

California Faculty Association Representation Policy

(Revised by CFA Representation Committee October 2018)

Preamble

Every member of the California State University professional community has certain employment rights and privileges guaranteed by the United States and California Constitutions, the laws and regulations governing their employment, and the tradition of academic governance as exemplified by the AAUP 1940 Statement of Principles of Academic Freedom and Tenure, the 1958 Statement of Procedural Standards on Faculty Dismissal Proceedings, and the 1971 Procedural Standards on the Renewal and Non-renewal of Faculty Appointments.

Many of these rights and protections are recognized and implemented in the binding agreement, called a Collective Bargaining Agreement (CBA), between the California Faculty Association (CFA) and the Board of Trustees of the California State University (CSU). The CBA recognizes these rights, and provides procedures for enforcement of those rights, as well as providing a body of additional rights and benefits.

Equality of Representation

It shall be the policy of CFA to represent all employees in the Faculty Bargaining Unit in good faith without discriminatory or arbitrary conduct regardless of organizational membership, rank, classification, race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, gender expression, genetic information, marital status, pregnancy, age, disability, medical condition, or veteran status, or political belief.

CFA is committed to anti-racism and social justice, and as articulated in our ten principles:

“Diversity and inclusion” are not enough. As educators, we are models for our students, and what and how we teach them will shape the future of the California State University system, our state, and our nation. We are committed to doing all we can to address the rise of racism and exclusion in our society, and being a model for others. Together, and through this transformation, we will grow stronger.

Representation Obligations

As the certified exclusive representative for CSU faculty unit employees, CFA recognizes its duty to represent faculty and faculty interests as they relate to wages, hours, benefits, and other terms and conditions of employment as reflected in the CBA. Said obligation, however, is tempered by CFA’s right to fairly and prudently determine those specific grievances and discipline appeals wherein the greater good of the bargaining unit may or may not be served by CFA action. In general, the Association will strive to provide professional, competent advice, advocacy, counsel, and assistance to

members of the unit in all matters relating to the interpretation and enforcement of the Collective Bargaining Agreement.

As a matter of practice, CFA will carefully consider actively participating in all statutory or contract grievances on a case by case basis. CFA will normally participate in contract grievances upon request, but will rarely participate in statutory grievances due to the nature of the process and its reliance on individual faculty participation, advocacy, and adjudication. Members' rights to representation are explained and provided for below.

Except in extraordinary cases, CFA will not participate in grievances involving intra-faculty disputes unless the dispute involves the exercise of authority granted by contract or Administrative delegation.

In addition to its duty of fair representation as exclusive representative, CFA will, at its discretion and as resources allow, provide advice and consultation to members of the bargaining unit in regard to employment-related questions pending before or having potential for determination by unions, State or Federal administrative agencies, legislative tribunals, or quasi-judicial forums. These may include the Public Employment Relations Board, State Personnel Board, Board of Control, California Fair Employment and Housing Department, the Equal Employment Opportunity Commission, Unemployment Compensation Review Board, and/or various non-contractual governmental grievance procedures.

CFA at its discretion may also represent or assist in the representation of faculty employment-related rights in the various state and federal courts of appropriate jurisdiction.

Financial Obligations

Those grievances and discipline appeals falling under CFA's obligations as exclusive representative shall be processed by the Association at no cost to the unit member, except that CFA shall bear no financial responsibility for judgments or penalties that may fall to the faculty member at the conclusion of the administrative/judicial proceeding. The member may be responsible for any travel and incidental costs that may accrue.

In those instances where CFA has voluntarily determined to assist in employment-related activity outside of the confines of the CBA, the level of financial participation shall be as determined by the Director of Representation, with final approval resting with the Chief of Staff and statewide Officers.

CFA at its discretion may act to indemnify a member against all or a portion of costs stemming from private, employment-related litigation initiated by the unit member utilizing private counsel. A request for such indemnification shall normally be made to the CFA Chief of Staff in advance of the initiation of such litigation although in rare instances involving potentially precedent setting litigation, application for financial assistance may be made during the course of said litigation. No financial commitment shall be deemed approved by CFA without a written statement of particulars signed by the Chief of Staff.

Process of Representation

CFA will endeavor to fulfill its duty of fair representation according to the following principles:

1) CFA representatives will be familiar with all aspects of the CBA and shall endeavor to counsel, advise, and advocate based on that knowledge and experience.

2) CFA representation will be conducted in a non-arbitrary, non-discriminatory, good faith manner consistent with the duty of fair representation.

3) CFA advocates will investigate complaints in a careful fashion and to a degree permitted by time and available resources. These investigations will be conducted giving careful attention to the section of this document entitled "Equality of Representation" and CFA's principles of Anti-Racism and Social Justice.

4) CFA will make a good faith effort to observe all applicable filing and processing deadlines while maintaining complete records of grievances and discipline appeals. To the degree possible CFA will advise the faculty member in regard to time limits.

5) CFA will promptly notify the faculty member concerning CFA decisions on his/her grievance or discipline appeal and shall discontinue CFA representation only for proper reasons, including, but not limited to: lack of merit, refusal to accept reasonable settlement, failure to cooperate, etc. Such decisions are subject to the appeal process outlined below.

6) CFA will promptly notify the faculty member concerning offers of settlement and will discuss such settlements with the faculty member before taking action on the offers.

7) In all grievances and discipline appeals, CFA will represent the faculty member fairly and diligently, but may also, at the faculty member's request, allow the participation of private counsel at no cost to CFA. CFA, however, shall maintain full responsibility for, and control of any aspect of a case touching upon the integrity of the CBA.

8) Grievances and discipline appeals accepted by CFA for arbitration will be presented in a competent, reasonable and thorough fashion by CFA.

9) CFA retains the right to assign a competent representative of its choosing to each grievance or discipline appeal.

10) CFA retains the right to publicize the results of any completed or resolved grievance or discipline appeal, following discussion of such publicity with the faculty member(s) involved. However, CFA recognizes that in some instances grievants and appellants desire anonymity in reporting, and CFA shall redact names and identifying information when appropriate.

Case Priority Selection Guidelines

In all instances, the selection of cases for CFA participation shall be based on a substantive assessment of its merits and impact upon the individual, the bargaining unit, and the CFA rather than on a strict application of the following priority guidelines.

a) Top Priorities include:

- Grievances and discipline appeals involving imminent termination of employment or unpaid suspension;
- Class-action grievances having the potential for benefiting large numbers of unit members in a significant fashion;
- Grievances and discipline appeals involving a large economic impact to CFA members;
- Grievances and discipline appeals designed to secure the validity and sanctity of the CBA with particular attention to the rights of CFA and the rights of employees to participate freely within the process of collective bargaining.
- Grievances and discipline appeals that are consistent with the section of this document entitled "Equality of Representation" and CFA's principles of Anti-Racism and Social Justice.

b) Lesser Priorities include:

- Grievances and discipline appeals not involving imminent loss of employment and particularly those eligible for review through alternate dispute resolution procedures, such as peer review procedures;
- Grievances and discipline appeals involving de minimus (minimal or inconsequential) rights violations and small dollar amounts;
- Grievances and discipline appeals with unclear contractual rights or that are legally risky but nevertheless morally or politically important to pursue.
- Grievances and disciplinary appeals unrelated to contractually protected rights.

Requests for Representation for Contractual Grievances and Discipline Appeals

1) CFA will provide advice and advocacy to Unit 3 members in the initial stages of contractual grievances, or in pre-grievance activities designed to protect faculty rights or the CBA and in the initial stages of discipline appeals. At the point CFA must request arbitration according to the contractual grievance procedure set out in the CBA, CFA will make a determination to accept or reject a request for representation of a grievance or

discipline appeal. Upon request by the grievant or appellant, the Director of Representation shall make a determination to proceed to arbitration based on a review of the grievance or discipline appeal, its merits, the facts made known to CFA at the time of the request, and recommendations of chapter and staff advocates. When circumstances merit, the Director of Representation will withdraw from and/or deny representation before the arbitration stage. CFA will assess each request for representation in a good faith manner consistent with this policy.

2) All requests for CFA representation following the last pre-arbitration step of the grievance procedure or disciplinary appeal, or any request for representation outside of the contract proceedings including administrative agencies and/or court, shall be made in a timely fashion.

In order to make an informed decision on case acceptance, CFA may request that grievants or appellants provide facts, documents, and other information.

As soon as possible following the request for representation, CFA shall inform the faculty member, in writing, of the decision to arbitrate. Should the Director of Representation deny the representation request, a statement of reasons shall be provided. The Director of Representation shall also provide the faculty member with representation appeal rights. During the period of review and appeal, the Director of Representation shall take whatever steps necessary to preserve applicable time limits.

Requests for Representation in Statutory Grievances

CFA may not participate in statutory grievances at the time of filing, but will, upon request, assist in the initial discussion of such grievances with the Administration at the first step of the process. Following the issuance of the first Administrative answer to the grievance, CFA will consider formal participation in the statutory track grievance upon timely, written request of the faculty grievant.

If CFA agrees to participate, it will provide assistance and/or representation before the Faculty Hearing Committee as requested by the grievant. Denial of representation, pre-arbitration in the statutory track, is not subject to the appeals process described below.

Following issuance of the Faculty Hearing Committee decision and that of the campus President, CFA will again consider, as requested by the grievant, participation in arbitration in a statutory grievance. In cases where a Faculty Hearing Committee rules favorably on a grievance in which 1) CFA has not participated and 2) the campus President has rejected the ruling of the Faculty Hearing Committee, CFA will, upon written request of the grievant, consider or reconsider participation in the arbitration of that dispute. Because of contractual time limit mandates, such a request must be made within 3 days of the Faculty Hearing Committee decision. If the Union agrees to participate in the arbitration process, it will provide assistance and/or representation in

arbitration. Denial of representation at the arbitration stage of a statutory grievance is subject to the appeals process described below.

Appeal of the Director of Representation Decision

Should the Director of Representation deny CFA representation, the member shall have the right to submit a written appeal to CFA's Representation Committee.

An appeal of the Director of Representation's decision shall be made by the unit member within two weeks of the receipt of the initial decision (or five days in the case of a discipline appeal) and shall be addressed to the Chair of the Representation Committee. The Chair of the Representation Committee shall be responsible for the convening of a Representation Committee conference call for the conduct of Committee business. The Chair of the Representation Committee shall provide the Representation Committee with relevant information and documents in his/her possession together with an analysis of the case and the projected level of CFA resources necessary to fulfill the representation request under consideration. The appellant shall have the obligation to provide the Representation Committee any materials in his/her possession relative to the case in question. The Representation Committee's deliberations will be limited to committee members, campus advocates, and staff only.

Decisions of the Representation Committee shall be made in a timely fashion and communicated to the appellant, the Director of Representation, Chief of Staff, and the applicable CFA Chapter. Decisions of the Representation Committee shall be final. While appeal procedures are in progress, CFA will protect all applicable contract filing deadlines, and CFA will not withdraw representation or otherwise inform the CSU of its intent until the Representation Committee makes a final decision.

In a systemwide grievance, any decision by the Director of Representation to withdraw the grievance or decline arbitration shall be reviewed by the Representation Committee.

CFA Campus Chapters

The most effective way to enforce our contract is with a vigilant faculty rights program at the campus level that actively involves members. Each campus chapter shall designate a Faculty Rights Chair and is encouraged to maintain a Faculty Rights Committee to provide campus-level consultation and assistance in such matters as meet and confer sessions, grievances, discipline, anti-racism & social justice, academic freedom matters, etc. In other work settings, these workplace advocates might be called "shop stewards," as they work for the same employer and under the same conditions as those seeking union advocacy. Faculty Rights Chairs are knowledgeable about the Collective Bargaining Agreement (CBA) and members' rights. They interpret CBA provisions; file grievances; represent members in Level I meetings and meetings connected to disciplinary action; assist with rebuttals and responses to the administration; and make recommendations for and provide assistance in arbitrations. Advocates meet regularly with CFA staff for guidance and support, attend systemwide meetings and trainings, and are given access to a CFA email account so that they may provide confidential advice.

Consultation includes, but is not limited to, advising Unit 3 members in regard to their various employment-related rights (particularly in regard to the CBA) as well as informing Unit 3 members of their right to seek redress of problems through contractual mechanisms. Assistance includes, but is not limited to representing Unit 3 members in efforts to resolve various employment related problems particularly through pre-arbitration contractual mechanisms, filing grievances, representing members in Level I meetings, and processing grievances according to the terms of the CBA. Faculty Rights Advocates may rely upon staff involvement to advise on and handle the complex cases or those involving statewide impact.

Upon request, any member of the unit seeking to file a grievance shall be advised of his/her right to file and process said grievance at Levels I and II independent of CFA's involvement in the grievance. If the campus CFA Chapter determines not to be actively involved in the filing and processing of a grievance, procedural advice shall nevertheless be made available upon request.

Assistance commitments for contractual grievances shall be made only by the CFA Chapter President, Faculty Rights Chair and/or Committee members, CFA staff, or such other individual or groups determined by the Campus CFA Executive Committee. CFA commitments made at the local campus level shall not be construed to automatically continue beyond processing the complaint/problem/grievance at the local campus level.

As part of its counseling and assistance function, CFA shall maintain permanent records of all representation requests including the name of the person making the request, the nature of the request, the date received and the disposition by the chapter.