

ARTICLE 16: GRIEVANCE PROCEDURE

A. Definitions

1. "Grievance"

- A. A "grievance" is an allegation that the District has violated or has misapplied a specific provision(s) of this Agreement. A grievance may be initiated by any member(s) of the bargaining unit who has been adversely affected by a misapplication or violation of this Agreement and who has, when appropriate, completed and signed the grievance form. The Union Representative may co-sponsor any grievance and thereby become a party to the grievance.
- B. If any unit member feels that there is an alleged violation of any District policy and/or procedure on employment, he/she must grieve in accordance with the procedures set forth in the applicable policy and/or procedure.

- 2. A "**day**" is any day in which the District office of the Marin Community College District is open for business.
- 3. Time limits for appeal provided at each level shall begin the day following receipt of written decisions by the appropriate District representative. If the District fails to act within any time limit set forth in this Article, the grievance shall proceed automatically to the next step except as provided in Section C. 11. of this Agreement. Failure of the grieving party(ies) to proceed within any time limit set forth in this Article shall constitute a waiver of the grievance. Time limits may be extended in writing by mutual agreement between the District and the Union.
- 4. The "**supervisory/management team member**" is the lowest level management or supervisory person who has been designated to adjust grievances and who has immediate jurisdiction over the grievant.

B. Procedures

- 1. It is the expressed intent of the District and the Union that grievances be resolved expeditiously at the lowest level.
- 2. Nothing within this procedure shall be construed to limit the right of a unit member to informally discuss any employment problem with the immediate supervisor or designated management person.
- 3. The Executive Dean for Human Resources & Labor Relations, or designee, may act as a resource person to provide information as requested at any level of the grievance procedure. The Administrative Dean may also intervene at any point in the procedure to provide necessary assistance.

Level I

Within ten (10) days of when the grievant knew or reasonably should have known of the act or omission which gave rise to the grievance, the grievant must request to informally discuss the problem with the immediate supervisor or designated management person. A meeting will be convened as soon as possible with the appropriate supervisor. The District shall communicate a written decision within ten (10) days of the meeting.

Level II

If the grievant is not satisfied with the decision at Level I, within ten (10) days after receipt of the Level I response, the grievant must present such grievance in writing on the appropriate form to the Executive Dean for Human Resources and Labor Relations, or designee. The grievance shall consist of a clear and concise statement of the problem, the specific provision of the Agreement involved, and the specific remedy sought. Should the grievant and/or Union representative request a conference, the appropriate Dean or Vice President, or designee, grievant and/or Union representative shall meet at a mutually convenient time in an effort to resolve the grievance. Extensions shall be granted to accommodate such meetings. The appropriate Supervisor/Manager may also participate in this meeting, if deemed necessary by the Dean, Vice President, or designee. At such meeting, either party may request the presence of relevant witnesses including, but not limited to, supervisory/management team personnel. The District shall communicate a written decision within ten (10) days of the meeting.

Level III

If the grievant is not satisfied with the decision at Level II, within ten (10) days after receipt of the Level II response, the grievant may appeal the decision on the appropriate form to the Superintendent/President or designee. Should the grievant and/or Union representative request a conference, the Superintendent/President, the Executive Dean for Human Resources & Labor Relations, or designee, grievant and/or Union representative shall meet at a mutually convenient time in an effort to resolve the grievance. Extensions shall be granted to accommodate such meetings. The appropriate Vice President and/or Manager may also participate in this meeting, if deemed necessary by the Administrative Dean or designee. At such meeting, either party may request the presence of relevant witnesses including, but not limited to, supervisory/management team personnel. The Superintendent/President shall communicate, in writing, a decision within ten (10) days of the meeting.

Level IV (Arbitration):

There shall be two options that may be pursued if a grievance is appealed to arbitration. The option shall be selected by the Union. Once an option is selected it shall be the sole process by which the grievance shall be resolved.

Option 1.

a) Within twenty (20) days of the grievant's receipt of the decision at Level III, the Union shall inform the District of its intent as to whether or not the grievance will be arbitrated. The Union and the District shall attempt to agree upon an arbitrator. If no agreement can be reached, they shall request that the State Conciliation Service supply a panel of five (5) names of persons experienced in hearing grievances in public schools. Each party shall alternately strike a name until only one (1) name remains. The remaining panel member shall be the arbitrator. The order of the striking shall be determined by lot.

b) If any question is raised as to whether or not the grievance is arbitrable, the question must first be heard and a decision rendered by the Arbitrator prior to hearing the merits of the grievance.

The fees and expenses of the arbitrator deciding the issue of arbitrability shall be borne by the party which raised the question of arbitrability.

c) The arbitrator shall, as soon as possible, hear evidence and render a decision on the issue or issues so submitted. If the parties cannot agree upon a submission agreement, the arbitrator shall determine the issues by referring to the written grievance and the answers thereto at each step.

d) The District and the Union agree that the jurisdiction and authority of the arbitrator so selected and the opinions the arbitrator expresses will be confined exclusively to the interpretation of the express provision or provisions of this Agreement at issue between the parties. The arbitrator shall have no authority to add to, subtract from, alter, amend, or modify any provisions of this Agreement or impose any limitations or obligations not specifically provided for under the terms of this Agreement. The arbitrator shall be without power or authority to make any decision that requires the District or the administration to do an act prohibited by law.

e) After a hearing and after both parties have had an opportunity to make written arguments, the arbitrator shall submit in writing to all parties his/her findings and award.

f) The award of the arbitrator shall be final and binding.

g) The fees and expenses of the arbitrator and the hearing shall be shared equally by the District and the Union. All other expenses shall be borne by the party incurring them, and neither party shall be responsible for the expense of witnesses called by the other. Either party may request a certified court reporter to record the entire arbitration hearing. The cost of the services of such court reporter shall be paid by the party requesting the

reporter or shared by the parties if they both mutually agree. If the arbitrator requests a court reporter, then the costs shall be shared by both parties.

- h) By filing a grievance and processing it beyond Level III, the grievant expressly waives any right to statutory remedies or to the exercise of any legal process other than as provided by this grievance/arbitration procedure. The processing of a grievance beyond Level III shall constitute an express election on the part of the grievant that the grievance/arbitration procedure is the chosen forum for resolving the issues contained in the grievance, and that the grievant will not resort to any other forum or procedure for resolution or review of the issues. The parties do not intend by the provisions of this paragraph to preclude the enforcement of any arbitration award in any court of competent jurisdiction.

Option 2.

If the grievant is not satisfied with the decision at Level III, the Union may within twenty (20) days of the receipt of the decision, submit a request in writing to the President of the College to convene a Grievance Resolution Committee comprised of no more than two representatives from the Union and two representatives of the College. They shall meet with a facilitator/mediator acceptable to the parties. The role of the facilitator/mediator is to facilitate/mediate with the Committee for the purpose of reaching a consensus for resolving the grievance. Meetings shall be convened for the purpose of exploring the parties' mutual and varied interests, creating options for and selection of the option(s) that best meet the interests of the parties in resolving the grievance. It is not the function of the Committee to determine rights, hear evidence or assess violation of the contract.

Resolution of the grievance may be achieved in one of two ways:

1. If consensus is reached, that consensus is reduced to writing, signed by the Committee members, and is final and binding on the parties.
2. If consensus is not reached within 15 days, then the neutral shall act as an arbitrator and shall submit a written decision which is final and binding on the parties.

C. Miscellaneous

1. No reprisals of any kind will be taken by the District against any grievant, any party in interest, or any other participant in the grievance procedure, by reason of such participation.
2. The grieving party(ies) has the right to be represented at any step in this procedure by the Union. However, nothing contained herein will be construed as limiting the right of any unit member having a grievance to discuss the matter with an appropriate member of management, and to have the grievance resolved without intervention or presence of the Union; provided that the resolution is not inconsistent with the terms of this

Agreement, and provided further, that prior to any agreement on the resolution, the Union has been given ten (10) days in which to study the issues and to state its views.

3. If the District management fails to respond in writing to the grievance within the specified time limit, the grievant has the right to process the grievance at the next level. If the grievant does not process the appeal within the given time limits, the grievance shall be considered as settled and the grievant cannot thereafter grieve the issues again. The time limits specified at each level should be considered maximums and every effort should be made to expedite the process. The time limits for a specific grievance, however, may be extended by written mutual agreement.
4. With respect to a particular complaint or grievance of an employee concerning the interpretation or application of this Agreement, and upon the employee's written authorization, the business representative of the Union may inspect and obtain copies of relevant material in the employee's personnel file upon which the District is or will be relying, during regular business hours and with one (1) business day's notice.
5. The grieving party(ies), one (1) Union Steward, and any necessary witnesses shall be granted release time to attend any hearings or meetings between the grieving party(ies) and the District required by this grievance procedure.
6. During the pendency of any grievance, the grieving party(ies) shall continue his/her assigned functions until final resolution of the grievance.
7. A copy of the form for processing grievances is attached hereto and incorporated herein as Exhibit C. The cost of preparing these forms shall be borne by the District, and they shall be made available to unit members upon request. The use of District equipment or extraordinary use of District facilities in the preparation of grievances shall be prohibited.
8. If a grievance involves unit members with different immediate supervisory/management team members, the grievance may be submitted at Level II.
9. If the outcome of a grievance applies to unit members not named in the grievance, the outcome shall apply to all similarly situated unit members.
10. By mutual agreement, any level or levels of the grievance procedure shall be waived.
11. No management or supervisory employee at Level I or the Executive Dean for Human Resources and Labor Relations at Level II of this Article shall be required to handle more than two (2) SEIU grievances at a time. Any

additional grievances shall be handled in order of submission and the time limits shall begin to run as soon as the first (1st) level of the two (2) prior grievances has been elevated to the next level or been terminated by the grieving party(ies). The District shall inform the Union Representative in writing regarding the status of unit grievances whenever this provision applies.

ARTICLE 17: TRANSFERS/REASSIGNMENTS

- A. When a position becomes vacant or a shift or campus location is available, an employee in the same classification may request a transfer.
- B. The Human Resource Department shall post the position announcement online, on the employee bulletin boards outside the Human Resources Department and in the corporation yard office of the College of Marin for a period of ten (10) working days. With the implementation of the district's online application program, the district will transition to an electronic application submission process.
- C. The employee shall submit the Request for Transfer form to the Human Resource Department. The Department Supervisor/Manager shall review the request and approve/disapprove the transfer. Where there are two (2) or more applicants equally qualified for the transfer, seniority shall govern.
- D. The Department Supervisor/Manager shall provide reason(s) for approval/disapproval on the *Request for Transfer* form and forward the form to the requesting employee and the Human Resource Department within ten (10) working days of receipt of the request.
- E. The District will consider the following criteria whenever a transfer is being considered (either a request from an employee or a District-initiated transfer):
 - 1. The impact on the building, area, or campus.
 - 2. The impact on the individual(s) who would be involved.
 - 3. The skills of the individual(s) involved.
- F. If the transfer is being considered for disciplinary reasons, the transfer must be reviewed and approved by the appropriate Supervisor, the appropriate Manager and the appropriate Vice President or Dean.
- G. During the District's Modernization process, employees may be transferred to transitional space.