

What is a grievance?

A grievance exists when a faculty member has a reasonable allegation that a contract agreement clause or past practice has been violated, misinterpreted or applied unfairly.

It is the association and the bargaining unit member who determine that a grievance exists, not the administration. The employer may dispute the grievability of a problem but may not refuse to hear it, respond to it and/or process it through the grievance procedure.

A grievance is a dispute between the association (through its members) and the employer regarding an employment contract, rule or practice. A grievance is NOT a dispute between employees, nor should it be a personal conflict between a grievant and an administrator.

Disagreements can be processed without being disagreeable about it. Each side can, and should, respect the other's right to be vigorous in support of its position, but this need not disrupt personal relationships. Remember that we are all "participants" in the grievance process. The process will bring out the facts and merit of the case. None of the advocates should judge a grievance – only guide it through the process.

Who takes care of grievances?

The association provides the resources for our members to work out grievances.

A bargaining unit member and/or site representative will handle the grievance at the **informal level** and at **stage one**.

If a bargaining unit member does not feel comfortable with their site rep(s), they may ask for assistance from their Representative-at-Large or the Grievance Committee.

A grievance committee is in place within the association to handle grievances at **level two**. If an informal conference with the immediate administrator has not solved the issue and the administrator has refused to comply with the remedy proposed by the association rep at level one, that grievance will be reviewed by the grievance committee and may be moved to level two.

If the superintendent or superintendent's designee refuses to comply with the association's proposed remedy in the level two grievance, the grievance committee can recommend that the association advance the grievance to **level three** – the arbitration process. At this stage, a neutral arbitrator is called in from an outside organization to hold a hearing. At the end of the hearing process, the arbitrator's decision is final and binding (aka "binding arbitration").

What is the order and timing of a grievance?

Day 1: The bargaining unit member knows about the circumstances that form the basis of the grievance. The bargaining unit member has thirty (30) days to hold an **informal meeting** with their immediate administrator in an attempt to solve the issue informally.

Within five (5) days after that informal meeting, the administrator and/or district shall respond to the employee.

If that response is not acceptable to the bargaining unit member and/or the association, the grievant and/or association has the option to bring a grievance to the **formal level (level 1)** by presenting the grievance in writing (see the form) to the immediate administrator within ten (10) days.

Within five (5) days of receipt, the district must respond.

If either party is not satisfied with the proposed resolution from the district or no proposed resolution is received, the grievance will be reviewed by the LEA Grievance Committee and can be sent in writing to the superintendent's designee within ten (10) days and advanced to **level 2**.

Within five (5) days of receipt, the district must respond.

Within ten (10) days after receiving the decision or if no decision has been rendered, the association may appeal to an Arbitrator (**level 3**).

The Arbitrator will then hold a hearing and render a final and binding decision.

What if I don't agree with the decision of the grievance committee?

If the grievance committee reviews your grievance and recommends not to pursue the grievance to either level 2 or level 3, the bargaining unit member may appeal that recommendation to the Livermore Education Association's Executive Board.

If the Livermore Education Association's Executive Board maintains the position not to advance the grievance to either level 2 or level 3, the bargaining unit member may advance the grievance on their own time and at their own expense.

Why would the grievance committee recommend not to advance my grievance? I thought they weren't the judges, but were there to support me through the process?

That is true, they are there to support you through the process. But the grievance committee, Livermore Education Association's Executive Board and the California Teachers Association must also consider other legal cases with similar or identical grievances. If a grievance has a high probability of causing further negative rulings toward the Livermore Education Association or the California Teachers Association, we may choose not to pursue it because it can endanger future grievances that may have more merit than this present grievance.

Responsibilities of the Association Grievance Representative

1. Know the Contract

Grievance reps should be very familiar with areas of the contract where violations frequently occur.

2. Know the Grievance Process

Grievance reps should know the definition of a grievance, the timelines of the procedure and the steps of the procedure.

Procedural errors can cause the loss of a grievance.

3. Know the Faculty Members

Grievance reps should know the association members (to the extent possible) and be known by the association members. Association reps should know how and where to reach the grievance reps.

Grievance reps should be alert to problems and potential grievances. Bargaining unit members do not necessarily know the contract.

4. Know Who to Report to

Grievance reps should know to report to the association grievance chairperson(s) or association president.

5. Be Able to Handle a Level One Grievance

Grievance reps should be able to write a grievance, file a grievance and conduct the first level hearing with a supervisor.

6. Know the Role of the Grievance Rep and Practice it! (lead by example)

Grievance reps are advocates – not judges.

Grievance reps have a standing equal to management and have access to association resources.

7. Don't Mix Association and School Business

When you meet with an administrator about an association issue, whether it be a grievance or about someone's evaluation, make sure that you let them know you are there on association business. When you're done, don't ask them if you're getting that new whiteboard soon. Save all personal school/classroom/teacher issues for another meeting.

The Grievance Process for Grievance Representatives

GET THE FACTS

When a unit member comes to you with an alleged grievance, take time to get the facts. If there is not adequate time at that instance, schedule a time and place that will permit confidentiality and a thorough review. A member will not usually lie to you, although it has and will happen. Human nature will cause their story to be slanted. Therefore, do not be surprised if Management has a different perception of what happened. **It is appropriate to investigate the situation by making inquiries of other unit members to check the accuracy of the complaint.**

GET IT IN WRITING

It is usually helpful to have the grievant write down his/her interpretation of what has happened. Have the Grievant formulate what s/he wants as a resolution. In any case, the Association Rep should take notes at the meeting for later reference. This is done to provide background information in case the Association Rep should need assistance of the Association Grievance Committee or CTA Primary Contact Staff Person.

Facts win arbitrations, not emotions.

LET THE PROCESS WORK

Don't be the judge of a grievance yourself. Let the process prove the merits of the grievance. That's what an arbitrator is paid to do. Your job is to represent the interests of the aggrieved: to be his/her counsel. You may give the member your opinion about the grievance and how it should be handled through the grievance procedure or as a complaint to be handled differently. Use persuasion. **Give the member the benefit of the doubt.**

COMPLAINT EVALUATION

The Association must investigate every complaint, obtain the information needed and make a determination of the most advantageous course to pursue to resolve the grievance. The initial fact-finding phase is conducted by answering the following six questions:

1. **WHO:** are the persons involved? are the witnesses? is the administrator in charge? can resolve the grievance? will stand behind the claim?
2. **WHAT:** is the real or imagined complaint? is asserted to have been done or not done? rule, regulation or policy has been violated? are the areas of the Contract that might apply?
3. **WHEN:** did the incident occur? (Is it within the time limits of the grievance procedure?)
4. **WHERE:** is the violation alleged to have occurred? is the appropriate level to enter the grievance?
5. **WHY:** did it occur? (Is it a result of misunderstanding?) is such an incident grievable under the terms of the contract, board policy or administrative directive?
6. **HOW:** is the Association affected? (Does it have a position regarding the provision violated?) has the member been affected? have such matters been resolved in the past? should this matter be processed?

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ARTICLE X: GRIEVANCES

- 10.1 The purpose of this Article is to provide a procedure for the consideration of grievances which may arise as a result of the terms and conditions of this Agreement.
- 10.2 Definitions
 - 10.201 Grievance. A grievance is a claim by an employee or group of employees that there has been an alleged violation, misapplication, or misinterpretation of the specific provisions of this contract. See Appendix C for the form to be used.
 - 10.202 Grievant. A grievant is an employee, group of employees covered by this Agreement, or Association making the claim.
 - 10.203 District Employee. An employee is a full-time or part-time certificated person receiving compensation and belonging to the employees unit as defined in Appendix D.
 - 10.204 Representative. A representative is another unit member or the Association who participates in the grievance procedure.
 - 10.205 Immediate Administrator. An immediate administrator is the administrator having immediate jurisdiction over the alleged grievance.
 - 10.206 Day. A day is any day in which the central administrative offices of the School District are open for business
- 10.3 An employee may present grievances relating to a contract dispute to his/her employer and have such grievances adjusted without the intervention of the Association as long as the adjustment is reached prior to arbitration and is not inconsistent with the terms of this Agreement.
 - 10.301 The District shall not agree to the adjustment or resolution of the grievance until the Association has received a copy of the grievance and the proposed resolution and has been given the opportunity to respond. The response shall be made within ten (10) days and may be in writing. The Association shall be apprised of all grievances at each formal step and shall be present as a representative or as an observer.
- 10.4 The District and the Association agree that every effort shall be made by the District and the grievant to settle grievances at the lowest possible level.
- 10.5 Failure by the District to adhere to decision deadlines constitutes the right for the grievant to appeal automatically to the next step (higher level).
 - 10.501 Failure of the grievant to adhere to the submission deadlines shall mean that the grievant is satisfied with the latest decision and waives any right to further appeal.
 - 10.502 Nothing prevents the parties from extending or shortening the dates by mutual written agreement.

- 10.6 Until final disposition of a grievance takes place, the grievant is required to conform to the original direction of his/her supervisor unless such action is determined to be a safety or health hazard by the Superintendent or his/her designee.
- 10.7 All documents dealing with the processing of a grievance shall be filed separately from the personnel files of the participants.
- 10.8 Every reasonable effort shall be made to schedule meetings for the processing of grievances at times within the regular work day of the participants.
- 10.801 If any grievance meeting or hearing shall be scheduled during the school day, any grievant, his/her representative, and any party required to participate as a witness in such meeting or hearing shall be released from regular duties without loss of pay for a reasonable amount of time.
- 10.9 When a grievance has been filed, the grievant may terminate the grievance at any time by giving written notice to the Superintendent or his/her designee. This action shall not preclude the Association from pursuing the grievance on its own.
- 10.901 The District shall give written notice of such termination to all parties, if the Association agrees that the grievance may be terminated.
- 10.10 The grievant has the right to have a representative present at any formal step of the grievance procedure. The grievant, however, shall be present at each step of the grievance procedure unless physically ill or detained due to transportation difficulties.
- 10.11 Informal Resolution
- 10.1101 An employee who believes he/she has a grievance shall present the concern orally to the immediate administrator within thirty (30) days after the grievant knew, or reasonably should have known, of the circumstances which form the basis for the grievance. It is the intent of this informal meeting that at least one personal conference be held between the grievant and the immediate administrator.
- 10.1102 Within five (5) days after the meeting, the administrator shall respond to the employee.
- 10.1103 The grievant has the option to begin a grievance at the formal level.
- 10.12 Formal Resolution - Grievances shall be processed in accordance with the following steps:
- 10.1201 Level 1 - If the concern is not settled during the informal discussion, the employee shall present the grievance in writing to the immediate administrator within ten (10) days after the oral decision by the administrator. The statement written by the grievant shall include:

- A description of the specific grounds of the grievance, including names, dates, and places necessary for a complete understanding of the grievance;
- A listing of the provisions of this Agreement which are alleged to have been violated or misapplied;
- A listing of specific actions requested of the District which shall remedy the grievance.

10.1202 Level 2 - If either party is not satisfied with the disposition of the grievance, or if no disposition has been made within five (5) days, the grievance shall be transmitted in writing to the Superintendent's designee. The written statement shall include:

- A copy of the original grievance;
- A copy of the decision made at the first level, if any;
- Reasons why the proposed solution is unacceptable.

10.1202.1 Within five (5) days from the receipt of the grievance, the Superintendent or his/her designee shall meet with the grievant in an effort to resolve the grievance. The Superintendent or his/her designee shall make a written disposition of the grievance within five (5) days after such meeting and return it to the grievant and to the Association.

10.1202.2 If the grievant is not satisfied with the disposition of the grievance, or if no disposition has been made within five (5) days of such meeting, the grievance shall be transmitted to level 3.

10.1203 Level 3 - Within ten (10) days after receiving the decision of the Superintendent or his/her designee or if no decision has been rendered, the Association may appeal to an Arbitrator and contact the American Arbitration Association or State Conciliation Service.

10.1203.1 If the parties cannot agree on an Arbitrator within ten (10) days, they shall then be subject to the Voluntary Arbitration Rules of the AAA.

10.1203.2 Once the arbitrator has been selected, hearings shall commence at the convenience of the Arbitrator.

10.1203.3 The Arbitrator shall conduct the hearing in accordance with the voluntary arbitration rules of the American Arbitration Association and the provisions of this procedure.

10.1203.4 The appeal shall be in writing and shall include the same information as described in the previous appeal.

10.1203.5 The Arbitrator shall have available to him/her all documents relating to the grievance and any District records that would be helpful in resolving the problem.

- 10.1203.6 Within thirty (30) days after the conclusion of the hearing, the Arbitrator's decision shall be in writing and shall set forth the Arbitrator's findings of fact, reasoning and conclusions on the issues submitted.
- 10.1203.7 The Arbitrator shall be without power or authority to make any decision which requires the commission of an act prohibited by law or which is violative of the terms of this Agreement.
- 10.1203.8 The decision of the Arbitrator shall be submitted to the Superintendent and the Association and shall be final and binding upon the parties of this Agreement.

10.13 Limitation of Arbitrator - The Arbitrator shall be subject to the following limitations:

- 10.1301 The Arbitrator shall have no power to add to, subtract from, disregard, alter, or modify any of the terms of this Agreement.
- 10.1302 The Arbitrator shall have no power to establish salary structures or change any salary. This limitation does not apply to changing placement on a salary schedule.
- 10.1303 The Arbitrator shall have no power to recommend or resolve:
- Any issue arising out of the exercise by the Board and the Administration of its responsibilities under the District Rights Section of this Agreement;
 - Issues involving the content of evaluation.
- 10.1304 The Arbitrator shall have no power to change any practice, policy, or rule of the District nor to substitute his/her judgment for that of the District as to the reasonableness of any such practice, policy, rule, or any action taken by the District.
- 10.1305 The Arbitrator shall have no authority to usurp the Board's financial rights and responsibilities, but may recommend to the Board to rectify contractual errors that have resulted in loss of compensation to the grievant(s).
- 10.1306 Expenses incurred by the Arbitrator shall be shared equally by the District and the Association. 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.
- 10.1307 The fact that the grievance has been considered by the parties in the preceding step of the grievance shall not constitute a waiver of jurisdictional limitations upon the Arbitrator in this Agreement.
- 10.1308 Either party may request a certified court reporter to record the entire hearing.

- 10.1308.1 The cost of the services and expenses of such court reporter shall be paid by the party requesting the reporter or shared by the parties if they both mutually agree.
 - 10.1308.2 If the Arbitrator requests a court reporter, then the costs shall be shared by both parties.
 - 10.1308.3 The court reporter shall deliver a copy of the proceedings to each requesting party as soon as possible.
 - 10.1308.4 Cost of copies of the proceedings shall be paid by party(ies) requesting such copy(ies).
- 10.14 Hearings held under this procedure shall be conducted at a time and place, which shall afford a fair and reasonable opportunity, for all persons entitled to be present to attend.
- 10.1401 Such hearings shall be conducted during non-classroom hours, unless there is mutual agreement for other arrangements.
 - 10.1402 The District and the Association are responsible for the payment of their own representatives and witnesses involved in any grievance meeting.
- 10.15 If the grievance arises from an action of authority higher than the principal of a school, the employee may present such grievances to the appropriate administrator.
- 10.1501 The resolution of a grievance, which has the effect of resolving problems for which other bargaining unit employees would have filed, shall also apply to that class of employees.
- 10.16 No probationary employee may use the grievance procedure in any way to appeal discharge or a decision by the District not to renew his/her contract.
- 10.1601 No tenured employee shall use the grievance procedure to dispute any action by the District which is applicable to the State tenure laws.
- 10.17 All proceedings of a grievance shall be confidential.
- 10.18 Nothing contained herein shall deny any employee his/her rights under State or Federal Constitutions and Laws.