

ARTICLE 19

DISCIPLINARY ACTION PROCEDURE

Scope of Disciplinary Action

- 19.1 This Article shall apply to all bargaining unit employees excluding temporary employees who have been employed for one semester or quarter or less. Sanctions imposed in a disciplinary action shall be limited to dismissal, demotion, or suspension without pay. Unless the grievant and the President agree to the contrary in writing, all suspensions shall be served on consecutive work days.
- 19.2 Disciplinary action shall not include denial of appointment, reappointment, probation, tenure, or promotion, separation during a temporary appointment pursuant to 12.5, rejection during probation, reassignment, transfer, layoff, reprimand, temporary suspension with pay, docking of pay or any other action, recommendation, or decision except those in 19.1 of this Article. Recommendations or decisions in the appointment, reappointment, probation, tenure, promotion, reassignment, transfer, layoff, reprimand, or temporary suspension with pay processes are not disciplinary actions for the purpose of this Article and are not subject to the disciplinary action procedures of this Article.

Informal Resolution of Pending Disciplinary Action

- 19.3 Nothing contained in this Article shall be interpreted to preclude a voluntary attempt by the parties to informally resolve potential disciplinary actions, either prior to the notice of pending disciplinary action or at any other time. Such attempts at informal resolution shall not preclude the University from relying upon, at any future disciplinary proceeding, evidence gathered during the investigation of the alleged misconduct by the faculty unit employee.

Notice of Pending Dismissal, Demotion, or Suspension Without Pay

- 19.4 The President shall initiate the disciplinary action process by written notice of pending disciplinary action served in person, via electronic mail ("e-mail") or served by U.S. mail to the affected faculty unit employee. When U.S. mail or "e-mail" is used, a proof of service shall

be prepared. The faculty unit employee shall be informed in this notice that the sanction specified in the notice shall be imposed unless, following review of the matter, the President notifies the faculty unit employee otherwise.

19.5 The notice of pending disciplinary action shall include:

- a. the cause(s) for disciplinary action;
- b. the pending sanction;
- c. the proposed effective date of the pending sanction;
- d. the identity of the Reviewing Officer designated by the President to review the matter;
- e. the right of the faculty unit employee to appeal the pending disciplinary action and to have the matter heard; and
- f. a copy of this Article.

Acceptance of Disciplinary Action

19.6 The faculty unit employee may accept the pending disciplinary action at any time by filing a letter of acceptance of the disciplinary action with the President. An acceptance of disciplinary action shall result in the imposition of the pending sanction, but is not an admission by the faculty unit employee of the allegations of misconduct. Failure of a faculty unit employee to appeal a pending disciplinary action pursuant to this Policy shall result in imposition of the pending sanction.

Review of Pending Disciplinary Action

19.7 Within ten (10) days of receipt of the notice of pending disciplinary action, upon request of the faculty unit employee or their representative, ~~and~~ at a time and place mutually acceptable to the affected faculty unit employee and the Reviewing Officer, the faculty unit employee and a CFA representative, if any, may will meet with the Reviewing Officer designated by the President and their representative (if any) to review the notice, the reason(s), and the evidence. The faculty unit employee may respond orally or in writing. Such a

written response (if any) shall be provided to the Reviewing Officer

within ten (10) days of the notice of pending disciplinary action whether or not a meeting takes place. A copy of such written response may be provided to the President. The Reviewing Officer designated by the President shall not have been directly involved in the initiation of the pending disciplinary action.

- 19.8 The Reviewing Officer shall issue a report to the President within fifteen (15) days of the notice of pending disciplinary action. The President shall consider the report of the Reviewing Officer.
- 19.9 Within five (5) days of receipt of the report, the President shall notify the affected faculty unit employee of their decision to rescind, modify, or affirm the pending disciplinary action. The effective date of such disciplinary action shall be included in this notification. ~~Such an effective date shall be at least twelve (12) days from the date of this notification, except as provided in provisions 19.12(a) and 19.12(b).~~ This notice shall be the notice issued by the CSU for purposes stated in Education Code Section 89538 and Section 89539. The time requirements of provisions 19.7 through 19.9 may be extended by mutual agreement between the faculty unit employee and the CSU.

Disciplinary Action Appeal Process

- 19.10 A faculty unit employee may appeal a pending disciplinary action by selecting one (1) of the three (3) following appeal options at the time they file their notice of appeal:
- a. Within ten (10) days of receipt of the notification pursuant to provision 19.9, a faculty unit employee or their representative may file a written notice of appeal with the President in accordance with the Disciplinary Action Arbitration Procedure of this Article. Appeal by a representative of the faculty unit employee other than CFA is permitted only if it is accompanied by a written authorization of representation, which shall be signed by the faculty unit employee. Such notice shall be accompanied by a detailed statement of the disputed facts and defenses to the allegation of misconduct.

- b. Within ten (10) days of receipt of the notification pursuant to provision 19.9, a faculty unit employee or their representative may file a written notice of appeal with the President indicating an intent to request a hearing of the matter by the State Personnel Board as provided in Section 89539 of the Education Code. Appeal by a representative of the faculty unit employee other than the CFA is permitted only if it is accompanied by a written authorization of representation, which shall be signed by the faculty unit employee. Such notice shall be accompanied by a detailed statement of the disputed facts and defenses to the allegation of misconduct. A request for a hearing by the State Personnel Board must be filed with the State Personnel Board within thirty (30) days of receipt of the notification pursuant to provision 19.9.
- c. Within ten (10) days of receipt of the notification pursuant to provision 19.9, a faculty unit employee or their representative may file a written notice of appeal with the President indicating an intent to request a hearing of the matter by a Faculty Hearing Committee selected from the Faculty Review Panel, following the same procedures provided in provisions 19.10(d) and 19.10(e) below. Appeal by a representative of the faculty unit employee other than the CFA is permitted only if it is accompanied by a written authorization of representation, which shall be signed by the faculty unit employee. Such notice shall be accompanied by a detailed statement of the disputed facts and defenses to the allegation of misconduct.
- d. Faculty Hearing Committee
 - 1. The Faculty Hearing Committee shall be composed of full-time faculty members selected by lot from the Panel established pursuant to provisions 10.8, 10.9 and 10.10 of this Agreement. The Committee shall make a recommendation to the President as to whether the proposed disciplinary action should be sustained, modified, or voided.

2. The Co-Chairpersons of the Faculty Hearing Committee Panel shall be employed by the CSU. Within seven (7) days after the filing of the disciplinary action appeal as provided in 19.10(c), the Co-Chairpersons of the Faculty Hearing Panel shall jointly schedule the selection of the Faculty Hearing Committee. The Committee shall consist of three (3) members and one (1) alternate. No Faculty Hearing Panel member may serve on a Faculty Hearing Committee if they have been directly involved with or a party to matters related to a proposed disciplinary action submitted by the affected faculty unit employee to a faculty hearing. Each Faculty Hearing Committee shall be appointed and serve on an ad hoc basis until the Committee has issued its decision on the proposed disciplinary action in question. Participation on a Faculty Hearing Committee shall be considered "service" to the campus community for all applicable purposes.
3. Upon selection, the Academic Vice President/Provost or designee shall provide written notice to the affected faculty unit employee, appropriate administrator, and committee members of the selection.
4. A hearing of the proposed disciplinary action in question shall be scheduled to occur within fourteen (14) days from the date of notification to all parties of the selection of the Faculty Hearing Committee at a mutually acceptable time at the campus where the affected faculty unit employee is employed.
5. There shall be no post hearing briefs. The hearing will not exceed one (1) day with equal time for each party, except by written agreement of the parties.
6. Conduct of the hearing shall be at the discretion of the Faculty Hearing Committee but shall be open to the public at the discretion of the affected faculty unit employee.
7. The affected faculty unit employee and the President shall have the right of representation by a representative of their choice and to be provided, free of charge, access to a complete record of the hearing. Said record shall be taken in a manner deemed appropriate by the faculty hearing committee.

e. Committee Decision

1. The Committee shall transmit a decision to the President, within fourteen (14) days after the conclusion of the hearing, as to whether the proposed disciplinary action should be sustained, modified or voided. In making its decision regarding whether to sustain, modify, or void the sanction or pending sanction, it shall also be the function of the Faculty Hearing Committee to determine whether cause for disciplinary action existed.
2. The decision of the Faculty Hearing Committee shall set forth the findings, reasons, and conclusions on the issue(s) submitted. Copies of the complete decision shall be provided to the parties.
3. The decision of the Faculty Hearing Committee shall be based solely upon the evidence and arguments appropriately presented by the parties in the hearing.
4. The decision of the Faculty Hearing Committee may include back pay provided, however, that any back pay award shall be less the difference of any unemployment compensation received and/or any earnings resulting from the employee's compliance with their duty to mitigate damages; and/or any earnings that the employee should have received had the employee complied with their duty to mitigate damages. Only earnings derived from like, or substantially like, employment shall be considered for the purposes of this mitigation.
5. Within fifteen (15) days of receipt of the Committee's decision, the President shall inform the affected faculty unit employee in writing whether they agree or disagree with the Committee's decision. If there is no disagreement between the Faculty Hearing Committee's decision and President's decision, then the President's decision shall be final and binding, and not subject to arbitration. If the President does not agree with the Committee's decision, the affected faculty unit employee may elect to appeal the matter to arbitration pursuant to provision 19.10(e)(6). The arbitrator's decision shall be final and binding. Where the President agrees in part, and disagrees in part,

with a decision of the Faculty Hearing Committee, then only the issue(s) with which the President disagrees may be appealed to arbitration under 19.10(e)(6); the President's decision on issues on which there is no disagreement shall be final and binding and not subject to arbitration.

6. Within fifteen (15) days of receipt of the President's decision, a faculty unit employee or their representative may file a written notice of appeal with the Office of the Chancellor requesting arbitration.

- 19.11 Filing the notice of one (1) of the three (3) disciplinary action appeal options pursuant to provision 19.10 shall constitute a final and binding decision by the affected faculty unit employee.

Imposition of Sanction

- 19.12 a. If, pursuant to provision 19.10(a) or 19.10(c), the affected faculty unit employee notifies the President of an appeal involving the sanction of any disciplinary action, including a suspension without pay for more than thirty (30) days, demotion, or dismissal, the faculty unit employee or their representative and the CSU may agree that the sanction shall be held in abeyance pending a final decision and its implementation.
- b. ~~If, pursuant to provision 19.10(a) or 19.10(c), the affected faculty unit employee notifies the President of an appeal involving the sanction of suspension without pay for more than thirty (30) days, demotion, or dismissal, the CSU shall hold the sanction in abeyance pending a final decision and its implementation. Abeyance shall not exceed one hundred and thirty-five (135) days.~~

Disciplinary Action Arbitration Procedure

- 19.13 Unless the specific language of the Agreement is in conflict, the arbitration procedure shall be conducted in accordance with the AAA Labor Arbitration Rules, subject to the following provisions. The parties shall meet within thirty (30) days of the ratification of this Agreement to select a panel of ten (10) members. If no agreement is reached on the panel within a sixty (60) day period from the ratification of this Agreement, the parties shall designate

arbitrators for each case in accordance with AAA Labor Arbitration Rules until agreement on a panel is reached.

- 19.14 If the parties agree to a panel of arbitrators, either party may peremptorily challenge two (2) members on the panel at any time during the term of this Agreement and such a panel member shall be removed from the panel and replaced with a new mutually acceptable replacement. If the parties are not able to agree on a replacement within thirty (30) days, then the cases scheduled for that particular arbitrator will be heard by an arbitrator designated by the parties in accordance with AAA Labor Arbitration Rules on a case-by-case basis until agreement on a replacement is reached. Once a party has notified the other party of its intention to remove an arbitrator, no new cases shall be heard by that arbitrator, and that arbitrator shall not be notified of their removal prior to the receipt by the parties of any of their pending awards.

Scheduling Arbitration Hearings

- 19.15 a. All disciplinary cases involving suspension, dismissal, or demotion appealed to arbitration pursuant to 19.10(a) shall be scheduled for hearing in arbitration no later than ninety (90) days from the effective date of the disciplinary action contained in the notification issued by the President pursuant to 19.9. The process for selecting the arbitrator shall be that contained in 19.13 and 19.14. If the parties have mutually agreed on an acceptable arbitrator, then they shall submit jointly a list of suitable hearing dates to the arbitrator within the ninety (90) day period. If the hearing is estimated by the parties to require more than one day, then the hearing dates should be consecutive whenever possible. If the arbitrator cannot offer consecutive dates to the parties, then they may offer their soonest available dates. If the parties have not been able to mutually agree on an acceptable arbitrator, then they shall submit jointly a list of suitable hearing dates to the American Arbitration Association and request them to supply pursuant to its rule a list of arbitrators each of whom has at least one of those dates available to hear the appeal within the ninety (90) day period. If the hearing is estimated by the parties to require more than one (1) day, then the hearing dates should be consecutive whenever possible. If the arbitrator cannot offer consecutive dates, then they may offer their soonest available dates. The parties shall then use the strike procedure detailed in 19.14 to designate an arbitrator to hear the appeal.

- b. All disciplinary cases involving suspension, dismissal or demotion appealed to arbitration pursuant to 19.10(e)(6) shall be scheduled for hearing in arbitration no later than sixty (60) days from the date of the appeal to arbitration. The process for selecting the arbitrator shall be that contained in 19.13 and 19.14. If the parties have mutually agreed on an acceptable arbitrator, then they shall submit jointly a list of suitable hearing dates to the arbitrator within the sixty (60) day period. If the hearing is estimated by the parties to require more than one (1) day, then the hearing dates should be consecutive whenever possible. If the arbitrator cannot offer consecutive dates to the parties, then they may offer their soonest available dates. If the parties have not been able to mutually agree on an acceptable arbitrator, then they shall submit jointly a list of suitable hearing dates to the American Arbitration Association and request them to supply pursuant to its rule a list of arbitrators each of whom has at least one of those dates available to hear the appeal within the sixty (60) day period. If the hearing is estimated by the parties to require more than one (1) day, then the hearing dates should be consecutive whenever possible. If the arbitrator cannot offer consecutive dates, then they may offer their soonest available dates. The parties shall then use the strike procedure detailed in 19.14 to designate an arbitrator to hear the appeal.
- c. The parties shall accept the first date offered pursuant to 10.26 e. Either party may request the date to be rescheduled based on witness availability or other issues that require rescheduling.
- d. No later than ten (10) days prior to the date of an arbitration hearing the parties shall confirm any arbitrability issue(s) to be raised, attempt to formulate a joint statement of issue, exchange the names of all anticipated witnesses, and provide (and identify as exhibits) copies of all documents anticipated to be entered into evidence. This provision shall not preclude either party from calling witnesses or entering documentary evidence not identified during this discussion. Scheduled hearings shall not be delayed or postponed due to the failure to complete this discussion.

Arbitration Rules and Procedures

- 19.16 It shall be the function of the arbitrator to determine whether cause for disciplinary action existed and to affirm, modify, or deny the sanction or pending sanction.
- 19.17 Absent a mutual agreement to the contrary, if an arbitrability question exists, there shall be a bifurcated hearing in which the arbitrator shall determine the arbitrability question after the submission of post-hearing briefs and prior to holding a hearing, if any, on the merits of the appeal.
- 19.18 Within thirty (30) days from the date the hearing has concluded, or 30 (thirty) days after the submission of briefs (where the parties have agreed to submit briefs), the arbitrator shall issue to the parties a written award stating the decision on the issue(s) submitted. Copies of the award shall be provided to the parties. The award shall be final and binding on the parties.
- 19.19 Both the arbitrator's decision and the decision of the Faculty Hearing Committee shall set forth the findings, reasons, and the conclusions on the issue(s) submitted no later than thirty (30) days after the award is issued. Copies of the complete decision shall be provided to the parties.
- 19.20 The Labor Arbitration Rules of the American Arbitration Association shall apply except when the specific language of this Article is in conflict, in which case the specific language of this Article shall apply.
- 19.21 The decision of the Faculty Hearing Committee and the arbitrator's award shall be based solely upon the evidence and arguments appropriately presented by the parties in the hearing and upon any post-hearing briefs by the parties.
- 19.22 The arbitrator shall have no power to alter, add to, detract from, or amend any CSU Policy or the CSU/CFA agreement. The arbitrator shall be without power to make an award which requires the commission of an act prohibited by law, or an omission of an act required by law, or which is violative of the specific terms and conditions of the CSU/CFA agreement. The decision of the Faculty Hearing Committee shall also be limited in this manner, so that the decision of

a Committee shall not result in a remedy that exceeds the authority of an arbitrator.

19.23 The award of the arbitrator may include back pay provided, however, that any back pay award shall be less the difference of any unemployment compensation received and/or any earnings resulting from the employee's compliance with their duty to mitigate damages, and/or any earnings that the employee should have received had the employee complied with their duty to mitigate damages. Only earnings derived from like, or substantially like, employment shall be considered for the purposes of this mitigation. The decision of the Faculty Hearing Committee shall also be limited in this manner, so that the decision of a Committee shall not result in a remedy that exceeds the authority of an arbitrator.

19.24 Each party shall bear the expenses of preparing and presenting its own case both in arbitration and in hearings before faculty committees. The parties shall attempt to schedule all Faculty Committee hearings in a manner that does not interfere with CSU operations. The affected faculty unit employee, their representative, if any, and witnesses who are CSU employees called before the arbitrator shall be provided with release time for the official hearing. The cost for the services of the arbitrator shall be borne by the CSU unless a grievant, and/or their representative, has unilaterally requested a postponement of the proceedings at a stage in the proceedings where arbitrator's costs have been necessarily incurred. In that case, the costs of the arbitrator shall be borne by the party that requested the postponement of the proceedings.

~~When the CSU waives the 135-day abeyance period set out in 19.12 b., withholding imposition of disciplinary action until a final arbitration award is issued, and when CFA is acting as the affected member's advocate, CFA shall pay an equal share of the arbitrator's fees. Absent a specific agreement of the parties, the abeyance shall not be extended beyond two hundred and seventy (270) days. In such instances, the agreement to split the costs and fees of the arbitrator shall expire at the same time as the abeyance period.~~

Should the arbitrator require a transcript, the parties shall pay equal shares of the court reporter fees.

Should both parties require a transcript, the parties shall pay equal shares of the court reporter fees.

Pre-Sanction Suspension

- 19.25 When the President determines it is in the best interests of the campus, they may suspend with pay a faculty unit employee who has been served with a Notice of Pending Dismissal, Demotion or Suspension Without Pay pursuant to 19.4 of this Article. Such a suspension may continue until imposition of sanction or a final award pursuant to this Article or pursuant to Education Code Section 89539.
- 19.26 The affected faculty unit employee shall be notified in writing of the reasons for such a suspension with pay, and shall also be provided with copies of any documents related to the suspension except when the President determines that disclosure would endanger the safety of any person or would compromise the completion of the investigation or a related investigation, or where such disclosure is prohibited by law. If disclosure of documents is not provided, an explanation of the reasons for the decision shall be provided in writing at the time of the suspension. The President may terminate such suspension at any time. The affected faculty unit employee shall be notified in writing of such a termination.

Pre-Sanction Reassignment

- 19.27 When the President determines it is in the best interests of the campus, they may reassign a faculty unit employee who has been served with a Notice of Dismissal, Demotion, Suspension Without Pay pursuant to 19.4 of this Article. Such a reassignment shall be without a change in salary. Such a reassignment may continue until imposition of sanction or a final award pursuant to this Article or pursuant to Education Code Section 89539.
- 19.28 The affected faculty unit employee shall receive written notification of the reasons for reassignment and shall also be provided with copies of any documents related to the reassignment except when the President determines that disclosure would endanger the safety of any person or would compromise the completion of the investigation or a related investigation, or where such disclosure is prohibited by applicable law. If disclosure of documents is not provided, an explanation of the reasons for the decision shall be provided in

writing at the time of the reassignment. The affected faculty unit employee shall receive written notification of termination of reassignment, when appropriate. Such a reassignment shall not be considered a punitive reassignment.

- 19.29 The CSU has the burden of proving the conduct by the preponderance of the evidence in all discipline cases.