

**FACTFINDING PROCEEDINGS**

**PURSUANT TO THE HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT**

TRUSTEES OF THE CALIFORNIA STATE  
UNIVERSITY,

Higher Education Employer,

and

CALIFORNIA FACULTY ASSOCIATION,

Exclusive Representative.

(Systemwide Time, Place and Manner Policy.)

PERB CASE NO. LA-IM-4188-H

FACTFINDING REPORT AND  
RECOMMENDATIONS FOR  
SETTLEMENT

(March 27, 2026)

Chairperson:

Shawn P. Cloughesy, Arbitrator

Higher Education Employer  
Panel Member:

Joseph J. Jelincic, III  
Associate Vice Chancellor, Labor Relations  
and Collective Bargaining  
Trustees of the California State University

Exclusive Representative  
Panel Member:

Molly Talcott, Ph.D.  
Chair of California Faculty Association,  
Representation Committee  
California Faculty Association

Representative for the  
Higher Education Employer:

Erin L. Eckelman-Ray  
Senior Director—Arbitration Lead, Labor and  
Employee Relations  
Trustees of the California State University

Representative for the  
Exclusive Representative:

Kathy M. Sheffield  
Director of Representation and Bargaining  
California Faculty Association

## PROCEDURAL BACKGROUND

On November 3, 2025, after completing mediation, the California Faculty Association (CFA or Association) filed a request for factfinding pursuant to the Higher Education Employer-Employee Act (HEERA)<sup>1</sup> with the Public Employment Relations Board (PERB) regarding the California State University (CSU) Systemwide Time, Place and Manner (TPM) Policy.

On November 14, 2025, the parties selected their factfinding panel members and on December 2, 2026, PERB notified the undersigned arbitrator that he had been selected as the Chair of the factfinding panel.

On December 9, 2025<sup>2</sup> and February 16, 2026, the Chair held two organizational meetings where the agenda of the factfinding proceeding, factfinding proceeding date, options for closing arguments, and issuance date of the factfinding report and recommendation(s) for settlement (factfinding report) were discussed. The parties agreed that the factfinding proceeding would be scheduled for February 25 and 26, 2026; that the parties would be submitting written arguments on March 13, 2026; and the factfinding report would be issued on March 27, 2026.

The factfinding proceeding was held and concluded on February 25, 2026. Both parties presented arguments and submitted exhibits surrounding the issues in dispute. Written closing arguments were submitted on March 13, 2026.

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<sup>1</sup> HEERA is codified at Government Code section 3560, et seq.

<sup>2</sup> On December 11, 2025, the parties agreed to extend the statutory timeframes set forth in Government Code sections 3592 and 3593 to accommodate the agreed schedule of the dates of the factfinding proceeding, written closing arguments, and issuance of the factfinding report.

## STATEMENT OF THE ISSUES

The parties were able to resolve some of their issues between the filing of the request for factfinding and the date of the factfinding proceeding. As of the date of factfinding proceeding, four issues remained outstanding, which were:

1. Should Section IV. Public, Limited, and Non-Public Areas, Subsection A. Public Areas of the TPM Policy include a provision that offers “alternative channels of communication for other speakers, including in proximity to the reserved use when alternative locations are insufficient to accommodate constitutional rights” as proposed by CFA?
  - a. Should the campus addendum template also set out an articulation of this legal right to protest/counter protest in proximity to reserved use when alternative locations are insufficient to accommodate constitutional rights?
2. Should Section VIII. Prohibited Activities and Uses on University Property, Subsection B. No Camping, Overnight Demonstrations, Overnight Loitering, Furniture, or Large Household Items be amended to avoid management interference with HEERA-protected activities (including early morning and late-night union activities that have been permitted in the past)?
3. Should Section XI. University Response to Activities that Violate this Policy, Threaten Safety, or Disrupt University Activities, Subsection B. Violations, Enforcement, Sanctions, and Discipline remove harsh sanctions, so no student is expelled, and no employee is terminated for non-violent civil disobedience?

## FACTFINDING CRITERIA

HEERA provides no statutory criteria for factfinders to consider; however, HEERA factfinders have often looked at the criteria laid out in the Educational

Employment Relations Act (EERA).<sup>3</sup> As set forth in Government Code section 3548.2, subd. (b) (1) through (7), EERA provides:

“(b) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

“(1) State and federal laws that are applicable to the employer.

“(2) Stipulations of the parties.

“(3) The interests and welfare of the public and the financial ability of the public school employer.

“(4) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.

“(5) The consumer price index for goods and services, commonly known as the cost of living.

“(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received.

“(7) Any other facts, not confined to those specified in paragraphs (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

Of these factfinding factors and based upon the nature of the disputed issues, the most pertinent factfinding factors for this factfinding report is Government Code

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<sup>3</sup> EERA is codified at Government Code section 3540, et seq.

section 3548.2, subd. (b) (1) State and federal laws that are applicable to the employer;<sup>4</sup> and (3) the interests and the welfare of the public.

## FINDINGS OF FACT

### Background

CSU has 22 campuses across the State of California which serves over 460,000 students with over 63,000 faculty and employees and 20,000 student employees.

The Association is the exclusive representative of CSU's bargaining unit 3 which includes lecturers, assistant professors, associate professors, full professors, coaches, counselors, and librarians. CFA and CSU's existing Collective Bargaining Agreement (CBA) has a term of February 23, 2022 through June 30, 2025.

There are 15 total bargaining units within CSU, which include two student employee bargaining units—bargaining unit 11, the academic student employees,<sup>5</sup> who are represented by United Autoworkers Local 4213 (UAW Local 4213), and

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<sup>4</sup> In this factfinding report, the Chair will mostly be citing to HEERA and its accompanying case law as interpreted by PERB. The factfinding report will also include citations of cases which concern the United States Constitution First Amendment.

<sup>5</sup> The academic student employees include the classifications of Teaching Associates, Graduate Assistants and Instructional Student Assistants. The Factfinding Panel Chair took official notice of the CBA between CSU and UAW Local 4213 during the factfinding proceeding. Article 6 of the UAW Local 4213 CBA sets forth the Discipline provisions of that agreement.

bargaining unit 15, student assistants, who are represented by the California State University Employees Union (CSUEU).<sup>6</sup>

### Spring 2024

In Spring 2024, CSU experienced protest-related encampments at two of its campuses: California State Polytechnic University, Humboldt and California State University, Los Angeles. The damage caused by the protests cost CSU millions of dollars as well as disruption to the campus.

### Budget Control Act of 2024

On June 29, 2024, the Budget Control Act of 2024, was signed by Governor Gavin Newsom and Senate Bill 108 was chaptered. Section 220 of the Budget Control Act of 2024, subdivision 7 provided:

“It is the intent of the Legislature that the California State University foster freedom of expression and the free exchange of ideas that comply with state and federal law and campus policies while also protecting student, staff, and faculty safety and access to educational opportunities. Each campus of the university shall prepare a campus climate notification by the beginning of the Fall 2024 term. The California State University Chancellor’s Office will develop a systemwide framework to provide for consistency with campus implementation and enforcement.

“(a) Each campus shall provide notification of the following to students before the start of each academic year:

“(1) The campus’s time, place, and manner policy, which identifies the allowable parameters of free speech activities and the campus.

“(2) The Student Code of Conduct, which identifies acceptable student behavior, and relevant state and federal laws, which delineate legal and illegal activities.

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<sup>6</sup> CSUEU is still negotiating its initial CBA with CSU.

- “(3) The systemwide Nondiscrimination Policy, which ensures compliance with Title VI and Title VII of the Civil Rights Act of 1964.
- “(4) The process by which the campus will resolve any complaint of a violation of relevant institutional policies, state law, or federal law, including complaints against individuals not affiliated with the campus.
- “(5) The range of consequences possible for students, faculty, or staff who violate relevant institutional policies, state law, or federal law, including, but not limited to, discrimination based on shared ancestry under Title VI of the Civil Rights Act of 1964.
- “(6) How the campus may respond to activities that threaten the safety of students, faculty, or staff, and disrupt their ability to access the campus or buildings, the educational process, or activities on campus. The notification will include strategies consistent with current law for how the university intends to ensure students can safely access buildings and activities on campus.
- “(7) How the campus intends to foster healthy discourse and bring together campus community members, and viewpoints that are ideologically different, in order to best promote the educational mission of the institution and the exchange of ideas in a safe and peaceful manner.
- “(8) Identify educational programs and activities for faculty, staff, and students to support the balance between free speech activities, educational mission, and student safety.
- “(9) A list of the resources available on campus for faculty, staff, and students to receive mental health and trauma support.”

## August 16, 2024—Notification of Systemwide TPM Policy by CSU

On August 16, 2024, CSU Senior Director of Systemwide Labor & Employee Relations – Arbitration Lead Erin Eckelman-Ray notified CFA’s Director of Representation and Bargaining Kathy Sheffield (Sheffield) that it would be implementing a Systemwide TPM Policy pursuant to the Budget Control Act of 2024, which would be effective August 15, 2024 for all non-represented employees and students. For represented employees, the existing campus TPM policies would be effective until the conclusion of the meet and confer process. A campus addendum to the Systemwide TPM Policy would also be submitted for each individual CSU campus. CFA was given 30 days to request to meet and confer over the matter.

Attached to the notification was CSU’s Interim Systemwide TPM Policy. The policy was twenty-pages long and was broken down by section headings with nineteen Roman numeral headings dividing each portion of the policy. For purposes of this factfinding proceeding,<sup>7</sup> the headings in dispute are: Section IV. Public, Limited, and Non-Public Areas, Subsection A. Public Areas; Section VIII. Prohibited Activities and Uses on University Property, Subsection B. No Camping, Overnight Demonstrations, Overnight Loitering, Furniture, or Large Household Items; and Section XI. University Response to Activities that Violate this Policy, Threaten Safety, or Disrupt University Activities, Subsection B. Violations, Enforcement, Sanctions, and Discipline.

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<sup>7</sup> The Roman numerals of some of the headings changed as the policy progressed through the meet and confer process.

### August 20, 2024—Response from CFA

On August 20, 2024, Sheffield responded to the notification. In short, Sheffield listed a number of items that CFA wanted to bargain with CSU.

### October 30, 2024 through May 22, 2025—Bargaining to Declared Impasse

The parties began negotiating over the Systemwide TPM Policy on October 30, 2024 and negotiated for eight bargaining sessions until both sides believed they were at impasse. On May 22, 2025, CFA declared impasse with PERB and requested mediation.

### Post Impasse Bargaining

Even though the parties were at impasse, they continued to attempt to resolve outstanding issues while waiting for the scheduled factfinding proceeding.

### Recognition of HEERA Rights in Systemwide TPM Policy

Although not an area of dispute in this factfinding proceeding, the first and second headings of the Systemwide TPM Policy entitled “Statement of Values” and “Purpose” are prefatory to the detailed provisions of the Systemwide TPM Policy.

Under the “Statement of Values” heading, the final paragraph provides:

“The CSU is a unionized environment and recognizes that its employees and their union representatives’ are afforded rights under the Higher Education Employer-Employee Relations Act (HEERA). This Policy is not intended to conflict with rights under state or federal law, and the University will not enforce this Policy in a manner that violates employees’ rights under HEERA or the terms of an applicable Collective Bargaining Agreement.”

(Emphasis added.)

Under the “Purpose” heading, the final paragraph provides:

“This Policy shall not interfere with the statutory rights provided by the Higher Education Employer-Employee Relations Act (HEERA) or the terms of an applicable Collective Bargaining Agreement and does not prohibit CSU unions from communicating with their members regarding union-related activities or engaging in protected or concerted activities otherwise allowed under HEERA or an applicable Collective Bargaining Agreement.”

These provisions appear to have been agreed to by the parties by April 23, 2025.

#### Proposals from Disputed Issues

A. Section IV. Public, Limited, and Non-Public Areas—Alternate Channels of Communication in “Proximity” to Reserved University Event

Section IV. of the Systemwide TPM Policy sets forth the areas of an individual university which are deemed to be “Public Areas.” Public areas are available for assemblies, marches, demonstrations, and protests by members of the university community and the public as long as they do not interfere or disrupt with the normal operations of the individual university. At times, however, the public area may not be available for such expressive activities, for example, if it had been reserved for a University event. CFA became concerned that if the public area had been reserved for a University event that it may not be allowed to organize a protest in an area which was nearby to the scheduled University event.<sup>8</sup> CSU stated it would always be able to provide an area for CFA to have their protest, but it may not be nearby.

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<sup>8</sup> The policy lists as examples of some of these University events—commencement, open house, orientation, convocation, and homecoming.

CFA proposed the following language in Section IV. A. regarding Public Areas:

“The University may reserve Public Areas for specific uses provided it offers alternative channels of communication for other speakers, including in proximity to the reserved use when alternative locations are insufficient to accommodate constitutional rights.”

(Emphasis added.)

CSU proposed the following language in Section IV.A. regarding Public Areas:

“If protesters seek access to a space where there is a University event, as set forth in Section III.d., alternative space would be provided in compliance with this Policy that does not disrupt University operations and events, or academic classes and activities subject to reasonable availability and the University’s operational resources and needs.”

CFA believed it had a First Amendment right to such proximity to a University event if it wanted to demonstrate. In defending its assertion, CFA cited to terminology, “ample alternate channels of communication,” which was found in opinions where governmental time, place and manner policies were scrutinized under the tests set forth by the United States Supreme Court in *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 130 (1992), *Ward v. Rock Against Racism*, 452 U.S. 640 (1989) and *Heffron v. International Society For Krishna Consciousness, Inc*, 452 U.S. 640 (1981). This time, place and manner tests and the phrase “ample alternate channels of communication” have been interpreted in numerous federal appellate court cases such as *Santa Monica Nativity Scenes Committee v. City of Santa Monica*, 784 F.3d 1286, 1298 (9th Cir. 2015); *Long Beach Area Peace Network v. City of Long Beach* (9th Cir. 2009) 574 F.3d 1011, 1023-1024; *Menotti v. City of Seattle*, 409 F.3d 1113, 1138 (9th Cir. 2005); and *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1227 (9th Cir. 1990). Some of the decisions from these cases support the concept that the

protesters proximity or closeness to intended audience (the University event that is being protested in this case) is critical to the protesters' exercise of their First Amendment rights. Other cases support that a more flexible standard other than proximity is what is required to satisfy time, place and manner First Amendment scrutiny. In this factfinding proceeding, CFA believes it is guaranteed proximity to the intended audience and CSU believes that a more flexible standard as to a location is required.

In addition to proposing "proximity" as being inserted into this section of the Systemwide TPM Policy, CFA also believed that this right of proximity should be included in the campus addendum templates for the individual campuses so that this First Amendment right is highlighted to those administering the individual campus decisions regarding reserving University events in public areas.

B. Section VIII. B. Prohibitions as to Camping, and Overnight Demonstration and Loitering

The Systemwide TPM Policy broadly prohibited any type of encampment or overnight demonstration and stated in part:

"To ensure the health and safety of the entire University community, and to protect University Property, encampments of any kind, overnight demonstrations (e.g., outside the operating hours of each University), and overnight loitering are not permitted in or on any University Property, whether indoors or outdoors. No one may camp, occupy camping facilities (including recreational vehicles or any other similar vehicles), use camping paraphernalia, or store personal property on University Property for these purposes. No one may bring a tent or other housing structure on University Property or occupy any tent or housing structure. No one may set up a campsite on University Property. . . . Such unauthorized activities, including overnight activities utilizing vehicles, will be considered trespassing and a violation of this Policy. . . ."

(Emphasis added.)

CFA believed that the hourly timeframe as to which the policy restricted demonstrations was unrealistic as to how labor actions are conducted. A labor demonstration required time to prepare for the labor demonstration prior to the individual university's operating hours and then time to conclude it which occurred after the individual university's operating hours.

CFA arrived at their labor demonstrations early in the morning, before operating hours, to set up for the demonstration and then had union meetings late into the evening after operating hours had concluded.<sup>9</sup> CFA brings tables, chairs, pop-up tents and shade canopies to their labor demonstrations.

As a result of the manner in which CFA had conducted its labor demonstrations in the past, on March 4, 2025, CFA offered the following modified proposal which was rejected by CSU:

“To ensure the health and safety of the entire University community, and to protect University Property, encampments of any kind, overnight demonstrations (e.g. more than a consecutive 24-hour period), and overnight loitering are not permitted in or on any University Property, whether indoors or outdoors. No one may camp, occupy camping facilities (including recreational vehicles or any other similar vehicles), use camping paraphernalia, or store personal property on University Property for these purposes.”

(See underlining for CFA's proposed substitution as to when a demonstration could take place.)

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<sup>9</sup> CBA Article 6.1 states in part, “Upon request of CFA, the CSU shall provide at no cost adequate facilities not otherwise required for campus business for meetings of the CFA. . . .”

C. Section XI, University Response to Activities that Violate this Policy, Threaten Safety, or Disrupt University Activities, Subsection B. Student and Employee Discipline for Violation of the Systemwide TPM Policy

1. Student Discipline

Section XI of the Systemwide TPM Policy set forth the consequences for those students, employees and members of the public who would violate the policy. A large portion of this section sets forth the disciplinary ramifications for a student who violated the policy and therefore violated the Student's Code of Conduct.

The CFA does not contend that it has the right to negotiate over the decision of student disciplinary matters, but that student discipline impacts the working conditions of faculty<sup>10</sup> and that CFA has the right to negotiate over those negotiable effects to faculty. (*Trustees of the California State University (2024) PERB Decision No. 2915-H, reduction in CSU's immunization requirement of entering students impact the health and safety of faculty.*) As CFA had this legal right to negotiate the effects of student discipline, it also believed it had bargaining authority to discuss negotiating an alternative to such disciplinary decisions as part of its effects bargaining—such as restricting the penalties issued to students as a result of violating the Systemwide TPM Policy. (*County of Sonoma (2021) PERB Decision No. 2772-M, p. 54.*) As a result, CFA proposed some additions to the Systemwide TPM Policy which limited the disciplinary exposure of students which were found to have engaged in civil

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<sup>10</sup> CFA gave some examples as to how a student's dismissal and/or interim suspension would affect the bargaining unit employees—faculty members would have to manage without the help of research assistants (student employees) or determine how to permit suspended students to complete courses. A coach would have to go without one of the student athletes on the team.

disobedience at a campus demonstration.<sup>11</sup> CFA's last proposal regarding this subject matter was:

“Student behavior that is not consistent with the Student Conduct Code is addressed through an educational process that is designed to promote safety and good citizenship and, when necessary, impose appropriate sanctions. The procedure for all student conduct violations is set forth in CSU's Student Conduct Process. Sanctions may include restitution, loss of financial aid, educational and remedial sanctions, denial of access to Campus or persons, disciplinary probation, suspension, and expulsion, and can include multiple sanctions. However, a student's participation in non-violent civil disobedience that does not result in damage to property but violates this Policy will not result in discipline more severe than a five-day academic suspension, will not be referred for criminal prosecution, and will not affect access to financial aid.

A Campus President may also impose an interim suspension pursuant to Title 5, California Code of Regulations, section 41302 where there is reasonable cause to believe that separation of a Student is necessary to protect the personal safety of persons within the University community or University Property, and to ensure the maintenance of order. Such an interim suspension shall be limited in scope to what is reasonably required to maintain campus safety and order.

(See underlining for CFA's proposed additions to the Systemwide TPM Policy.)

CSU refused to bargain with CFA regarding any of its proposals regarding student discipline as it believed such proposals to be outside of CFA's scope of representation.

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<sup>11</sup> Factfinding Panel Molly Talcott, Ph.D. spoke eloquently and passionately regarding how professors consider their students as proponents for social change. Sociology courses include how civil disobedience has been a historical impetus for social and cultural change for the better. In many ways, the professor(s) considered themselves mentors to such students and did not want to see students become permanently harmed based upon a mistake which was considered to be civil disobedience and a violation of the Systemwide TPM Policy.

## 2. Employee Discipline

The Systemwide TPM Policy also included a component regarding the possibility of employee discipline if the employee violated the Systemwide TPM Policy. CFA's last proposal to CSU on this issue provided.

“Employees who violate this Policy may be subject to a range of discipline consequences from a reprimand up to termination, in accordance with the applicable Collective Bargaining Agreement<sup>[12]</sup> and University policies for represented Employees, or the applicable University policies and standards for non-represented Employees, and Cal. Education Code section 89535. which provides that any permanent or probationary CSU Employee may be dismissed, demoted, or suspended for (a) immoral conduct, (b) unprofessional conduct, and/or (c) failure or refusal to perform the normal and reasonable duties of the position, among other causes as set forth in statute or applicable University policies. Employees will not be terminated for non-violent civil disobedience that does not involve damage to property or violate the rights of others.”

(See underlining for CFA's proposed addition to the Systemwide TPM Policy.)

The last proposal offered by CSU regarding employee discipline provided.

“Employees who violate this Policy may be subject to a range of discipline consequences from a reprimand up to termination, in accordance with the applicable Collective Bargaining Agreement and University policies for represented Employees, or the applicable University policies and standards for non-represented Employees, and Cal[ifornia] Education Code section 89535 which provides that any permanent or probationary CSU Employee may be dismissed, demoted, or suspended for (a) immoral conduct, (b) unprofessional conduct, and/or (c) failure or refusal to perform the normal and reasonable duties of the

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<sup>12</sup> CBA Article 19 Disciplinary Action Procedure sets forth three avenues in which a bargaining unit employee can appeal a disciplinary action: arbitration, the State Personnel Board and a Faculty Hearing Committee.

position, among other causes as set forth in statute or applicable University policies.”

(Emphasis added.)

CSU included the range of penalties in its proposal as it wanted to demonstrate some flexibility as to the range of penalties that may be involved in a violation of the policy. CSU believed that it should examine every violation on a case-by-case basis to determine the outcome of the penalty imposed. On the other hand, CFA’s proposal was offered with the purpose to restrict CSU from arbitrary decision making for those violations which appeared to be more minor.

#### APPLICATION OF STATUTORY CRITERIA AND RECOMMENDATIONS

Unlike interest arbitration, where a third-party neutral sets the terms of a new agreement, a third-party neutral in a HEERA factfinding report simply provides recommendation(s) as to terms for settlement, which shall be advisory only.

(Gov. Code, § 3593, subd. (a).) In essence, the impasse resolution procedure, which includes the factfinding process, is a continuation of the collective bargaining process.

(*Regents of the University of California* (2026) PERB Decision No. 3010-H, p. 5;

*San Bernardino County Superintendent of Schools* (2024) PERB Decision No. 2934,

p. 16.) Ultimately, the parties must persuade one another of their positions, and the neutral factfinder simply provides an outside perspective to assist the parties possibly to come to an agreement over matters within the scope of representation.

(Government Code section 3590; *City of Oakland* (2018) PERB Order No. Ad-462-M,

p. 4; *County of Ventura* (2018) PERB Order No. Ad-461-M, p. 5.) Both parties to the

factfinding process are statutorily obligated to participate in this process in good faith.

*(Regents of the University of California, supra, p. 6; San Bernardino County Superintendent of Schools, supra, p. 16.)*

HEERA and Accompanying PERB Decisional Law on Access Rights

The following pertinent provisions of HEERA provide:

**Government Code 3560**

“The Legislature hereby finds and declares that:

“(a) The people of the State of California have a fundamental interest in the development of harmonious and cooperative labor relations between the public institutions of higher education and their employees.

“[¶ . . . ¶]”

**Government Code section 3562**

“As used in this chapter:

“[¶ . . . ¶]

“(e) ‘Employee’ or ‘higher education employee’ means any employee, including student employees whose employment is contingent on their status as students, of the . . . Trustees of the California State University. . . .

“[¶ . . . ¶]

“(r) (1) For purposes of the California State University only, ‘scope of representation’ means, and is limited to, wages, hours of employment, and other terms and conditions of employment. The scope of representation shall not include:

(A) Consideration of the merits, necessity, or organization of any service, activity, or program established by statute or regulations adopted by the trustees, except for the terms and conditions of employment of employees who may be affected thereby.

“[¶ . . . ¶]

(2) All matters not within the scope of representation are reserved to the employer, . . .

“[¶ . . . ¶]”

**Government Code section 3568**

“Subject to reasonable regulations, employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes and other means of communication, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this act.”

(Emphasis added.)

The right of access falls within the scope of representation, including the type of access where the exclusive representative is reaching both the public and other employees. (*Regents of the University of California* (2012) PERB Case No. 2300-H, p. 21.) HEERA also grants employee organizations a statutory right of access to employer facilities, subject to reasonable regulation by the employer. (Gov. Code § 3568.)

“To assess the reasonableness of a particular regulation, [PERB] must balance, in light of applicable public policies, the benefits conferred by the regulation and the burdens it imposes.” (*Regents of the University of California v. Public Employment Relations Bd.* (1990) 220 Cal.App.3d 346, 361.) An employer bears the burden of proving that a restriction on access to its premises is: (1) necessary for safe or efficient operations; and (2) narrowly drawn to avoid overbroad, unnecessary interference with protected rights. (*Regents of the University of California (Los Angeles)* (2026) PERB Decision No. 3003-H, p. 35 (*Regents (UCLA)*.) Competing

demands on limited space may justify a system whereby persons or organizations planning significant events or gatherings must reserve specific spaces or facilities. Public safety concerns may also inform regulations on the types of temporary structures an organization is permitted to erect on campus. (*Regents (UCLA)*, *supra*, p. 47.)

After setting forth PERB's decisional law regarding access, the Chair will now examine the disputed proposals for recommendations for settlement.

#### Section IV. Public, Limited, and Non-Public Areas—Alternate Channels of Communication in "Proximity" to Reserved University Event

In these proposals, CFA emphasizes that it has a constitutional right of proximity to the University's reserved event, and CSU believes the standard is a more flexible standard. Both CFA and CSU have cases which support them. An adjudicator would need to rule upon which party's cited cases carry the greater force, but a Chair of a factfinding panel occupies a different role. Rather than rule on the persuasiveness of the case law presented, the Chair recommends that the Systemwide TPM Policy reflect the terminology found in the case law that is interpreted by the cases: that CSU will provide ample alternative channels of communication where a location for demonstrators is not available next to the reserved University event.

Recommendation(s) for Settlement: Pursuant to Government Code section 3548.2, subdivision (b)(1) and (3), I recommend that the parties consider adopting in its policy that CSU will provide ample alternative channels of communication where a location for demonstrators is not available next to the reserved University event.

## Section VIII. B. Prohibitions as to Camping, and Overnight Demonstration and Loitering

In the Systemwide TPM Policy, CSU proposes that there shall not be “overnight” demonstrations and demonstrations cannot be held “outside the operating hours of each University.” CFA countered by defining “overnight” as “more than a consecutive 24-hour period.” While CFA’s proposal runs contrary to the overnight intent of the prohibition—which was inserted in light of the health and safety and protection of University property purpose of this section—CFA has a point. There should be some provision for preparatory and conclusory activities for CFA’s demonstrations. The purpose of a demonstration is to express one’s viewpoint to the largest group possible and that includes those employees, students and members of the public who are arriving at the campus at the beginning of operating hours and at the conclusion of operating hours.

It is recommended that the parties negotiate a reasonable timeframe for CFA to arrive and exit from the public area of the campus to perform preparatory and conclusory activities for the demonstration before and after operating hours. In addition, it would be helpful if the policy set forth what the demonstrators could bring to the demonstrations (e.g. tables, chairs, and canopies) during the negotiated times which include preparatory and conclusory activities. If the parties are unwilling to address this in the Systemwide TPM Policy, it can be addressed in a side letter to be placed in the CBA. Lastly, the parties can address whether CFA wants to meet with its bargaining unit members after the conclusory meeting by reserving a room pursuant to CBA Article 6.1.

Recommendation(s) for Settlement: Pursuant to Government Code section 3548.2, subdivisions (b)(1) and (3), the Chair recommends that the parties negotiate a reasonable timeframe for preparatory and conclusory activities prior to and after the individual University's operating hours. The parties can also specify what types of furniture demonstrators can bring to the demonstration if the furniture is removed by CFA at the end of conclusory activities.

Section XI, University Response to Activities that Violate this Policy, Threaten Safety, or Disrupt University Activities, Subsection B. Student and Employee Discipline for Violation of the Systemwide TPM Policy

A. Student Discipline

CFA offered many proposals attempting to negotiate a penalty short of dismissal for students who violated the Systemwide TPM policy by being civilly disobedient during a demonstration. CFA focused on those incidents of civil disobedient that were nonviolent and did not result in property damage.

CSU refused to bargain with CFA over the issues of student discipline as it did not believe such issues fell within CFA's scope of representation. CFA cited to PERB precedent (*Trustees of the California State University, supra*, PERB Decision No. 2915-H) and argued that it had authority to bargain over the negotiable effects of such student discipline.

In *Trustees of the California State University, supra*, PERB Decision No. 2915-H, the change which impacted the student was that upon the entrance of the student to CSU—students were now not required to show proof of immunization for two immunizations. That change as to students did not affect students while they were employed as students or enrolled as students, but as an entrance requirement to

being a student. In the instant case, however, student discipline could affect the students' employment if they are employed. (Government Code section 3562, subd. (e) — a student's employment is contingent upon being a student.) Such scope of representation as to bargaining the decision of a student's discipline falls closer to the two bargaining units of student employees than to CFA. While CFA can negotiate the effects of the discipline to its bargaining unit, it should be limited to that, and CFA should not be allowed to encroach upon or co-opt the two student employee bargaining units' right to represent their bargaining units.

Recommendation(s) for Settlement: Pursuant to Government Code section 3548.2, subdivision (b) (1), no recommendation is made due to the decisional subject matter of the penalty of student discipline falling outside of CFA's scope of representation.

B. Employee Discipline

As with the subject of student discipline, CFA attempted to minimize its bargaining unit employees' disciplinary exposure regarding violations of the Systemwide TPM Policy which also constituted civil disobedience. On the other hand, CSU wanted to be able to evaluate each violation of the Systemwide TPM Policy on a case-by-case basis. As there can be aggravated circumstances regarding civil disobedience which do not involve violence or property damage that can justify dismissal, and mitigating circumstances which include property damage, it is best to proceed in a manner set forth by CSU's proposal where the employer determines the penalty of a personnel action upon the individual facts of that case with a neutral deciding the appeal of such matter. Without a standard pattern of offenses and

penalties already existing for such violations, creating a standardized penalty seems premature.

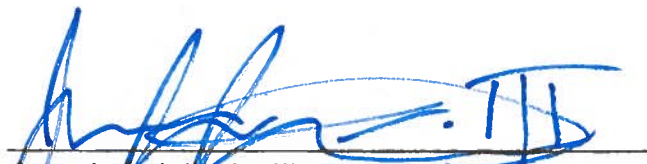
Recommendation(s) for Settlement: Pursuant to Government Code section 3548.2, subdivision (b)(3), the Chair recommends that CSU's proposal be recommended. In addition to such recommendation, it is recommended that the parties negotiate an elective expedited disciplinary appeals process which can resolve these types of cases quickly.

CONCLUSION

The Chair is sincerely hopeful that these recommendations will assist the parties in their negotiations going forward and which eventually will result in the parties coming to a resolution of this matter.



Shawn P. Cloughesy  
Chair



Joseph J. Jelencic, III  
Panel Member for Higher Education Employer  
Trustees of the California State University

X

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Concur  
Concur in Part  
Dissent  
Dissent in Part  
(See attached.)

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Molly Talcott, Ph.D.  
Panel Member for Exclusive Representative  
California Faculty Association

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Concur  
Concur in Part  
Dissent  
Dissent in Part  
(See attached.)


CONCLUSION

The Chair is sincerely hopeful that these recommendations will assist the parties in their negotiations going forward and which eventually will result in the parties coming to a resolution of this matter.

  
\_\_\_\_\_  
Shawn P. Cloughesy  
Chair

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Joseph J. Jelincic, III  
Panel Member for Higher Education Employer  
Trustees of the California State University

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Concur  
Concur in Part  
Dissent  
Dissent in Part  
(See attached.)

  
\_\_\_\_\_  
Molly Talcott, Ph.D.  
Panel Member for Exclusive Representative  
California Faculty Association

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  x    
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  x    
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Concur  
Concur in Part  
Dissent  
Dissent in Part  
(See attached.)

**In the matter of Trustees of the California State University &  
California Faculty Association, factfinding proceedings pursuant to the Higher  
Education Employer-Employee Relations Act**

Case No.: LA-IM-4188-H

The University has reviewed the Factfinding Report by the neutral panel chair and wishes to thank him for the time and care devoted to gaining a thorough understanding of the issues presented. The matters addressed, particularly those implicating First Amendment protections, are important to the CSU mission.

The Report's careful consideration of the CSU's Time, Place and Manner Policy as it relates to the regulation of union activity is, in our opinion, well-reasoned. The analysis appropriately recognizes the need to balance the protection of free speech rights with the application of content-neutral restrictions that are narrowly tailored to serve significant interests while preserving ample alternative channels for speech activity.

The University finds the recommendations to be thoughtful and consistent with established constitutional and legal standards. The recommendations should provide a constructive framework to guide the parties toward a mutually agreeable resolution that respects and upholds First Amendment rights.

Respectfully submitted,



JOSEPH J. JELINCIC III  
Associate Vice Chancellor,  
Labor Relations & Collective Bargaining

Employer Panel Member

Dated: March 27, 2026

# Memo

To: Shawn Cloughesy, Factfinder  
From: Molly Talcott, California Faculty Association, Factfinding Penelist  
Date: March 27, 2026  
Re: Factfinding Report for the Factfinding Panel's Review, Trustees of the CSU and CFA (Systemwide Time, Place and Manner Policy), PERB Case No. LA-IM-4188-H

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CFA's contributions to the report are set out as follows:

1. Alternative channels of communication, including in addendum?

Recommendation(s) for Settlement: Pursuant to Government Code section 3548.2, subdivision (b)(1) and (3), I recommend that the parties consider adopting in its policy that CSU will provide ample alternative channels of communication where a location for demonstrators is not available next to the reserved University event.

**CFA:** The union concurs with this recommendation.

2. Amend prohibited activities to avoid interference with HEERA protected activities

Pursuant to Government Code section 3548.2, subdivisions (b)(1) and (3), the Chair recommends that the parties negotiate a reasonable timeframe for preparatory and conclusory activities prior to and after the individual University's operating hours. The parties can also specify what types of furniture demonstrators can bring to the demonstration if the furniture is removed by CFA at the end of conclusory activities.

**CFA:** The union concurs in part and has demonstrated a willingness to set some reasonable parameters for its campus activities by limiting the time it uses tables, chairs, pop up tents, etc. CFA continues to worry that the CSU will impose harsher conditions than it has in the past. CFA intends to reserve the right to engage in HEERA protected activities not currently contemplated by the parties.

### 3. Discipline

#### Student discipline:

Recommendation(s) for Settlement: Pursuant to Government Code section 3548.2, subdivision (b) (1), no recommendation is made due to the decisional subject matter of the penalty of student discipline falling outside of CFA's scope of representation.

**CFA:** The union dissents and disagrees with the factfinder. The rationale provided addresses only impact based on discipline of represented student employees, but CFA provided other examples where non-employee students' discipline can impact CFA bargaining unit members. The recommendation entirely fails to address the importance of these impacts on CFA represented employees. As an aside, the factfinder is incorrect in terms of the vaccination policy being only relevant as an entrance requirement. Whether students are vaccinated or not prior to entering impacts faculty health and safety for the duration of the students' enrollment because they continue to be either vaccinated or unvaccinated *while enrolled*.

#### Employee Discipline:

Recommendation(s) for Settlement: Pursuant to Government Code section 3548.2, subdivision (b)(3), the Chair recommends that CSU's proposal be recommended. In addition to such recommendation, it is recommended that the parties negotiate an elective expedited disciplinary appeals process which can resolve these types of cases quickly.

**CFA:** The union dissents. CFA sought to protect employees from termination for civil disobedience in recognition of the critical role civil disobedience has played in creating progressive policy changes at the CSU and in our society at large. The factfinder's proposal offers nothing to advance this value. Further, the factfinder's conclusion entirely overlooks CFA's concern that, without some minimum safeguards, CFA-represented employees will be chilled in their willingness to engage in peaceful protest, because it can be deemed a violation of the policy without the member intending to violate the policy.

## PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Yolo, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Cloughesy Arbitration Services, P.O. Box 301, Davis, 95616.

On March 27, 2026, I served the Factfinding Report and Recommendations for Settlement and Panel Representatives' Responses in Trustees of the California State University and California Faculty Association, PERB Case No. LA-IM-4188-H dated March 27, 2026 on the parties listed below by

X Electronic service (e-mail).

### PUBLIC EMPLOYMENT RELATIONS BOARD

Public Employment Relations Board  
Email: [factfinding@perb.ca.gov](mailto:factfinding@perb.ca.gov)

### FACTFINDING PANEL REPRESENTATIVES

Molly Talcott, Ph.D.  
Chair of CFA Representation Committee  
California Faculty Association  
Exclusive Representative Panel Member  
Email: [mtalcott@calfac.org](mailto:mtalcott@calfac.org)

Joseph J. Jelincic, III  
Associate Vice Chancellor, Labor Relations and Collective Bargaining  
Trustees of the California State University  
Higher Education Employer Panel Member  
Email: [jjelincic@calstate.edu](mailto:jjelincic@calstate.edu)

### PARTY REPRESENTATIVES

Kathy M. Sheffield, Director of Representation and Bargaining  
California Faculty Association  
Representative for Exclusive Representative  
Email: [ksheffield@calfac.org](mailto:ksheffield@calfac.org); [ksheffield@calstate.edu](mailto:ksheffield@calstate.edu)

Erin L. Eckelman-Ray  
Senior Director—Arbitration Lead, Labor and Employee Relations  
Representative for Higher Education Employer  
Email: [eeckelman-ray@calstate.edu](mailto:eeckelman-ray@calstate.edu) ;

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 27, 2026, at Davis, California.

Shawn P. Cloughesy  
\_\_\_\_\_  
(Type or print name)

  
\_\_\_\_\_  
(Signature)