

# Article 11: Conciliation/Grievance/Arbitration

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## 11.01 INTRODUCTION

- A. **Prompt Resolution of Differences:** The All Faculty Association and the Sonoma County Junior College District recognize that the prompt resolution of differences is essential to sound employer-employee relations.
- B. **Conciliation/Grievance Initial Advisory Process:** To encourage informal and confidential resolution of disputes prior to the filing of a grievance, the AFA Conciliation/Grievance Officer shall, when asked by the complainant or AFA Executive Council, consult with those who may be helpful in resolving the dispute to assist faculty members in the resolution of such disputes.
- C. **Tenure Arbitration:** In matters related to arbitration of tenure issues, the procedures identified in the [Ed Code Sections 87610-87611](#) will be followed.

## 11.02 WHO MAY FILE A FORMAL GRIEVANCE:

When the complainant is not satisfied with the results of the initial advisory process or chooses not to participate in the process, a grievance may be filed. Each of the individuals identified below are eligible to file, as long as the individual is not alleging a violation, misinterpretation, or misapplication previously and unsuccessfully grieved:

- A. **Unit A Member:** Any faculty member who, at the time of filing, is represented by the bargaining unit; or
- B. **Former Unit A Member:** Any former faculty member who was represented by the bargaining unit during the alleged grievance; or
- C. **AFA Representative**
  - 1. A representative of the AFA who has been authorized to file the grievance on behalf of the AFA by the AFA Executive Council; or
  - 2. A representative of the AFA who has been authorized by an individual faculty member to file the grievance on behalf of the employee.

## 11.03 REPRESENTATION DURING CONCILIATION/GRIEVANCE:

Upon the filing of the grievance and thereafter, a grievant may be advised and represented by:

- A. **AFA:** Advised by AFA and AFA's legal counsel and represented by AFA.
- B. **Grievant:** Advised and represented by him/herself.
- C. **Grievant's Representative:** Advised and represented by a representative of the grievant's own choosing other than AFA; however, a Unit A member cannot be formally represented by any other bargaining agent.

## 11.04 FILING AND TIME LIMITS ON FILING

- A. **District Grievance Form:** The person eligible to file a formal grievance shall complete a District *Grievance Form*. The faculty member may request assistance of the AFA Conciliation/Grievance Officer in completing the form. The form shall contain:
  - 1. A concise statement of the alleged violation, misinterpretation, or misapplication of specific provisions of the Agreement and other mutually agreed upon policies related to terms and conditions of employment.
  - 2. A description of how the grievant was adversely affected, and
  - 3. The proposed remedy requested, which may be changed at any time during the process.

#### **11.04.B. Grievance Time Limits:**

1. A formal grievance shall be initiated by the filing of a completed written District *Grievance Form* with the Director of Human Resources within thirty (30) working days after the grievant reasonably could have discovered and verified the circumstances, or action, giving rise to the grievance.
2. Either party to the grievance may initiate a suspension of the process during the summer months.
3. Regardless of the date of discovery, a grievance shall not be filed beyond the existing statute of limitations.

#### **C. Beginning the Grievance Process**

1. District role:
    - a. The Director of Human Resources shall have ten (10) working days to acknowledge in writing official receipt of the District *Grievance Form* and to document the District's opinion regarding the forms' completeness and that the grievance is timely, addresses a contractual or eligible policy violation, and has been filed by an eligible individual. The findings of the Director of Human Resources shall be communicated in writing to the AFA Conciliation/Grievance Officer.
    - b. The Director of Human Resources shall keep a complete file of all documentation associated with each grievance in order to provide it to the administrative designees at each step of the process.
  2. AFA role: The AFA Conciliation/Grievance Officer shall have fifteen (15) working days to respond in writing to the written District's findings about the grievance.
    - a. AFA's written response to the District findings shall be submitted to the Director of Human Resources.
    - b. If AFA agrees with the District's findings the process either proceeds to Step 1 or is dropped in accordance with the District's opinion.
    - c. In the event that the AFA Conciliation/Grievance Officer does not agree with the District's findings, additional information may be submitted to the Director of Human Resources by the grievant or AFA to address the concerns identified by the District. In this case, the grievance may proceed and the issues in conflict will be resolved during the various steps of the grievance process.
- D. **Initiating Step 1:** Receipt by the Human Resources Director of the AFA written response to the District grievance findings initiates Step 1–Conciliation.

#### **11.05 STEP 1–CONCILIATION**

- A. **Confidential Meetings:** Within five (5) working days of submitting AFA's response to the District grievance findings, the AFA Conciliation/Grievance Officer and/or the grievant and/or the grievant's representative, if not represented by AFA, will start a process of confidential and informal meetings at the lowest possible administrative level to resolve the differences outlined in the District *Grievance Form*. A conscientious and good faith conciliation attempt will be made by both faculty and administration before proceeding to Step 2 of the grievance procedure.
- B. **Inadmissibility of Evidence/Statements:** Evidence of conduct or statements made during the informal conciliation meetings between the faculty member and the administration shall be inadmissible in any subsequent grievance proceedings.
- C. **Initiating Step 2:** In the event that the grievance cannot be settled at this level, Step 2 shall be initiated by either party submitting to the Human Resources Director a written request for an administrative review.

#### **11.06 STEP 2–ADMINISTRATIVE REVIEW**

- A. **Administrative Designee:** Within fifteen (15) working days of receipt of the request for progression to Step 2, an administrative designee shall be appointed by the Superintendent/President to represent the management team in resolving the grievance. The administrative designee shall not be the person originally involved in the dispute. The AFA Conciliation/Grievance Officer and/or the grievant and/or the grievant’s representative, if not represented by AFA, may request of the Superintendent/President the replacement of the initial appointment of the administrative designee. However, the final decision as to who will serve as the administrative designee will be made by the Superintendent/President.
- B. **Meeting:** Within fifteen (15) working days of submitting to the Human Resources Director a written request for an administrative review, the administrative designee shall schedule a meeting with the grievant and the grievant’s representative to afford them a reasonable opportunity to be heard. The administrative designee may also seek additional information about the grievance from any source.
- C. **Administrative Review Findings:** Within fifteen (15) working days of the meeting noted above, the administrative designee shall provide a written decision to the grievant, the AFA Conciliation/Grievance Officer, and the Human Resources Director informing them of the intended resolution of the dispute.
- D. **Initiating Step 3:** In the event that the grievant is not satisfied with the disposition of the grievance at this level, the AFA Conciliation/Grievance Officer, the grievant and/or the grievant’s representative, if not represented by AFA, may initiate Step 3 by submitting a written request for Superintendent/President’s Review, along with any additional documentation, to the Human Resources Director within fifteen (15) working days of the receipt of the Administrative Review Findings.

#### **11.07 STEP 3–SUPERINTENDENT/PRESIDENT’S REVIEW**

- A. **Meeting:** Within ten (10) working days of the submittal of a written request for Superintendent/President Review to the Human Resources Director, the Human Resources Director will deliver the grievant’s documentation to the Superintendent/President. Within another five (5) working days, the Superintendent/President shall schedule a future meeting with the grievant and the grievant’s representative to review material relevant to the dispute and decisions taken to resolve the dispute.
- B. **Superintendent/President’s Review Findings:** Within fifteen (15) working days of the meeting noted above, the Superintendent/President shall provide a written decision to the grievant, the AFA Conciliation/Grievance Officer, and the Human Resources Director informing them of the intended resolution of the dispute.
- C. **Initiating Step 4:** In the event that the grievant is not satisfied with the disposition of the grievance at this level, or if the Superintendent/President fails to make a timely decision, Step 4 may be initiated by AFA by submitting a written request for a *Board of Trustees Decision Based on Advisory Arbitration* to the Human Resources Director within fifteen (15) working days of the receipt of the Superintendent/President’s Review Findings or within fifteen (15) working days of when the Superintendent/President Review Findings should have been submitted.

#### **11.08 STEP 4–ADVISORY ARBITRATION**

- A. **AFA’s Exclusive Right:** AFA shall have the exclusive right to submit the decision of the Superintendent/President to advisory arbitration on behalf of the unit member. Submittal of the written request for the *Board of Trustees Decision Based on Advisory Arbitration* will start Step 4 of the process. If AFA declines to submit the grievance to advisory arbitration, the grievant shall have exhausted all administrative remedies. The grievant is free to pursue other legal remedies that may be available.

### **11.08.B. Selection of Arbitrator**

1. Unless AFA and the District mutually agree upon an arbitrator within five (5) working days of the filing to move to Step 4 of this process, a representative of AFA and a representative of the District shall jointly request the American Arbitration Association to submit a list of seven (7) arbitrators. Fees for this list will be shared equally.
2. Within five (5) working days of the receipt of the requested list of arbitrators, AFA and the District shall alternately strike names from the list until only one (1) name remains. That person shall serve as the arbitrator. A toss of the coin shall determine which representative strikes the first name from the list. If both parties are mutually dissatisfied with the list, a new list may be requested with costs equally shared by both.
3. The District representative shall immediately send a written notice of selection to the chosen arbitrator, requesting an arbitration hearing as soon as possible. The notice of selection shall be accompanied by a copy of the Agreement and relevant policy, a copy of the District *Grievance Form*, and the written notice of intent to consolidate grievances, if applicable. (See section 11.10.B.)
4. The arbitrator shall establish as early a hearing date as is practicable, provided that the arbitrator shall notify the grievant, Board designee, and AFA of the date, time, and place of the hearing at least five (5) working days in advance of the date set for the hearing.
5. If the arbitrator fails to establish a hearing date that is within ninety (90) calendar days of the date that the arbitrator received the notice of selection, either AFA or the District may request the selection of a new arbitrator pursuant to the above procedures.

### **C. Hearing**

1. It shall be the duty of the arbitrator to hold a hearing for the purpose of considering arguments and evidence submitted by parties to the grievance and to form a decision to resolve the grievance which will be submitted to the Board to be used in an advisory capacity in forming their decision.
2. Except as otherwise noted herein, the *Voluntary Labor Arbitration Rules* of the [American Arbitration Association](#) shall govern the arbitration proceedings. Attendance at the hearing shall be limited to:
  - a. The grievant
  - b. The AFA representative
  - c. The District representative
  - d. The arbitrator
  - e. The court reporter, if any
  - f. Witnesses, but only while giving evidence
  - g. Role of legal counsel shall be as mutually agreed upon by AFA and the District.
3. The grievant and all necessary witnesses shall be provided release time for the time during which they are needed at the hearing.

### **D. Arbitrator's Findings**

1. The arbitrator shall, as soon as possible after the conclusion of the hearing, prepare an advisory report. The arbitrator's report shall consist of the arbitrator's detailed findings of facts, awards, and decisions. This report shall be submitted to the Board, the District representative, AFA, and the grievant.

**11.08.D. 2.** Acceptance or rejection of report.

- a. Post-arbitration report meeting: Within ten (10) working days of the receipt of the report, AFA and the District representative shall meet to accept or reject the results of the arbitration report.
- b. If mutually acceptable, the Board shall be informed and the grievance shall be considered solved. The District shall send a report outlining the remedy to the grievant, AFA, the District, the Human Resources Director, and the Board of Trustees.
- c. If the decision of the arbitrator is not mutually acceptable, the arbitrator's report shall be submitted to the Board, immediately following this meeting, to be used as advisory by the Board to help resolve the grievance.

**11.09 STEP 5—BOARD DECISION BASED ON ADVISORY ARBITRATION**

- A. **Timeline for Board Decision:** In the event that the parties do not agree with the recommendation of the arbitration report, the Board shall render a decision about the arbitrator's proposed resolution of the grievance at the next regularly scheduled Board meeting, provided that at least fifteen (15) days are allowed for Board consideration from the post-arbitration report meeting between AFA and the District representative.
- B. **Consideration of Arbitration Report:** The Board shall consider the advisory arbitration report in making its decision. At the discretion of the Board, both AFA and the District representative may be requested to submit a brief (length to be set by the Board) evaluation of the arbitrator's decision.
- C. **Written Decision:** The Board shall, within fifteen (15) working days after the Board meeting, provide in writing its decision on the grievance and the reasons for the decision to the grievant, AFA, and the Human Resources Director. The Board's decision is final and completes the District grievance process.
- D. **Rights of Grievant:** Completion of the District grievance process shall in no way infringe on the rights of the grievant to pursue the grievance in a court of law.
- E. **Arbitration Costs:** Each party shall bear the costs of preparing and presenting its own case in arbitration. All fees and expenses of the arbitrator shall be paid by the party that "loses" the decision, unless either of the following situations exists:
  1. If the Board rejects or modifies, in whole or in part, the decisions and awards of the arbitrator in rendering the Board's resolution of the grievance (except through a process of mutual agreement with AFA and the grievant), the Board shall bear all costs of the arbitrator.
  2. If AFA does not accept the results of the Board's decision consistent with the results of advisory arbitration and elects to bring suit against the Board, AFA shall bear all costs of the arbitrator.

**11.10 GENERAL PROVISIONS**

- A. **Time Limits:** The time limits specified in these procedures are maximum limits and every effort shall be made to expedite the process. Notwithstanding this provision, any time limit specified in these procedures may be expanded by written agreement of the parties.
- B. **Consolidation of Grievances:** Grievances may be consolidated by action of the AFA Conciliation/Grievance Committee as follows:
  1. A written notice of intent to consolidate grievances shall be sent to the Human Resources Director within five (5) working days of the Conciliation/Grievance Committee action along with each grievant's written consent to consolidation.

- 11.10.B.** 2. Unless the Superintendent/President or designee objects to the joining of grievances in a particular instance, the grievances shall be consolidated in all remaining steps of the grievance procedures.
3. If the Superintendent/President or designee objects to a particular consolidation of grievances by AFA, each grievance shall be treated separately at all steps of the grievance procedures preceding advisory arbitration, but shall be joined at advisory arbitration if the arbitrator rules the consolidation is appropriate.
4. In the event that the Superintendent/President or designee objects to a particular consolidation of grievances, the Human Resources Director shall provide AFA with a written statement of the objections within five (5) working days of receipt of the written notice of intent to consolidate grievances.
5. The final decision in a consolidated grievance shall be binding upon all parties to the grievance.
- C. **Amendment of District Grievance Form:** The District *Grievance Form* may be reasonably amended by mutual consent at any time prior to the submittal of the written request for *Board Decision Based on Advisory Arbitration*, as long as the amendment is related directly to the allegations contained in the original District *Grievance Form*, including remedies proposed by grievant.
- D. **Withdrawal of Grievance:** A grievance may be withdrawn at any time.
- E. **Proceeding to Superintendent/President's Review:** The parties may, by mutual agreement, proceed immediately with any grievance to Superintendent/President's Review by agreeing to waive earlier stages of the conciliation/grievance process.
- F. **Filing of Grievance Records**
1. All documents, communications and records dealing with processing of a grievance shall be placed in a separate grievance file, except that any document of record removed from a personnel file or any other file for use in the grievance proceeding shall be returned to the original file.
2. At the time a document is removed, a form for each document removed, stating the contents of the document removed, shall be placed in the file only to be replaced by the document following the grievance procedures.
- G. **Grievance Materials:** Grievance materials shall not be placed in personnel files.
- H. **No Reprisals:** There shall be no reprisals of any kind taken against any of the participants or representatives because of participation in a grievance or support thereof.