officer must find against the grievant unless the grievant has persuaded him by a preponderance of the evidence that:

11.1.1.1 A prior committee or administrator substantially departed from required procedures, and that such departure was substantially prejudicial to the grievant, or

11.1.1.2 Substantial evidence favorable to the grievant was ignored in arriving at a decision affecting him, or

11.1.1.3 Under the circumstances, no reasonable, unbiased person faced with the same facts could have taken the action of which the grievant complains,

or any combination of these.

11.2 Within three college working days of the conclusion of the hearing or as soon thereafter as possible, the Hearing Officer shall submit his findings and conclusions to the President who shall make a copy available to the Grievance Committee.

12.0 Grievance Committee Procedural and Hearing Rules

12.1 A grievant who elects not to be represented at a hearing by any person, may also elect not to have his grievance heard by a Hearing Officer, but to be heard instead by a Grievance Committee as provided in this Section (12.0).

12.2 Decisions of the Grievance Committee, except rulings made by its chairman (see Sections 12.4 and 12.5 of these Procedures), shall be by majority vote of the three members.

12.3 Upon first convening, the Grievance Committee shall elect a Chairman and acquaint itself with these Procedures.
12.4 Unless overruled by a majority of the Grievance Committee, rulings of the Chairman shall be final on all questions except those pertaining to the initial determination and the substance of the findings and recommendations of the Committee which are sent to the President. All other provisions of these Procedures pertaining to the authority of the Chairman shall be subject to this section.

12.5 The Chairman may establish such other rules, within the general guidelines of these Procedures, as he deems necessary.

12.6 The Grievance Committee, through its Chairman, may obtain advice, as needed, from the Office of the Chancellor.

12.7 Two members of the Grievance Committee, one of whom must be the Chairman, shall constitute a quorum for transaction of the business of the Committee. No member who is absent during any part of the hearing may participate in the preparation of findings and recommendations of the Committee without first listening to the tape recording of the portion of the hearing conducted in his absence.

12.8 The Chairman of the Grievance Committee shall arrange for tape recording, but not a transcription, of the hearing. No other recording of the hearing shall be permitted.

12.9 Once a grievance has been set for hearing, the grievant may withdraw all or any part of his grievance only with the consent of the Grievance Committee. Once the hearing has been completed, the grievant cannot withdraw his grievance.

12.10 At the hearing, the grievant shall present his evidence, following which other evidence shall be received. The grievant shall have the burden of persuading by a preponderance of the evidence.

12.11 Where more than one grievant complaining of a wrong arising out of the same set of facts has a hearing pending, the hearings may be consolidated with the approval of all such grievants and of the Grievance Committee first appointed to hold such hearings. The consolidated hearing shall be conducted by that Grievance Committee. This Section 12.11 is subject to Section 10.8 of these Procedures.
12.12 The grievant and those persons listed in Section 5.2 of these Procedures shall be permitted to be present at all proceedings of the hearing whenever any evidence is being presented, and, subject to recognition by the Chairman of the Grievance Committee, shall be permitted to:

12.12.1 Examine all evidence presented to the Grievance Committee.

12.12.2 Present evidence available to them and to question witnesses. Written statements may be accepted in evidence by the Grievance Committee but only from persons unable, in the opinion of the Grievance Committee, to attend the hearing. Such inability shall be found only in cases of serious illness or death of the witness or a member of his family, physical absence from the area due to preexisting plans which cannot conveniently be changed, and the like.

12.12.3 Present an oral or written argument, or both, prior to the conclusion of the hearing.

12.13 The Chairman of the Grievance Committee shall:

12.13.1 Call witnesses before the Committee as requested by the grievant and those persons listed in Section 5.2 of these Procedures and by members of the Grievance Committee.

12.13.2 Maintain an orderly hearing and permit no person to be subjected to abusive treatment. He may eject or exclude anyone who refuses to be orderly.

12.13.3 Instruct each witness and other participants and observers on the policy of confidentiality contained in Section 12.16.1.2 of these Procedures.

12.14 No person shall be represented by another person.

12.15 At the hearing, the members of the Grievance Committee may ask questions of any witness or other person present at the hearing.

12.16 Persons Who May Attend Hearings; Confidentiality
12.16.1 Hearings shall be closed to everyone other than members of the Grievance Committee, the grievant, the President, those persons listed in Section 5.2 of these Procedures, the tape recorder operator, if any, witnesses while they are presenting evidence, and the representatives of not more than two faculty organizations as provided in this Section.

12.16.1.1 The grievant and the President may each authorize one person who is a representative of a professional faculty organization or the Academic Senate or Council of the campus to attend the hearing as an observer. Such representatives shall not be attorneys admitted to practice law before any state or federal court.

12.16.1.2 It is the policy of The California State University and Colleges that evidence, proceedings, findings and recommendations (but not the final decision of the President) are confidential and shall not be made public by the campus or by any participant in a hearing, including the faculty organization or Senate or Council observers, except as any of the foregoing may be filed in court or introduced in 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, the President may authorize such public statements as are appropriate. This policy of confidentiality shall not preclude the campus from taking any action following appropriate procedures against any person or entity on the basis of evidence developed at the hearing.

12.17 Pursuant to Section 1.4 of these Procedures, if a Grievance Committee finds that a prior committee or administrator substantially departed from required procedures, and such departure was substantially prejudicial to the grievant, or that substantial evidence favorable to the grievant was ignored, or
that, under the circumstances, it was arbitrary to take the action of which the grievant complains, the Committee shall report its findings to the President with a recommendation either:

12.17.1 that the appropriate faculty committee or administrator reconsider the matter and make a recommendation to the President in accordance with established procedure; or

12.17.2 that such action as the Committee specifies be taken by the President.

12.18 The hearing shall not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely. Evidence which is merely repetitious or cumulative shall be excluded.

12.19 Arguments by the grievant concerning the legal (as distinguished from factual) applicability, or legal validity of any statute, regulation, resolution of the Board of Trustees, Standing Order, or Chancellor's Executive Order, shall not be addressed to the Grievance Committee, but to the President, as soon as the hearing has concluded. The President shall seek advice on the matter from the Office of General Counsel. The advice received from that Office shall be considered by the President before a final campus decision is rendered.

13.0 Grievance Committee Recommendations

13.1 Following conclusion of its hearing, or receipt of the findings of the Hearing Officer, whichever is the case, the Grievance Committee shall meet in executive session, with all other persons excluded. In this session, the Committee shall prepare its findings of fact if it conducted the hearing, and its recommendations to the President for settlement or solution of the grievance. If the hearing was conducted by a Hearing Officer, the Committee shall be bound by its findings and conclusions.

13.2 The Grievance Committee shall make its written report to the President of the campus, with a copy to the grievant. The tape recording of the hearing and the Committee's file on the matter shall be forwarded to the President at this time.
13.3 The President must receive the Grievance Committee report within 30 college working days from the date of the Notice of Initial Determination in those cases where the matter is heard by the Grievance Committee, or within three college working days of the time the Grievance Committee Chairman receives the report of the Hearing Officer in those cases utilizing one. In any case in which such report is not received by the end of the 30th day, or the 3rd day, whichever is applicable, the Grievance Committee shall be foreclosed of jurisdiction in the case. In such case, the Chairman shall immediately furnish to the President the Notice of Grievance, any statement prepared pursuant to Section 5.3, and the Hearing Officer's report, evidence file and hearing tape, if any. The President then shall make such decision in the case as he deems wise, and no further action may be taken in the matter pursuant to these procedures.

13.4 In its deliberations, no evidence other than that received at the hearing shall be considered by the Grievance Committee.

14.0 Presidential Action

14.1 Upon receipt of the report of the Grievance Committee, the President of the campus shall review the findings in the case and the recommendations of the Grievance Committee. He shall decide upon the action to be taken in the matter. The decision of the President shall concur with the recommendations of the Grievance Committee except when those recommendations are not supported by the findings and conclusions of a Hearing Officer in the case, or except in rare instances when, in the opinion of the President, compelling reasons exist for a different result.

14.2 In the event that the President's decision is not in accord with the Grievance Committee's recommendations, the President and the Grievance Committee shall make an effort to resolve their differences regarding disposition of the case. If no such resolution occurs, the compelling reasons for the President's decision shall be detailed in his written Notice of Decision.

14.3 Within five college working days of the time he receives the recommendation of the Grievance Committee, or as soon
thereafter as possible, the President shall send his Notice of Decision to the grievant and to the Grievance Committee unless he returns the matter to the Hearing Officer or Grievance Committee, as appropriate, for clarification, necessary further proceedings, or reconsideration of Grievance Committee recommendations, in which cases the five college working days shall run from the date the Grievance Committee returns its further report to him. A Grievance Committee may change its recommendations from those forwarded to the President pursuant to Section 13.2. The President then shall make his decision.

14.4 The decisions of the President in each case are final at the campus level.

15.0 Record

15.1 If the President's decision is not in accord with the Grievance Committee's recommendations and a request for review is properly filed pursuant to Section 16.0, or if the grievant subsequently commences legal action seeking judicial review of his or her grievance, the grievant, under supervision and at his or her own expense, may obtain a written transcript of the tape recording of the hearing, provided that he or she first sign an agreement with the campus, and furnish the campus with a copy of the transcript when it is completed. This agreement shall provide that use of such a copy shall be limited to subsequent administrative and judicial proceedings held in connection with the matter, that the tape or its contents shall not otherwise be made public in any way, and that any violation of this agreement shall be unprofessional conduct as that term is used in Education Code Section 24306.

15.2 In keeping with the policy stated in Sections 10.11 and 12.16.1.2 of these Procedures, in no case other than that described in Section 15.1 shall a transcript of the tape recording of the hearing be furnished to the grievant. Neither the tape recording itself, nor a copy thereof, shall be furnished to the grievant.

16.0 Review

16.1 A grievant who has received a Notice of Decision on his or her grievance from a campus President may request review as provided herein, if the requirements of Section 16.2 are met, by directing a written Request for Review to the State University Dean, Faculty Affairs (Statewide Dean) in the Chancellor's Office, with a copy to the campus President. The Request should have attached
copies of the report of the Grievance Committee and the Notice of Decision of the President, and should state the dates of each, the grounds claimed for review (see Section 16.2 of these Procedures), and the facts which support the ground or grounds alleged. The Request must be postmarked within ten college working days of the date of distribution of the President's Notice of Decision.

16.2 Review may be requested only if the Notice of Decision of the President does not concur with the final recommendations of the Grievance Committee, unless that lack of concurrence was because of failure of the Grievance Committee to base its recommendations on the findings and conclusions on matters of fact made in the case by a Hearing Officer. Such review may be requested only as to those recommendations or portions thereof not concurred in by the President and only on one or more of the following grounds:

16.2.1 Arbitrary action by the President in not accepting the Grievance Committee's recommendations,

16.2.2 Substantially unfair departure from these Procedures which affected the President's decision,

16.2.3 Substantial evidence favorable to the grievant which was ignored by the President.

16.3 Upon receiving a copy of the Request for Review addressed to the Statewide Dean, the President of the campus shall promptly furnish the Statewide Dean with any written answer the campus wishes to make to the Request, as well as copies of the:

16.3.1 Hearing Officer's report, if any,
16.3.2 Grievance Committee's report,
16.3.3 Written arguments, if any, presented to the Grievance Committee or Hearing Officer,
16.3.4 President's Notice of Decision with attachments, if any, and
16.3.5 Tape recording of the hearing.

A copy of the campus answer, if any, without the enclosures just listed, shall simultaneously be sent the grievant.
16.4 If the answer by the campus to the Request alleges that the case is not one in which there is jurisdiction pursuant to Section 16.2 to make a decision on the grievance, the grievant may direct a response to that allegation to the Statewide Dean. In order to be considered, the response must be received within the same period of time as was taken by the campus to answer, but not less than, ten college working days from the date of receipt by the Statewide Dean of the materials described in Section 16.3.

16.5 Upon receipt from the campus of the materials described in Section 16.3, the Statewide Dean shall promptly forward the Request and those materials to the Los Angeles regional office of the American Arbitration Association (AAA), for assignment to, and determination by one academically oriented arbitrator admitted to practice law before any state or federal court. The arbitrator shall not be a member or an employee of the Trustees of the California State University and Colleges. If the campus answer objects to the arbitrator's jurisdiction, the Statewide Dean shall defer submitting the matter to the AAA for the period of time authorized by Section 16.4, so that the grievant's response, if any, may be included. If the grievant has requested a transcript pursuant to Section 15.1 and wishes the arbitrator to read all or any part of it, the Statewide Dean shall defer submitting the matter to the AAA until a copy of the transcript is received for forwarding by the Statewide Dean, but such deferral shall not exceed 45 calendar days from date of receipt of the materials described in Section 16.3. After his or her receipt of the materials from the Statewide Dean, the arbitrator shall not delay consideration or decision pending receipt of a transcript.

16.5.1 Arbitrators shall be selected from men and women who are "academically oriented" in order to assure that persons serving in this capacity have a sufficient knowledge about institutions of higher education so as to understand the nature of faculty grievances and the consequences of the resolutions available in each case. The term "academically oriented" includes (but is not limited to) persons who have served in four-year institutions of higher education in full-time faculty, administrative or executive positions, as well as persons who have served on public and private boards of such institutions of higher education.
16.6 The action on a Request for Review shall be limited to the grievant or grievants making the appeal unless the Statewide Dean, in his discretion, and with the consent of the grievants and the President consolidates related cases for purposes of review.

16.7 Based upon the materials submitted pursuant to Sections 16.1, 16.3, and 16.4, the AAA shall make an initial determination of whether there are sufficient facts asserted to make it appear that grounds for review exist. The AAA may use an arbitrator for this preliminary purpose selected without utilizing the appointment method provided for in AAA Arbitration Rule 12. Grounds for review shall exist if all of the following appear:

- The President did not act in accordance with the final recommendations of the Grievance Committee;
- the Grievance Committee based its recommendations on the findings and conclusions on matters of fact made in the case by a Hearing Officer, if any;
- one or more of the grounds listed in Sections 16.2.1 through 16.2.3 is asserted for review;
- and the procedural requirements of Section 16.1 have been followed. Otherwise, a negative determination shall be made.

16.8 In scheduling, cases involving nonretention where there is no terminal notice year shall be given high priority.

16.9 If it is determined that the matter should be reviewed pursuant to this Section 16.0, an arbitrator appointed by the AAA utilizing the appointment method provided for in AAA Arbitration Rule 12 shall have jurisdiction and authority to decide, based on the materials submitted pursuant to Sections 16.1, 16.3, and 16.4, whether or not

16.9.1 The action of the President in not accepting the Grievance Committee's recommendations was arbitrary, or

16.9.2 There was a substantially unfair departure from these Procedures which affected the President's decision, or

16.9.3 Substantial evidence favorable to the grievant was ignored by the President.

The grievant shall have the burden of proof on all issues before the arbitrator. If the arbitrator finds affirmatively as to any of Sections 16.9.1, 16.9.2, or 16.9.3, then he or she shall decide whether or not
16.9.4 The President's decision should be upheld, in whole or in part, or

16.9.5 The matter should be remanded to the campus with instructions that the action being grieved be reviewed, absent whatever defect was found to have existed in it. Should the arbitrator exercise the option of remand, he or she may retain jurisdiction over the action being contested until the matter is finally concluded on the campus and the arbitrator has had the opportunity to review the decision on remand, or

16.9.6 The Grievance Committee's recommendations should be adopted in whole or in part.

16.10 The review shall be conducted under the Arbitration Rules of the AAA in effect on June 10, 1974, the date these Procedures are issued, except as they may vary from provisions of these Procedures, in which case these Procedures govern. However, all of AAA Rule 7 other than the last sentence shall not apply to such review, nor shall AAA Rules 1, 8, 9, 10, 13, 14, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 34, 39, 40, and 44 apply. The arbitrator shall not hold a hearing. The word "resubmitted" shall be substituted for the word "reheard" in Rule 18. A copy of the applicable Rules is attached. In the event any applicable AAA Rule is changed, the Chancellor may authorize the matter to proceed under the Rule as changed, or may make other provision as respects such Rule as appropriate.

16.10.1 The arbitrator, if not selected pursuant to AAA Rule 12, may be selected by written agreement of the President, the grievant, and the Statewide Dean.

16.10.2 The days specified in the AAA Rules are calendar days, not campus working days.

The arbitrator shall review all materials presented by the Statewide Dean, except that 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. If the hearing was conducted by a Hearing Officer, the arbitrator shall be bound by the Hearing Officer's findings and conclusions on matters of fact. The arbitrator shall be bound by the policy of
confidentiality stated in Sections 10.11 and 12.16.1.2 of these Procedures. If the arbitrator has questions about facts or policy, he or she shall invite written comment on such questions from both the President and the grievant, who shall send copies of such comments each to the other. The President may refer such questions to the Grievance Committee or the Hearing Officer, as appropriate, for information necessary to the preparation of his or her response. Copies of responses of the Grievance Committee or the Hearing Officer to questions so referred shall be forwarded by the President to the grievant and the arbitrator. As to questions he or she may have on the law, the arbitrator shall refer such questions to the Office of General Counsel which shall send copies of all responses to such inquiries to the grievant and the President.

16.11 The arbitrator shall mail his or her decision which shall include reasons for that decision, to the Statewide Dean accompanied by all materials furnished the arbitrator by the Statewide Dean, the campus, and the grievant. The arbitrator shall mail a copy of the decision to the President of the campus and to the grievant, at his or her last known address or to the grievant's representative. If, in the judgment of the Statewide Dean, the decision of the arbitrator is unclear or incomplete, the Statewide Dean may request clarification or amplification or both of the arbitrator, with copies to the President and the grievant. The arbitrator shall comply with such request, with copies to the President and the grievant.

16.12 Prior arbitration decisions shall not be used as a precedent for any subsequent case. No arbitrator shall have any authority to add to, detract from, or in any way alter the provisions of these Procedures, any California statute or regulation, or any rules or policies of the Office of the Chancellor or of the campus.

16.13 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 which predate the grievance and to which the attention of the arbitrator, Grievance Committee or Hearing Officer was directed in the course of the Grievance Proceeding, and insofar as consonant with the laws of California and the United States, shall be final and binding upon the campus and the grievant.

16.14 AAA billings shall be submitted to the campus for payment.
16.15 By written agreement of the grievant and the President furnished to the AAA, a matter may be settled and withdrawn from the review provided by this Section 16.0 at any time. Such withdrawal shall be final.

17.0 Construction of These Procedures

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

17.2 Section headings do not in any manner affect the meaning or intent of the provisions of these Procedures.

17.3 These Procedures shall be considered complied with despite technical departures from them or errors in their application, unless in the opinion of the President or the arbitrator, the technical departures or errors were substantially prejudicial to persons directly involved or to the campus.

17.4 In applying the singular language of these Procedures to consolidated hearings, the singular number shall include the plural.

17.5 All notices, requests, reports, and statements sent pursuant to these Procedures shall be sent by U.S. mail. The date postmarked on the envelope shall be the governing date, unless the date of receipt is expressly specified in these Procedures.

17.6 Unless differently defined in these Procedures, terms used in these Procedures which are defined in Sections 40000 and 42700 of Title 5 of the California Administrative Code shall have the meanings given in those definitions.
American Arbitration Association
Arbitration Rules
Applicable Under
Executive Order 201

2. Name of Tribunal: Any Tribunal constituted by the parties under these Rules shall be called the Voluntary Labor Arbitration Tribunal.

3. Administrator: When parties agree to arbitrate under these Rules and an arbitration is instituted thereunder, they thereby authorize the American Arbitration Association (hereinafter AAA) to administer the arbitration. The authority and obligations of the Administrator are as provided in the agreement of the parties and in these Rules.

4. Delegation of Duties: The duties of the AAA may be carried out through such representatives or committees as the AAA may direct.

5. National Panel of Labor Arbitrators: The AAA shall establish and maintain a National Panel of Labor Arbitrators and shall appoint arbitrators therefrom, as hereinafter provided.

6. Office of Tribunal: The general office of the Labor Arbitration Tribunal is the headquarters of the AAA, which may, however, assign the administration of an arbitration to any of its Regional Offices.

7. After the Arbitrator is appointed, no new or different claim may be submitted to him except with the consent of the Arbitrator and all other parties.

11. Qualifications of Arbitrator: No person shall serve as a neutral Arbitrator in any arbitration in which he has any financial or personal interest in the result of the arbitration, unless the parties, in writing, waive such disqualification.

12. Appointment from Panel: If the parties have not appointed an Arbitrator and have not provided any other method of appointment, the Arbitrator shall be appointed in the following manner: immediately after the filing of the Demand or Submission, the AAA shall submit simultaneously to each party an identical list of names of persons chosen from the Labor Panel. Each party shall have seven days from the mailing date in which to cross off any names to which he objects, number the remaining names indicating the order of his preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable.

(Continued)
From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an Arbitrator to serve. If the parties fail to agree upon any of the persons named or if those named decline or are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Administrator shall have power to make the appointment from other members of the Panel without the submission of any additional lists.

15. **Number of Arbitrators:** If the arbitration agreement does not specify the number of Arbitrators, the dispute shall be heard and determined by one Arbitrator, unless the parties otherwise agree.

16. **Notice to Arbitrator of His Appointment:** Notice of the appointment of the neutral Arbitrator shall be mailed to the Arbitrator by the AAA and the signed acceptance of the Arbitrator shall be filed with the AAA prior to the opening of the first hearing.

17. **Disclosure by Arbitrator of Disqualification:** Prior to accepting his appointment, the prospective neutral Arbitrator shall disclose any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial Arbitrator. Upon receipt of such information, the AAA shall immediately disclose it to the parties. If either party declines to waive the presumptive disqualification, the vacancy thus created shall be filled in accordance with the applicable provisions of these Rules.

18. **Vacancies:** If any Arbitrator should resign, die, withdraw, refuse or be unable or disqualified to perform the duties of his office, the AAA shall, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in the same manner as that governing the making of the original appointment, and the matter shall be reheard by the new Arbitrator.

30. **Inspection:** Whenever the Arbitrator deems it necessary, he may make an inspection in connection with the subject matter of the dispute after written notice to the parties who may, if they so desire, be present at such inspection.

33. **Waiver of Rules:** Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object.

35. **Extensions of Time:** The parties may modify any period of time by mutual agreement. The AAA for good cause may extend any period of time established by these Rules, except the time for making the award. The AAA shall notify the parties of any such extension of time and its reason therefor.
36. Serving of Notices: Each party to a Submission or other agreement which provides for arbitration under these Rules shall be deemed to have consented and shall consent that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these Rules and for any court action in connection therewith or the entry of judgment on an award made thereunder, may be served upon such party (a) by mail addressed to such party or his attorney at his last known address, or (b) by personal service, within or without the state wherein the arbitration is to be held.

37. Time of Award: The award shall be rendered promptly by the Arbitrator and, unless otherwise agreed by the parties, or specified by the law, not later than thirty days from the date of closing the hearings, or if oral hearings have been waived, then from the date of transmitting the final statements and proofs to the Arbitrator.

38. Form of Award: The award shall be in writing and shall be signed either by the neutral Arbitrator or by a concurring majority if there be more than one Arbitrator. The parties shall advise the AAA whenever they do not require the Arbitrator to accompany the award with an opinion.

41. Release of Documents for Judicial Proceedings: The AAA shall, upon the written request of a party, furnish to such party at his expense certified facsimiles of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

43. Administrative Fee: As a nonprofit organization, the AAA shall prescribe an administrative fee schedule to compensate it for the cost of providing administrative services. The schedule in effect at the time of filing shall be applicable.

45. Communication with Arbitrator: There shall be no communication between the parties and a neutral Arbitrator other than at oral hearings. Any other oral or written communications from the parties to the Arbitrator shall be directed to the AAA for transmittal to the Arbitrator.

46. Interpretation and Application of Rules: The Arbitrator shall interpret and apply these Rules insofar as they relate to his powers and duties. When there is more than one Arbitrator and a difference arises among them concerning the meaning or application of any such Rules, it shall be decided by majority vote. If that is unobtainable, either Arbitrator or party may refer the question to the AAA for final decision. All other Rules shall be interpreted and applied by the AAA.