

2022 - Associated Pomona Teachers Grievance Training Packet

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For a refresher on all this information, see the APT website at <https://associatedpomonateachers.com/>. Click on the link for Grievances; there you will find downloadable Level 1 & Level 2 Grievance forms as well as a short video on filling out the forms and a longer video on the whole grievance process.

WHAT IS A GRIEVANCE?

A grievance exists when a bargaining unit member has a reasonable allegation that a Collective Bargaining Agreement (CBA) sections(s) has/have been **violated, misinterpreted, or misapplied.**

The Association and the bargaining unit member determine if a grievance exists, not the administration. The District may dispute the grievability of an issue but may not refuse to hear it or respond to it or to process it through the grievance procedure.

A grievance is a dispute between an Association, through its members, and the District regarding an employment contract, rule, or practice. A grievance IS NOT a dispute between employees/members, nor should it be a personal conflict between a grievant and an administrator.

It is essential that the Association assume an advocate posture when processing grievances. Members may always be supported on either the Merit of their case or their right to Due Process. An Association exists for the purpose of representing its members in their employment relations. The Association must ensure Due Process for bargaining unit members and an advocate to represent them whenever they must be judged.

THE WEINGARTEN RULE:

AN EMPLOYEE'S RIGHT TO REPRESENTATION:
IT IS THE RIGHT OF AN EMPLOYEE TO HAVE THE PRESENCE OF A UNION REPRESENTATIVE AT A MEETING WITH THE EMPLOYER IF HE OR SHE HAS REASONABLE EXPECTATION THAT DISCIPLINE MAY RESULT.

THIS IS A PRIVATE SECTOR RULE MADE APPLICABLE TO THE EERA. (See *Redwood CCD v. PERB* (1984) 159 Cal.App.3d 617)

THE COURT'S GUIDELINES

1. The employee must request the representative.
2. Is there a reasonable belief that discipline will result from the investigatory meeting?
3. The court's decision does not force the employer to interview the employee.
4. The union representative may speak to represent the employee and the union.

WHAT A SITE REP SHOULD KNOW ABOUT INSUBORDINATION

(Let members at your site know this!)

IT CAN GET YOU FIRED

Insubordination is one of the major contributing factors in many employee dismissals and is one of the easiest charges to prove. However, it is a concept that is misunderstood by many employees and as a result they place themselves in the position of being insubordinate. In order to avoid this hazard, a thorough understanding of the concept is necessary.

WHO'S BOSS!

First, it is important to understand that the principal/ immediate supervisor has some management rights simply because he or she is the "boss". Any principal/ immediate supervisor has the right to exert leadership, to direct the institutional operations, to enforce rules, policies, reasonable orders and directions so long as they conform to the contract and are clear and unambiguous, not injurious to your health, applied uniformly, and justly administered.

DEFINITION

Second, insubordination is defined as "failure to obey authority." If a worker at your site comes to you and questions a directive issued by the principal/immediate supervisor, advise him or her to discuss the objections with the principal. **If the principal insists that the order be obeyed, advise the member to comply unless it is a threat to property or to the health/safety of the students, the member, or other staff.** A member may ask for the "order" to be in writing. The administrator does not have to put it in writing in order to later claim you were insubordinate for failure to carry out the order.

WORK THEN GRIEVE

The member may then file a grievance. This is the "**Work, Then Grieve**" rule.

GRIEVANCE GUIDE

Grievance Processing for Site Representatives

1. **Listen** carefully to the bargaining unit member as he/she explains the problem. Get the Who, What, When, Where, and How.
2. **Complete** a Data Sheet to record the basic information needed. State the general nature of the problem and important details. Get names, dates, places, times, numbers.
3. **Examine** the contract, board policy, administrative regulations, relevant sections of the Education Code and past practice. Record on the data sheet, the article(s), section(s), and/or numbers which may have been violated, misinterpreted, or misapplied.
4. **Tell** the bargaining unit member:
 - a. The Association is concerned about the problem.
 - b. The Association will give it very careful consideration.
 - c. The Association will do what it can to help, and it can help if there are facts and/or arguments to sustain a case.
 - d. You will contact the grievance committee and get back to the member.
 - e. To save or locate all letters, memoranda, notes, or documents relating to the problem.
5. **Don't tell** the member:
 - a. Any evaluative or judgmental remarks about the member's conduct.
 - b. It's a good case or a weak case.
 - c. That you can deliver a quick, easy solution.
 - d. That he/she doesn't have a problem or grievance.
 - e. That there's nothing you can do to help.
6. **Start** a folder under the member's name with data sheet and documents.
7. **Contact** APT Grievance Committee member or Officer _____ at school phone _____ cell phone _____ or email _____.
8. **Discuss** with the grievance committee member the facts and some possible arguments and positions the Association might use.

A Member has a concern: Guidelines for meeting with the member

Get the Facts:

When a unit member comes to you with an alleged grievance, take time to get the facts. Talk through what happened and review the contract together for a possible violation. A member will not usually lie to you, but human nature may cause their story to be slanted. **It is okay to investigate the situation by making inquiries of other unit members to check the accuracy of the complaint.**

Get It in Writing:

It is always helpful to have the Grievant write down his/her interpretation of what has happened. Have the grievant relate what he/she wants as a resolution. The Association Rep should also take notes at the meeting for later reference. This will provide background information if the Association Rep should need assistance of APT Leadership or the Primary Contact Staff. **Facts win arbitrations, not emotions.**

Let the Process Work:

Don't be the judge of a grievance yourself. That is what an arbitrator is paid to do. **Let the process prove the merits of the grievance.** Your job is to represent the interest of the aggrieved. You may give the member your opinion about the grievance. Is it a contract violation (grievance) or is it a complaint? **Give the member the benefit of the doubt.**

Grievance Complaint Evaluation:

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

WHO are the persons involved? are the witnesses? is the administrator in charge? can resolve the issue? will stand behind the claim?

WHAT is the real or imagined complaint? is asserted to have been done or not done? rule, regulation, or policy has been violated? areas of the Contract that might apply?

WHEN did the incident occur? (Is it within the time limits of the grievance procedure?)

WHERE is the violation alleged to have occurred? is the appropriate level to enter the grievance?

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?

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?

(suggested) **MEMBER INTERVIEW FORM**

Date: _____

Member's Name: _____

Position: _____ Site: _____

Work Phone: _____ Cell phone: _____

Non-work email: _____

I. **WHAT** is the Complaint? _____

II. **WHO** is involved? _____

Administrator? _____

Witnesses? _____

III. **WHERE** did the incident occur? _____

IV. **WHAT** contract provisions are impacted? (Cite specific contract Articles and sections.)

V. **HOW** has the employee been affected? _____

VI. **WHAT** remedy does the employee seek? _____

VII. **DOES** the employee want to grieve? Yes or No?

At what level should the grievance be filed? I II

Are we within the grievance timelines? Yes or No?

What is the last day that we can file the grievance? _____

Comments: _____

Name of Interviewer: _____

Work phone: _____ Cell phone: _____

A Grievance Checklist for APT Reps

PREPARATION Request assistance from your Chapter President or Grievance Chair, use this Checklist to help understand the process.

- ___ Get all the facts from the employee who has the complaint.
- ___ Get details – dates, examples, witnesses, correspondence, etc.
- ___ Ask probing questions so that you can get the full story on the issue.
- ___ Be sure to take notes so you have a record and can check back to verify facts.
- ___ Get additional facts to support the complaint.
- ___ Check school board policies and regulations.
- ___ Determine whether or not there is a legitimate grievance.

IS THE COMPLAINT GRIEVABLE?

- ___ Determine which Article(s) of the contract has/have been violated.
- ___ Gather supportive data.
- ___ Discuss the problem informally with the principal or immediate supervisor in order to reach a settlement.

LEVEL I REPRESENTATION (at the Site)

- ___ Determine what arguments management will make in this case.
- ___ Gather supportive data for your arguments.
- ___ Research back-up information: check . . .
 - (a) Association files
 - (b) past practice
 - (c) past grievance(s)
 - (d) Association officers

GRIEVANCE PROCESS (general information)

Don't delay! File the Grievance right away.

Step 1: Use the electronic form from the APT website at <https://associatedpomonateachers.com/> and **notify APT office of the possible Grievance.**

Step 2: Informal: Level I: Meet with the site administrator. You may bring a representative. Must be done within 7 days** of the alleged occurrence.

Step 3: Site administrator has 12 days** to respond. If admin. denies Grievance then

Step 4: Formal: File at Level II. Must be held within 10 days** of the Level I Meeting. **Inform APT:** the Grievance Committee will work with you throughout.

: See below for continuation of process if not resolved.

ARTICLE 6: GRIEVANCE PROCEDURE

- **Level I** – 7 days to file; 12 days** for Admin response.
- **Level II** – File within 10 days** of Level I meeting; Admin has 10 days to respond in writing.
- **Level III** – Appeal to Superintendent; within 7 days**. Include all materials from Level II. Grievant may request to meet with Superintendent/Designee. The Supt. shall make a written decision within 10 days**.
- **Level IV** – Arbitration – Binding. Member request within 10 days** of Superintendent's decision. *ART 6.5.1 – “No Grievant may proceed to Level IV without the consent of the Association.”* APT must notify the grievant and the District of decision to go to arbitration. The final Arbitration Decision is Binding!

****See Art. 6.1 – a Day is when the DO is open for business.**



WRITING IT UP (See the APT Grievance Form)

The easiest to explain but most difficult to accomplish is the actual writing up of a grievance. It is best to contact APT leadership before writing up the grievance.

There are two basic rules of thumb in writing up a grievance:

1. K.I.S.S. Method

The secret is to “keep it simple and short”. Briefly state what has transpired.

It is not necessary to write a ten (10) page dissertation on the subject. The relevant details of the facts can be brought out at the informal and formal level.

DO assert violations of every Article and/or Section that have been even the remotest relevancy.

- Example:
 - My concerns are as follows: The District violated Article 23.2- Safety Conditions, and Article 5.1 - District Rights (Non-discrimination) when the immediate supervisor failed to replace the light in the women’s restroom.
 - The remedy I seek is: Adherence to the contract. Replace the bulb.
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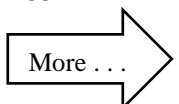
2. YOU CAN’T LOSE A GRIEVANCE AT LEVEL I or LEVEL II.

You may not win, or you may be persuaded that it has no merit, but you can always appeal the immediate supervisor’s decision.

***** So now you go to meet with the administrator

GUIDELINES FOR AN ADMINISTRATIVE MEETING

1. Be cordial, business as usual, and don’t feel out of place. You have an official role. You should expect everything to be conducted in a professional manner. **Don’t get emotional.**
2. Do advise the administrator that **you are there to assist in clarifying the issues** with the purpose of seeking a resolution of the situation at this level of the grievance.



3. Sit next to the unit member or at an angle next to the unit member which will enable you to observe both the administrator(s) and the unit member, but where the dialogue with the unit member is also to you. **Be within touching distance of the unit member.**
4. **Listen** carefully, using a great deal of eye contact – make your presence felt.
5. Take notes, but not too copiously; get a feeling of what is happening. Place on the record direct factual statements or accusation. Don't write too much of the unit member's response. **The unit member doesn't have to respond to anything and probably shouldn't.** You both should only be asking questions and seeking clarifications. Make note of the time, place, those present and their titles, and when the meeting ends.
6. **Ask for copies of documentation shown or referenced.**
7. Normally at this first meeting, the representative does not need to present a defense. The Rep is allowed to speak on behalf of the member if needed. Dialogue should be limited to questions and paraphrases. The Rep may need to state to the administrator, "Give us time to think about it," or "We will get back to you on this issue." The Rep may need to nudge the member to have the person keep quiet and not make a direct response. **The only direct response should be denial, "No, that is not true."**
8. **Don't be defensive.** The objective is to find out as much as possible about the situation and what the intent of the administrator is at the time and whether the issue can be settled.
9. **Silence is golden.** Don't feel pressured to respond or to say something when there is a void in the conversation or when you've been asked a question and don't know how to respond. You can always say you need to think about it longer, seek advice or ask, "What is the reason for the question?" If you wait long enough, administrators will usually feel the need to say something which may shed more light on the situation.

REMEMBER that the burden of proof is on the immediate supervisor. Let the supervisor try to justify and prove that the action they have taken is correct. You don't have to show the supervisor where he/she is wrong; the supervisor has the burden to show why he/she is correct. Try not to place the supervisor in a position whereby he/she can't retreat without embarrassment; permit him/her to save face. Let the supervisor do most of the talking; a good rule of thumb is supervisor talks 75% and you talk 25%. And **always use a caucus if you need to talk over an issue with the grievant.**

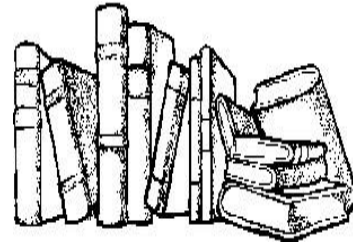
ALTERNATIVES TO GRIEVANCE

LOCAL

- ✦ Formal Complaint
- ✦ Organizing

STATE

- ✦ Education Code
- ✦ Fair Employment & Housing Act
- ✦ Equal Pay Act
- ✦ Family Rights Act
- ✦ Labor Code



FEDERAL

- ✦ Family Medical Leave Act
- ✦ Americans with Disabilities Act
- ✦ Title VII of the 1964 Civil Rights Act
- ✦ COBRA Regulations

DISCRIMINATION or HARASSMENT can be based on:

- ✦ Race
- ✦ Age (over 40)
- ✦ Ancestry/National Origin
- ✦ Religion
- ✦ Gender
- ✦ Disability
- ✦ Marital Status
- ✦ Sexual Orientation
- ✦ Medical Condition

CONTACT for the ENFORCEMENT:

- ✦ CA Dept. of Fair Employment & Housing
- ✦ CA Dept. of Industrial Relations
- ✦ Cal/OSHA
- ✦ CA Employment Development Department
- ✦ CA Labor Commissioner
- ✦ US Equal Employment Opportunity Commission
- ✦ US Dept. of Labor

LOOK for ADDITIONAL PROTECTIONS in the Following Areas:

- ✦ State/Healthy workplace
- ✦ Threats, violence & vandalism
- ✦ Sexual harassment
- ✦ Participation in political activities
- ✦ Voluntary participation in drug rehabilitation
- ✦ Complaints about safety/health concerns
- ✦ Refusal to perform dangerous work

Uniform Complaint Procedures and Williams Complaint Procedures

(see District Website and search “Complaints”: District Procedures for both the Uniform Complaint Form and the Williams Complaint Form)

I. Uniform Complaint (UCP): partial list of Complaint subjects

- A. Discrimination, harassment, intimidation, or bullying against any protected group as identified under sections 200 and 220 and Section 11135 of the Government Code, including any actual or perceived characteristic as set forth in Section 422.55 of the Penal Code, or on the basis of a person’s association with a person or group with one or more of these actual or perceived characteristics, in any program or activity conducted by an educational institution, as defined in Section 210.3, that is funded directly by, or that receives or benefits from, any state financial assistance.
- B. Local Control and Accountability Plans (LCAP)
- C. Physical Education Instructional Minutes²
- D. School Plans for Student Achievement
- E. School Safety Plans
- F. School Site Councils
- G. State Preschool Health and Safety Issues in LEAs Exempt from Licensing
- H. And any other state or federal educational program the State Superintendent of Public Instruction (SSPI) of the California Department of Education (CDE) or designee deems appropriate.

II. Williams Complaint: Areas covered by the Williams Decision

- A. There should be sufficient textbooks and instructional materials.
- B. School facilities must be clean, safe, and maintained in good repair.
- C. There should be no teacher vacancies or misassignments.
- D. Complaint forms and procedures available from the District.