

PROCEDURES MEMORANDUM

TO: MCC Staff

FROM: Office of the President

SUBJECT: Grievance Procedures Affecting Exempt and Non-Exempt, Non-Bargaining Unit Employees

DATE: June 18, 2009

PURPOSE: To provide a general grievance procedure for members of the exempt and non-exempt, non-bargaining unit staff.

SCOPE: This procedure applies to all full-time and part-time regular exempt and non-exempt non-bargaining unit employees whose employment relationship is defined in Board policy. For bargaining unit employees, grievance procedures are addressed in and governed by applicable collective bargaining agreements.

1. General Principles

Situations may occur where an employee believes that the fair and consistent application of a policy affecting him or her has not been followed. In most cases, Metropolitan Community College expects that the employee will be able to satisfactorily address such concerns within his or her work area or group. However, when a recent or continuing problem has not been resolved within a particular work area or group, the College wishes to provide employees an alternative vehicle for doing so. No employee shall be subjected to discrimination or adverse treatment for participating in a grievance procedure.

2. Applicability – This grievance procedure shall be applicable to all grievances as defined in paragraph 3.A. hereof, except it shall have no application in the following instances:
- A. Any matter in which the internal procedure for employee redress is prescribed by statute, such as the procedure for non-reappointment of faculty.
 - B. The matter or controversy in issue is governed by a separate grievance procedure established by the College, such as one contained in a collective bargaining agreement.
 - C. The matter or controversy in issue has already been submitted by the employee through a procedure external to the College, such as legal proceedings or complaints filed with local, state, or federal agencies.

3. Definitions

- A. Grievance – a formal allegation by a non-bargaining unit employee that he/she has been adversely affected by the erroneous application, interpretation or violation of the terms of his/her Notice of Appointment or the rules, regulations, procedures or policies of the College.
- B. Executive Level Supervisor – is an administrator who is a Dean, Vice President, or Executive Vice President or other administrator who reports directly to the President and has jurisdiction over the grievant and who has been designated by the College to adjust grievances of the grievant appealed from Level II.
- C. Mid-level Supervisor – is an administrator who reports directly to an executive level supervisor and who has jurisdiction over the grievant and has been designated by the College to adjust grievances of the grievant appealed from Level I.
- D. The "immediate supervisor" is the lowest level administrator having immediate jurisdiction over the grievant who has been designated by the College to adjust grievances of the grievant.
- E. A "day" is a calendar day.

4. Special Rules

- A. If the grieving exempt, non-bargaining unit employee is an executive-level supervisor, only Levels I, IV and V shall be applicable and both the informal grievance (Level I) and the lowest applicable level of formal grievance (Level IV) shall be initiated directly with the President.
- B. If the grieving exempt, non-bargaining unit employee reports directly to an executive-level supervisor, only Levels I, III, IV and V shall be applicable, and both the informal grievance (Level I) and the lowest applicable level of the formal grievance (Level III) shall be initiated with the executive-level supervisor.
- C. If the grieving exempt, non-bargaining unit employee reports directly to a mid-level supervisor, both the informal grievance (Level I) and the lowest applicable level of the formal grievance (Level II) shall be initiated with such mid-level supervisor.
- D. Regardless of the level at which the formal (written) grievance is first submitted under subparagraph 4A., B., or C., the written grievance must be a formal written statement, containing the specific information required by the underlined sentence in subparagraph 5.B.

5. Procedures

- A. Level I (Informal Level) – Recognizing that grievances should be raised and resolved promptly, a grievance shall be raised within ten (10) calendar days after the occurrence of the act of omission giving rise to the grievance; provided, however, if the grievant could not have reasonably gained knowledge of the occurrence of such act or omission within said ten (10) calendar day period, then the grievance shall be raised within ten (10) calendar days from the date the grievant could have reasonably gained knowledge thereof, but in no event more than forty-five (45) calendar days from the occurrence giving rise to the grievance.

A grievance shall be raised by the grievant's requesting an informal conference with the grievant's immediate supervisor. The immediate supervisor shall respond orally within seven (7) calendar days of the informal conference. No written record of the matter shall be placed in the official personnel file of the grievant if the grievance is thus resolved at the informal level.

If the grievant is not satisfied with the response of his or her immediate supervisor, or if the immediate supervisor fails to respond within seven (7) calendar days of the informal conference, the grievant may appeal his/her grievance by invoking the formal grievance procedure which is initiated at Level II.

- B. Level II – If the matter is not resolved at the informal level, the grievant may invoke the formal grievance procedure. To do so, the grievant shall within five (5) calendar days after receiving the informal response of his/her immediate supervisor (or within ten (10) calendar days after the informal conference if there is no response from the immediate supervisor) file a formal written statement of the grievance with his/her designated mid-level supervisor. The statement shall be a clear, concise statement of the grievance, the circumstances involved, the decision rendered at the informal level if any, a reference to the specific provision of the Notice of Appointment, rule, policy, procedure or regulation that is involved, and the specific remedy sought. Within seven (7) calendar days of the receipt of the formal written grievance, the mid-level supervisor shall respond with a written decision of the grievance and shall place a copy of the grievance and the response in the official personnel file of the grievant.
- C. Level III – If the grievant is not satisfied with the disposition of his/her case at Level II, the grievant may file a written appeal within five (5) calendar days of receipt of the written decision rendered at Level II to his/her designated executive-level supervisor. The written appeal shall include a copy of the original written grievance, the decision rendered, and a clear, concise statement of the reason for the appeal. Within five (5) calendar days of his/her receipt of the written appeal, the executive level supervisor shall set a date for a meeting and notify the grievant and grievant's mid-level supervisor, if applicable, and the meeting shall be scheduled to be held within ten (10) calendar days after receipt of the written appeal by the executive level supervisor. The executive level supervisor shall within seven (7) calendar days thereafter, communicate his/her decision in writing to the grievant and to the person rendering the decision at Level II and have a copy of the appeal and his/her decision placed in the official personnel file of the grievant.

D. Level IV – If the grievant is not satisfied with the disposition of the case at Level III, he/she may file a written appeal to the President within five (5) calendar days of receipt by the grievant of the decision at Level III. The written appeal shall include a copy of the original written grievance and of any appeals made and decisions rendered at Levels II and III, together with a clear, concise statement of the reason for the appeal to the President. The President, or his/her designee, may elect to review the appeal (1) by a review of the record, (2) by requesting a personal conference, and/or (3) by appointing an ad hoc committee. Depending upon which method, or combination of methods, the President or his/her designee elects, the applicable of the following procedures shall be used:

- 1) Review of the record – The President, or his/her designee, may within seven (7) calendar days after receiving the appeal make a decision without either a conference or a hearing by an ad hoc committee, and within that period of time notify the grievant and his/her executive level supervisor of the decision. A copy of the appeal and the decision of the President, or his/her designee, shall be placed in the official file of the grievant.
- 2) Conference – The President, or his/her designee, at his/her discretion may, within seven (7) calendar days after his/her receipt of the written appeal, request a conference with the grievant. The President, or his/her designee, within seven (7) calendar days after said conference, shall either make a written decision and send a copy to the grievant and his/her executive level supervisor, or appoint an ad hoc committee to conduct a hearing. A copy of this appeal and the decision of the President, or his/her designee, shall be placed in the official personnel file of the grievant.
- 3) Ad Hoc Committee – The President, or his/her designee, at his/her discretion, may appoint an ad hoc committee of five (5) disinterested persons to conduct a hearing and to make a recommendation to the President. If the President, or his/her designee, appoints an ad hoc committee, he/she shall do so within seven (7) calendar days after the later of (a) his/her receipt of the written appeal or (b) the conference as described in paragraph 5.D.2. The President shall, within the same period of time, designate the chairperson of the committee.

Within five (5) calendar days after appointment, the ad hoc committee shall set a time and place for the hearing and notify the grievant and the supervisors at each of the preceding levels. The hearing shall begin within ten (10) calendar days after the ad hoc committee has been designated, and may be continued as the committee chairperson may schedule. The ad hoc committee shall make its decision by simple majority vote and communicate its recommendations in writing to the President. Such recommendations shall be advisory only and shall not be binding upon the President. Within ten (10) calendar days of his/her receipt of such recommendations, the President, or his/her designee, shall render a written decision and shall notify the grievant and the executive level supervisor of the decision. A copy of this appeal and

the decision of the President, or his/her designee, shall be placed in the official personnel file of the grievant.

- E. Level V – If the grievant is not satisfied with the disposition of his/her case at Level IV, he/she may file a written appeal to the Board of Governors of the Metropolitan Community College Area within five (5) calendar days of receipt by the grievant of the decision rendered by the President, or his/her designee, and may also request a hearing by the Board. The written appeal shall include a copy of the original written grievance, and the appeals and decisions at all preceding levels, together with a clear, concise statement of the reason for the appeal to the Board. The Board, at its sole discretion, may elect to review or not review the case.

If the Board elects to review the case it may review same solely on the basis of the record of the prior proceedings of the case, or it may call the case before the Board for a full or partial hearing in which event the grievant shall appear at said hearing and respond to any questions the Board may have in the matter. No later than the second regular meeting of the Board following the lodging of the appeal with the Board, the Board shall determine whether it will accept and decide the appeal. The Recording Secretary of the Board shall notify the grievant and the President of the Board's decision in this respect. Not later than the conclusion of its next regular meeting after a decision by the Board to accept an appeal, the Board shall render its decision (if same is to be based upon the prior record of the case), or shall schedule a hearing (if the case is to be determined on the basis of a full or partial hearing, such hearing to be held not later than the next regularly scheduled Board meeting thereafter). In the event of such a hearing, the Board shall render its decision not later than the conclusion of its next regular meeting following the conclusion of such hearing. A copy of the appeal and the Board's decision shall be placed in the official personnel file of the grievant. The Board's decision on the matter, or its decision not to hear and decide the matter, whichever the case may be, shall be final under this grievance procedure. The Level V procedure may be changed by mutual agreement of the staff member and the Board.

6. Employee Representation

Except as provided in paragraph 5.A. above (Informal Level), any grievant may be represented at any or all stages of the grievance procedure by himself/herself or, at his/her option, by one attorney or one other representative of his/her own choosing. Any such representation shall be at the grievant's own expense. If any attorney or representative appeals a decision on behalf of the staff member, the approval of the staff member must be noted by his/her signature on the written appeal.

7. Time Limitations

The following rules shall govern as to time limitations:

- A. Extension of time – The time limitations specified for either the grievant or the College Area may be extended by written mutual agreement. Such extension of time on the part

of the College Area must be approved by the President, or his/her designee, for Levels I through IV and by the Board at Level V.

- B. Effect of failure to grieve or to appeal within time specified – Failure to raise a grievance within the time prescribed shall be considered a waiver of the grievance. A decision at one level not appealed to the next level of the procedure, within the time limit specified, shall be determined settled on the basis of the last decision rendered.
- C. Effect of failure to respond within time limit – Failure at any level of the grievance procedure to initiate communication of a decision to the grievant within the specified time limit shall permit the lodging of an appeal to the next level of the procedure within the time which would have been allotted had the decision been communicated on the final day specified.

8. Miscellaneous Provisions

- A. Identification – All written notifications and appeals shall include the name and position of the party appealing.
- B. Avoiding interruptions - This procedure shall not be construed to permit interruption of classroom activity or to authorize the involvement of students at any stage of the procedure. In circumstances where the only witness(es) available to prove or disprove the existence of a fact is a student(s), then in such cases the student(s) may be a witness.
- C. Informal discussion – Nothing contained herein shall be construed as limiting the right of the grievant at any time or at any level to discuss the matter informally with any appropriate supervisor/administrator of the College and have the grievance informally adjusted.
- D. Separate statutory remedies – In respect to any alleged violation of any statutory right, respecting which a statutory procedure is provided for the protection of said right, such statutory procedure shall be the exclusive procedure and shall preempt this grievance procedure and shall be used in lieu thereof.
- E. Hearings and conferences closed – All hearings and conferences under this procedure (except those hearings held in open session of the Board at Level V) shall be conducted in closed sessions without electronic recording or other transcript and shall include the person or body conducting the hearing or conference, the grievant, the grievant's designated representative, personnel of the College Area who are involved, witnesses, and the College Area's representative.
- F. Time extended by reason of hospitalization – If, on the date that a grievance must be lodged, an appeal taken, or the response or decision of an administrator (including an immediate supervisor) given, the person required hereunder to act is hospitalized, then the prescribed time for taking such action shall not be deemed to have commenced to run until the day following the last day of his/her hospitalization.

- G. Administrative designees – During such time as any administrator (including an immediate supervisor) is incapacitated or may otherwise be absent from the campus for a period of time, the President of the College Area may designate someone of the same or higher managerial level in her/his place and stead to do all things required to be performed by him/her under this grievance procedure.
- H. Public statements – Except for such simple announcements as may be required covering the time of hearings and similar matters, public statements and publicity about a case shall be avoided by all parties until after all College proceedings have been concluded.
- I. Suspension and/or dismissals – Nothing herein shall be construed to in any way limit or restrict the authority of the President or Board of Governors respecting the matters of suspensions with or without pay and dismissals, summarily or otherwise, as prescribed by Board Policy or other Procedures Memorandums.
- J. Delivery of notices – When giving notice of action or requesting appeal, it is the author's responsibility to make all reasonable effort to ensure that the person or persons designated to receive such notices and requests, receives them personally.

Adopted 2/15/90; Combined with PM VII-3 Grievance Procedures for Classified Staff (also adopted 2/15/90) and Revised 12/18/01; 11/16/04; 6/8/06; 6/18/09