

**California Faculty Association  
California State University  
A Labor/Management Project**

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**Statutory Hearing Manual**

**February 2017**

In the event that anything in this document does not agree with the current CFA-CSU Collective Bargaining Agreement, the language of the Collective Bargaining Agreement is controlling.

# Statutory Hearing Manual for Faculty Hearing Committees

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# I. Executive Summary

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- The Collective Bargaining Agreement incorporates two alternate means of resolving disputes between a grievant and the CSU: the contractual procedure and the statutory procedure. The Collective Bargaining Agreement also incorporates three alternative means of resolving appeals to pending disciplinary actions: 1) arbitration; 2) the State Personnel Board; and 3) the statutory procedure. The statutory procedure is a mandatory requirement of the grievance process by virtue of the operation of Education Code §89542.5.
- Grievants may select either the contract grievance procedure or the statutory hearing procedure at the time the grievance is filed. Disciplinary appellants must make the selection at the time of appeal of the disciplinary action.
- The statutory hearing procedure relies upon Faculty Hearing Committees as the first line of appeal from the denial of a grievance following Level I or after a notice of pending disciplinary action from the President. Three person Faculty Hearing Committees are drawn from all full-time faculty unit members of Bargaining Unit 3 on campus.
- A broad range of issues can be brought before the Faculty Hearing Committees, including rights accruing to job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like, including but not limited to rights arising under the collective bargaining agreement, either individually or as a group.
- Issues requiring legislative action, collective bargaining between the CSU and CFA, and grievances filed on behalf of CFA as a union may not be decided in the statutory hearing process.
- Any Unit 3 faculty employee who has been employed for more than one semester or quarter may file a grievance or file an appeal to a disciplinary action under the statutory procedure.
- A faculty member using the process is entitled to the representative of their choosing or may represent themselves.
- Faculty Hearing Committees must base their decisions on relevant and reliable evidence.
- Faculty Hearing Committees must issue a decision within 14 calendar days of the hearing.
- Findings and recommendations of the Faculty Hearing Committees are presented to the campus President. If the campus president agrees with the finding, that is the end of the case. If the Faculty Hearing Committee finds for the faculty member and the president disagrees with the decision or the remedy, the faculty member may request binding arbitration by a neutral third party arbitrator. In the case of a grievance, the cost of arbitration shall be paid by the CSU unless CFA officially represents the grievant, in which case the costs of the case will be split equally between CSU and the CFA. In the case of an appeal of a disciplinary action, the CSU bears the cost of the services of the arbitrator.

## II. Background: New Statutory Hearings

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### A. *History*

In 1999, CFA worked with the legislature to pass a bill to make the rights in the Education Code related to the grievance procedure a floor below which negotiated contracts could not go for CSU employees in bargaining Unit 3.

In order to implement this change in the law, the parties have set up a “statutory” grievance track in addition to the traditional contract grievance process. The parties also set up this statutory track as one of the options of appeal in the disciplinary process. The “statutory” track relies on faculty hearing committees to consider disputes and make decisions about the disputed matters. After hearing evidence of the dispute, Faculty Hearing Committees make recommendations to the campus presidents. If the campus president disagrees with the Faculty Hearing Committee’s positive recommendation, the grievant may elect to submit the continuing dispute to binding arbitration or may accept the president’s decision. If neither the panel nor the president rules for the grievant, the case does not go on to arbitration.

When the President agrees in part, and disagrees in part, with the decision of the Faculty Hearing Committee, then it is only the issue(s) with which the President disagrees that may be appealed to an arbitrator whose decision shall be final and binding. (See Article 10.21 (c) and Article 19.10 (e)(5) of the Collective Bargaining Agreement.)

### B. *Election of Faculty Panel Members*

Under the terms of the current Agreement, composition of the campus Faculty Hearing Panel consists of all full-time faculty including tenured faculty, probationary faculty, lecturers, counselors, librarians, and coaches. Additionally, faculty who work full-time by virtue of appointment to, or service, in multiple departments may be eligible to serve on the Faculty Hearing Panel.

The Faculty Hearing Committee shall be selected by lot from the campus Faculty Hearing Panel and shall consist of three members and one alternate. No Faculty Hearing Panel member may serve on a committee if s/he has been directly involved with or a party to matters related to the grievance before the Faculty Hearing Committee.

### C. *What Is a Grievance?*

A grievance alleges (claims) that the faculty member(s) was/were directly wronged in connection with the rights accruing to his or her job, classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment or the like, including but not limited to rights arising under the collective bargaining agreement. (See Article 10.2(b) and (c)(1) of the collective bargaining agreement.)

*D. How Should a Hearing Committee Assess a Grievance?*

In order to evaluate whether an incident is a grievance, Hearing Committee members should ask themselves:

1. Was the faculty member directly wronged by the CSU in connection with rights accruing to his or her job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment or the like, including but not limited to rights arising under the Collective bargaining Agreement; and
2. And was the wrong committed associated with a right? Is it a violation of the collective bargaining agreement? Of a campus or systemwide policy, procedure, or established practice? Of external law?
3. If the committee determines the faculty member was directly wronged and a violation of the CBA, campus or systemwide policy, procedure, established practice, or external law was committed, what is the appropriate remedy?

The allegation presented in the written grievance, supporting documentation and testimony, and the Administration's answer to the grievance, along with documentation and testimony presented by the University, should be the focus of the Faculty Hearing Committee's deliberations.

For more information on the contract see: <http://www.calfac.org/resource/collective-bargaining-agreement-contract-2014-2017> or [http://www.calstate.edu/LaborRel/Contracts\\_HTML/CFA\\_CONTRACT/CFAtoc.shtml](http://www.calstate.edu/LaborRel/Contracts_HTML/CFA_CONTRACT/CFAtoc.shtml)

*E. What is a Disciplinary Appeal?*

When the CSU intends to discipline a Unit 3 faculty member, it must first provide that member with a notice of pending disciplinary action, review the faculty member's response to the allegations, and provide a final notice of pending disciplinary action which either rescinds, modifies, or affirms the pending disciplinary action. The Unit 3 faculty member then has the right to appeal the final notice of pending disciplinary action through arbitration, the State Personnel Board, or the statutory process.

*F. How Should a Hearing Committee Assess a Disciplinary Appeal?*

In order to evaluate whether an incident rises to the level of disciplinary action, Hearing Committee members should ask themselves:

1. Did the CSU have cause for disciplinary action?
2. Whether the proposed disciplinary action should be sustained, modified, or voided?

The allegation presented in the final notice of disciplinary action, supporting documentation and testimony, and the faculty member's response to the pending notice of disciplinary action, along

with documentation and testimony presented by the faculty member, should be the focus of the Faculty Hearing Committee's deliberations.

For more information on the contract see: <http://www.calfac.org/resource/collective-bargaining-agreement-contract-2014-2017> or <http://www.calstate.edu/hr/employee-relations/bargaining-agreements/contracts/cfa/index.shtml>

#### *G. Information Requests*

It is the responsibility of the administration and the faculty member or his/her representative to seek and obtain all information that they want the Committee to consider. In cases where it is necessary for the faculty member or his/her representative to obtain information from the administration for the purpose of investigating, resolving, or presenting a grievance, the faculty member or his/her representative shall make a written request a reasonable time prior to the hearing to the appropriate administrator for reasonably specific information pursuant to Article 10.37. The faculty member or his/her representative shall have the right to receive, within thirty (30) days, such information not defined as protected from disclosure (confidential or personal under law and regulations governing the right to privacy) as would assist in investigating, resolving, or presenting the grievance). (See Article 10.37 of the collective bargaining agreement).

In the event of an unreasonable delay in the provision of the information requested and/or the parties are unable to agree on what information should be supplied, then the issue should be referred by the parties to the CFA Director of Representation and the CSU Manager of Labor Relations for their consideration. In the event that agreement still cannot be reached, the issue shall be sent to a third-party umpire who will be required to make a determination within 48 hours of the referral of the question to the umpire. The umpire will be selected from the current CFA/CSU panel of arbitrators. In order to expedite this process, it is anticipated that electronic mail will be the normal means by which such requests are made and by which responses are provided. The costs of referring such issues to an umpire will be shared equally by the parties.

### III. Overview of Statutory Hearings

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#### A. *The Purpose of the Statutory Hearings*

The purpose of these “statutory” hearings is to resolve workplace disputes.

#### B. *What Kinds of Issues Can Be the Basis for Statutory Grievances?*

Any issue involving an allegation that the employee was directly wronged in connection with the rights accruing to his or her job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like may be the basis of a statutory grievance. Typical grievances include (but are not limited to) promotion, retention, tenure, reappointment of lecturers and all other lecturer issues, workload, harassment on the job, prohibited discrimination, discrimination or retaliation for CFA activity, health and safety concerns, and any other employment disputes. Appeals of disciplinary actions may also be heard by Faculty Hearing Committees in accordance with the Disciplinary Action Appeal Process outlined in Article 19 of the collective bargaining agreement.

#### C. *What Kinds of Issues Are Excluded from Statutory Hearings?*

A statutory grievance may not include matters that require legislative action, Collective Bargaining, a decision to grant an equity award and/or the amount to be granted, and other matters which the parties have excluded from the grievance process. The statutory grievance procedure does not apply to grievances brought on behalf of CFA as an organization (as opposed to those brought by CFA on behalf of individuals or groups of individuals).

#### D. *Who Can File a Statutory Grievance?*

All faculty unit employees who have been employed for more than one semester or quarter may file grievances that, if not settled early in the process, may result in hearings before Faculty Hearing Committees.

#### E. *Who Can Appeal a Disciplinary Action Through the Statutory Process?*

A faculty unit employee with a final notice of discipline under Article 19.

#### F. *Who Represents a Faculty Member in Statutory Hearings?*

Faculty members may represent themselves at every level of the process. Alternatively, faculty members may identify an advocate of their choice, including CFA. CFA may agree or decline to represent faculty members in particular cases.

*G. Who Decides Whether a Grievance Goes Through the Statutory Hearing Process or the Regular Grievance Procedure?*

At the time of the initial grievance filing, the grievant must choose to pursue either the contract grievance procedure or the statutory hearing procedure. CFA faculty rights representatives may advise grievants on which process is more suited to their case.

*H. Who Decides Whether an Appeal to a Disciplinary Action Goes Through the Statutory Hearing Process?*

At the time of the appeal, the faculty member must elect the arbitration, State Personnel Board, or statutory procedure. CFA faculty rights representatives may advise faculty members on which process is more suited to their case.

*I. Who May Serve on Faculty Hearing Committees?*

Any member of the Faculty Hearing Panel (pool of eligible faculty; see Articles 10 and 19 of the CBA) who does not have a conflict of interest or who has not been directly involved with, or a party to, matters related to the dispute, may serve on Faculty Hearing Committees.

*J. How Are the Faculty Hearing Committees Selected?*

Faculty Hearing Committees should be selected by lot on a case-by-case basis. CFA and CSU shall each designate one individual to serve as panel co-chairpersons for each campus. The process shall be overseen by the two co-chairpersons. No Faculty Hearing Panel member may serve on a Faculty Hearing Committee if s/he has been directly involved with or a party to matters related to the grievance before the Faculty Hearing Committee. If an individual is selected who would clearly be prohibited from participation on that committee as a result of a conflict, then the co-chairpersons shall void that selection and replace it with another name until such time as four eligible names have been selected. Faculty members within the same department as that in which the controversy arose shall not be deemed eligible for service on a Faculty Hearing Committee assigned to hear that particular grievance. The fourth name selected shall be the nominated alternate. Faculty may be required to serve on no more than one Faculty Hearing Committee each academic year. When a faculty member's name is selected for committee service, his/her name shall be removed from the panel roster. If no hearing is ultimately held or if an alternate is not required to serve, that faculty member's name shall be returned to the panel roster. The grievant shall be notified at least 14 days in advance of the hearing as to the identity of the members of the Faculty Hearing Committee.

*K. What if a Committee Member Has a Conflict of Interest or is Unavailable Due to a Leave of Absence?*

If an individual selected for a specific committee believes that he or she should not sit on a Faculty Hearing Committee in a particular case because of a provision in the CFA/CSU agreement, other controlling CSU policy, personal or professional association with the grievant, is unavailable due to a leave of absence, or other reason, the individual should notify the Faculty Hearing Panel chair of his or her intent to withdraw. If the co-chairs agree that the individual should not participate, then he or she will then be replaced by the alternate. If a committee is reduced at any stage to less than three members, then the administrator and panel chair shall select by lot such additional members as are needed to reconstitute the panel to three members plus one alternate. No less than 7 days prior to the commencement of the hearing, the grievant may request removal of a Hearing Committee member for cause. The grievant shall be required to state in writing the specific grounds for such objection and so notify the co-chairpersons. E-mail may be used for such a notification. If the co-chairpersons agree, the challenged Hearing Committee member shall be removed and replaced by the alternate. If they do not agree, the matter shall be referred by the parties to the CFA Director of Representation and the CSU Manager of Labor Relations for their consideration. In the event that agreement still cannot be reached, then the issue shall be sent to a third-party umpire who will be required to make a determination within 48 hours of the referral of the question to the umpire. The umpire will be selected from the current CFA/CSU panel of arbitrators. In order to expedite this process, it is anticipated that electronic mail will be the normal means by which such requests are made and by which responses are provided. The costs of referring such issues to an umpire will be shared equally by the parties.

*L. Confidentiality*

Members of Faculty Hearing Committees may be privy to information in these proceedings that is private and sensitive in nature. All efforts must be made to protect the confidentiality of the parties in such circumstances. It would be highly unethical for a Faculty Hearing Committee member to disclose confidential information regarding these hearings, except to those who have are required to have that information provided to them by law, or otherwise under the terms of the Agreement.

*M. Questions the Faculty Hearing Committee Should Be Able to Answer at the End of the Hearing*

- What is the nature of the “wrong” that the faculty member is claiming?
- What rights have been violated (if any)?
- What remedy does the grievant want?
- What is the appropriate remedy (if any)?
- Who has the burden of proof?
- What are both parties’ positions?
- What happened?
- When did it happen?

- Where did it happen?
- Who was involved in the incident or pattern of incidents?
- What documentary proof is available?
- What did witness testimony (if any) show?
- Which testimony does the panel find to be more credible?

## IV. Evidence, Proof, Standards, and Committee Discretion

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### A. *Evidence*

A Faculty Hearing Committee has the authority to set its own procedures. However, it is important for neutral decision-makers like Faculty Hearing Committee members to focus clearly on the evidence relating to, and relevant to, the complaint.

#### 1. Relevant Evidence

The Faculty Hearing Committee must distinguish clearly between evidence that is or is not relevant. Relevant evidence is defined as that which tends to prove (or disprove) a fact in question.

#### 2. Testimony Based on Personal Knowledge Is Always the Best Evidence

Third-hand evidence (hearsay – when the declarant is not at the hearing) should have limited weight. However, the members of the Faculty Hearing Panel are the judges of the evidence. They are entitled to determine how much weight to give any evidence which is presented for their consideration.

#### 3. What Is the Best Evidence? What Is the Most Efficient and Reliable Way of Proving Facts?

Faculty Hearing Committee members should think about what will provide the best evidence in the most efficient manner.

Committees can ask advocates to summarize documents (subject to the other party's comments), but particularly regarding disputed matters, they should make certain to get the "best evidence," either the document itself or a copy of it that no one objects to in terms of its authenticity.

Documents such as business records (from university files) are one form of documentary evidence. Listings on the university web page may be used as evidence, but they should be reduced to print, with copies made available to the Faculty Hearing Committee, the grievant, and the advocates on the other side. Email messages are commonly used as documentary evidence so long as they are authentic.

#### 4. Documentary Evidence

All documentary (written or visual) evidence must be presented in a clear and digestible form. Faculty Hearing Committee members should not be asked to "surf the web" looking for items referred to by the parties. It is the responsibility of the parties and/or their advocates to provide

printed documentary evidence. Panel members may request additional documentation at the time of the hearing, if they require it for the hearing.

The record may be held open to receive additional documentary evidence, if necessary, for a limited time.

Ideally, seven (7) copies of each document presented for evidence should be provided by each side. Copies of all documents should be provided for each Faculty Hearing Committee member (unless the committee indicates that it will share a copy), each advocate, and the faculty member. A set of any documents to which witnesses will be referring in their testimony should also be provided for the witnesses.

## 5. Stipulate to Undisputed Facts When Possible

When facts are not in dispute, it is helpful for the parties to enter into stipulations (agreements as to undisputed facts). Typical areas in which the parties frequently enter into stipulations include dates of employment, salary levels, the department in which the grievant is or was employed, the fact that certain documents were in the Personnel Action File, academic degrees held by parties to the case, and any undisputed facts leading up to the grievance. Stipulations regarding undisputed matters will save time and allow the Faculty Hearing Committee to spend more time focusing on disputed matters. Once facts have been agreed to by way of stipulation, it is not necessary to submit evidence to re-prove those facts.

### *B. Who Has the Burden of Proof?*

The faculty member has the burden of proof, except in discipline cases, where the administration has the burden of proof.

### *C. Standards of Proof*

Having heard all the evidence, the Faculty Hearing Committee will then have to make determinations about the weight, relevancy and authenticity of the evidence they have received. The decision they will then have to make is whether the evidence supports either the grievant (or appellant in cases of discipline) or the CSU in relation to all material matters in controversy between the parties.

1. In all cases other than discipline cases, the burden is on the faculty member to prove his or her case by a "preponderance of the evidence." Under that standard, the grievant has met his or her burden if all the evidence taken together favors the grievant, however slightly (more than 50%). In other words, what is more probable than not.
2. In discipline cases (e.g., suspension without pay, or termination), the burden is on the administration to prove it had "just cause" to impose the discipline. The Committee will require the administration to prove just cause by a "preponderance of the evidence."

#### *D. Faculty Hearing Committee Recommendations*

The Faculty Hearing Committee **shall** make a written decision within 14 days of the commencement of the hearing for both discipline cases and grievances. While we recognize that it may be difficult at times to arrive at a decision, each Faculty Hearing Committee is responsible for issuing its decision on the dispute in question. That decision may support either of the parties in whole or in part. Such decision shall include a statement of reasons for any denial or granting of the grievance. Like an arbitrator, the Faculty Hearing Committee has discretion in making determinations of fact and fashioning appropriate remedies. However, that discretion does not extend to engaging in acts that are illegal (for example gender or race discrimination) or that are “arbitrary and capricious” (making decisions that are totally unsupported by the evidence). (See Article 10.19 of the collective bargaining agreement.)

In discipline cases, the Faculty Hearing Committee may recommend to sustain, modify, or void the sanction or the pending sanction. The decision shall set forth the findings, reasons, and conclusions. The Faculty Hearing Committee shall also determine whether cause for the disciplinary action existed in the first place. The decision may include back pay to the extent provided for in provision 19.10(e)(4) of the Collective Bargaining Agreement. (See Article 19.10(e)(1)-(4) of the Collective Bargaining Agreement.)

#### *E. What If the Campus President Doesn't Agree with the Faculty Hearing Committee?*

In non-disciplinary cases, within twenty-one (21) days of the President's receipt of the decision, s/he shall inform the grievant and the Faculty Hearing Panel Co-Chairpersons in writing of his/her decision which may be to accept the decision of the Faculty Hearing Committee; to accept the decision in part and reject the decision in part or to reject said decision.

In disciplinary cases, within fifteen (15) days of the President's receipt of the decision, s/he shall inform the affected faculty unit employee in writing whether s/he agrees or disagrees with the Committee's decision.

If there is no disagreement between the Faculty Hearing Committee's decision and the President's decision, then the President's decision shall be final and binding. If the President does not agree with the Committee's decision, the affected faculty unit employee may elect to appeal the matter to arbitration. In the event the President determines to reject the decision of the Faculty Hearing Committee, s/he shall provide a statement of reasons for said decision. If the Campus President does not agree with the Faculty Hearing Committee's decision to sustain the grievance, the grievant may choose to proceed to arbitration. Where the President agrees in part, and disagrees in part, with a decision of the Faculty Hearing Committee, then it is only the issue(s) with which the President disagrees that may be appealed to an arbitrator whose decision will be final and binding.

## **V. Conduct of the Hearing and Role of the Committee Members**

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### *A. Pre-Hearing Matters*

#### 1. Setting the Time and Place of the Hearing

The Faculty Hearing Panel co-chairpersons will make the necessary arrangements (room reservation, notice to the parties, etc.) and will coordinate meeting times to best accommodate all participants to the degree possible. Because the faculty member may elect an open/public hearing process, the faculty member's wishes must be ascertained before room arrangements are made. A reasonable effort must be made to accommodate the expected number of observers if an open hearing is elected.

#### 2. The Hearing Room

There should be plenty of table space and enough chairs in the room reserved for the hearing. The room should be large enough to accommodate, at a minimum, the faculty member and one or two CFA representatives, and administration representatives. If the faculty member wishes to have observers present or open the hearing to the public, subject to availability, the room must be large enough to accommodate additional observers. There should be copying facilities available during the meeting, someone to make copies if needed, and telephone access nearby.

#### 3. Prior to the Hearing, the Faculty Hearing Committee Should Choose a Chair to Facilitate the Hearing

The Hearing Committee Chair is in charge of the event, and keeps things fair, efficient and orderly. This person is selected by the entire three-member Hearing Committee.

#### 4. Recording the Hearing

It is important to have a reliable record of what took place during the hearing. In the absence of agreement to the contrary, the hearings will be recorded digitally. The University will supply the recording equipment. The Faculty Hearing Committee chair has responsibility for overseeing the recording process. The original digital record of the hearing will be retained by the Faculty Hearing Panel co-chairpersons and his/her successors in the position. A copy of the record will be supplied in the form of a digital audio recording (WAV/MP3 file) to the appropriate administrator and to the faculty member if the matter is subsequently appealed to arbitration. The CSU shall provide the equipment necessary for maintaining the official record.

## 5. Time Limit of the Hearing

Cases are not to exceed more than one business day in length, absent mutual written agreement by the parties for more time. The Faculty Hearing Committee must be available to hear testimony for a full day. The Faculty Hearing Committee may not demand that the parties conclude their presentations in order to provide the Committee time to deliberate on the same day of the hearing.

The Faculty Hearing Committee shall file with the appropriate administrator its written decision within fourteen (14) days of the commencement of the hearing. Such decision shall include a statement of reasons for any denial or granting of the grievance. All limitations on the authority of an arbitrator, including those in provisions 10.26 (i), (j) and (k) of the Collective Bargaining Agreement apply to the recommendations of the Faculty Hearing Committee.

(Please see Appendix for text of provisions 10.26 (i), (j) and (k).)

### *B. Responsibilities of the Faculty Hearing Committee*

#### 1. Running the Hearing

The Hearing Committee Chair is in charge of the hearing.

#### 2. During the Hearing

It is the responsibility of the Faculty Hearing Committee to take evidence; make factual determinations; apply the facts to the applicable standards; make fair, unbiased decisions; and issue written decisions within the applicable timelines.

#### 3. Ways to Make All Parties Feel “Heard”

Members of the Faculty Hearing Committee should pay close attention to both sides. They should attempt to run the hearing in such a way that the parties all feel that the panel understood the issues clearly and considered all the relevant evidence before making the decision. The Faculty Hearing Committee shall be respectful of both sides and all witnesses present at the hearing.

#### 4. What are the Rules About Decisions?

**Limitations to the Committee’s Authority:** The Committee shall base its decision solely upon the evidence and arguments appropriately presented by the parties in the hearing and the record. The Committee has no authority to add to, subtract from, modify, or amend any provisions of the parties’ Collective Bargaining Agreement.

**Drafting:** Committees should decide prior to the hearing who will take notes and after the hearing who will draft the decision.

**Length of Decisions:** Recommendations normally should be as brief and succinct as the facts and the issues will allow. It is anticipated that few cases (if any) will necessitate a recommendation in excess of three pages. However, the decision shall include a statement of reasons for any denial or granting of the grievance or disciplinary appeal.

**How Are Decisions Made?** Decisions should be voted on by members of the Faculty Hearing Committee. Decisions should be either unanimous or, if there is a minority opinion, the decision may reflect both the majority and minority opinions, at the option of the members of the Faculty Hearing Committee hearing the particular case.

**When Are Decisions Due?** Hearing Decisions should be provided to all the involved parties within fourteen (14) calendar days of the date of the hearing.

**What Information Should Be Included in the Written Decision?** The decision should include the following information: The names of the faculty member(s), advocates, witnesses, and Faculty Hearing Committee members; the faculty member's department; the issue; findings of fact; whether the Faculty Hearing Committee is granting or denying the grievance/appeal; the remedy ordered (if any); and a statement of the reasons upon which the decision is based.

## C. *Getting the Hearing Started*

### 1. Setting the Tone

It is important to set a good tone right from the beginning. The Faculty Hearing Committee chair should let the parties know:

- The schedule;
- Where the restrooms are;
- Where coffee and water can be located; and
- Anything else necessary for the participants' comfort.

### 2. Establishing Expectations and Rules

It is important for the Faculty Hearing Committee chair to take charge of the hearing process right at the beginning, while reassuring the grievant that he or she will have a chance to tell the story that led to the grievance.

### 3. Finding Out What Will Be Presented

The Hearing Committee co-chairs should find out how many witnesses and documents the parties wish to present, and emphasize that each side's presentation, including witnesses, should take no longer than four hours if possible. Many will take considerably less.

CFA or other outside advocates, grievants, and local administration representatives should be encouraged to agree ahead of time on joint exhibits and stipulated facts.

*D. Requesting Issue Statements by the Parties*

In order for the hearings to be focused and completed within appropriate timeframes, the parties should agree on a statement of the issue(s). If agreement is not possible, each party should provide a BRIEF statement of the issue, using a few sentences at the most. The Hearing Committee can then create a statement of the issue to be outlined in their written recommendation.

*E. Stipulations*

The Hearing Committee chair should ask the parties to make a list of all facts that are not disputed, and, if possible, have the parties agree to stipulations, preferably in writing. If stipulations are not in writing, the chair should verbally review the stipulations to which the parties have agreed and have all parties indicate their agreement to the stipulations on the audiotape.

## Sample Opening Comments and Basic Questions for Faculty Hearing Committees at Statutory Hearings

1. Good morning. My name is \_\_\_\_\_. I will be facilitating this hearing today. The other members of the Faculty Hearing Committee are \_\_\_\_\_ and \_\_\_\_\_. The purpose of the hearing is to resolve a workplace dispute. Each party will have a chance to explain its position.
2. The grievant is (name here)  
*(Note: The Faculty Hearing Committee chair should find out who everyone in room is, and the capacity in which they are attending (grievant, CFA representative, friend, colleague, etc.). A sign-up sheet should be sent around, and/or business cards collected.)*
3. The advocates are: (names here)
4. Housekeeping details are as follows: (restrooms, water, copy facilities if needed).
5. We have (or need) a copy of the grievance form.
6. Can we get a brief statement of the issue?
7. Are there joint exhibits? Any other exhibits you wish to share with the panel?
8. Number the documents that the parties wish to provide as:
  - Joint exhibit 1, etc.
  - Grievant or CFA exhibit 1, etc.
  - Administration exhibit 1, etc.
9. Are there any stipulations (agreements regarding undisputed facts)?
10. Are the parties ready to proceed? If so, (the party with the burden of proof) please proceed.

## F. *Opening Statements*

### 1. Purpose

Opening statements are a road map of the case. What is the theory of the case? What will the evidence show? The parties should be asked to give a brief opening statement. Opening statements should focus on facts the party will prove and how these facts fit into the overall theory of the case.

### 2. Time Limits

The entire hearing is not to exceed more than one business day in length, absent mutual written agreement by the parties for more time. In view of this time limit, it is strongly suggested that opening statements be no more than 10-15 minutes in length. Faculty members and advocates should be informed of recommended time allocations ahead of time before the hearing. It is important to allow plenty of time for the actual presentation of evidence. The parties should be informed as to the time limits each of them has to present their case.

### 3. Asking Questions While Maintaining Control of the Hearing.

Throughout the hearing, the Faculty Hearing Committee chairpersons should maintain an orderly hearing. This manual lays out the elements of the hearing – opening statement, presentation of evidence, and closing statements. Each side should be treated fairly and have the opportunity to be heard throughout the hearing stages.

Faculty Hearing Committee members should not hesitate to ask appropriately timed questions if they are confused by the faculty member's, advocates', or the University's opening statements or case presentations. Committee members might wait until the opening statement is complete to ask clarifying questions.

The Hearing Committee chair should not let the parties interrupt each other or interject questions or comments during opening statements. Objections during the presentation of cases will require a ruling by the Faculty Hearing Committee Chair to sustain (agree) or overrule (disagree) in which case the party proceeds. In this informal hearing, the parties are probably best directed to save their disputes for cross-examination and/or closing arguments.

Direct and cross-examination should be handled in an orderly manner. If a party wishes to object to a question, the witness should be instructed not to respond until the Committee decides whether the question is proper.

## G. Evidence

### 1. Is the Evidence Relevant?

Evidence is relevant if it tends to prove or disprove a fact at issue in the hearing. If evidence is not relevant, it is not useful to spend time on it. Parties may have years' worth of hurt feelings and misunderstandings by the time they get to the Faculty Hearing process. The Faculty Hearing Committee will want to set some clear parameters regarding how far afield the parties can go in introducing evidence that may not be relevant. It is good to make people feel heard, but also important to let them know what kinds of evidence will make a difference in their case.

### 2. Is the Evidence Reliable?

Evidence based upon the personal knowledge of the witness is generally much more reliable than indirect evidence for which the witness does not have actual direct personal knowledge.

### 3. How to Weigh the Evidence

In weighing the evidence, the Faculty Hearing Committee should think about the following factors:

- Credibility.
- Relevance.
- Strength of the evidence.
- Does the evidence tend to prove or disprove the case?
- Does the evidence require background or explanation?
- Relationship between the facts, laws, contract provisions, and policies.
- Whether the witness observed the event at issue.
- Any bias or motivation the witness may have.
- The ability of the witness to recall the event.

### 4. Admission of Documentary (Written) Evidence

Advocates may enter documentary evidence at any stage in the proceedings, until the hearing has been concluded. For ease of identification, mark documents as Joint Exhibit # \_\_, Employer Exhibit # \_\_, Faculty Member/CFA Exhibit # \_\_, etc., as appropriate. Each category of exhibit (Joint exhibits, employer exhibits, Grievant exhibits) should be marked in numerical sequence (Joint Exhibits 1- 4, etc.). Make certain that all parties understand which documents were admitted.

## *H. Testimony*

### **1. Direct Testimony**

Witnesses may testify on behalf of either party. However Faculty Hearing Committees do not have the power to subpoena witnesses (compel testimony).

### **2. Cross-Examination**

Each side may ask questions of the other side's witnesses. If cross-examination becomes repetitive or argumentative, the Faculty Hearing Committee chair may ask the party asking the questions to move along.

## *I. Closing Statements*

Advocates may, time permitting, make short closing statements. It is good, if time permits, to give the parties a few minutes to complete preparation of their closing statement. The purpose of a closing statement is to allow the parties to summarize the evidence, apply it to the applicable standards, and make arguments as to why their position is correct and the grievance/appeal should either be granted or denied.

## VI. Remedies

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Like arbitrators, Faculty Hearing Committees are given a certain degree of discretion as to how they arrive at their decisions and fashion their remedies, provided that their decisions are based on the evidence, not contrary to law, and otherwise consistent with the Collective Bargaining Agreement that provides them with their authority to determine the issue(s) in controversy.

### A. *Threshold Questions:*

- Has the committee decided to sustain or deny the grievance?
- If the grievance is to be sustained, what is the remedy?
- Has the committee decided to sustain, modify, or void the proposed disciplinary action?
- If the proposed disciplinary action is to be modified or voided, what is the remedy?

### B. *If a decision is in favor of the faculty member, questions to consider when fashioning a remedy are:*

- How serious was the violation?
- Was the violation prejudicial?
- What loss (monetary and/or non-monetary), if any, did the faculty member suffer as a result of the violation?
- Based on the nature of the loss, what remedies will make the faculty member whole for any losses suffered?

## **VII. Written Recommendations**

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Written recommendations are due within fourteen (14) days of the date of the Hearing. The members of the Faculty Hearing Committee may use their discretion as to whether they want to give an oral ruling at the end of the hearing, but they shall not be required to do so. All cases shall result in written decisions. Such decisions shall be forwarded to CFA, the faculty member, Faculty Hearing Panel Co-Chairpersons, and the local campus administration. (Refer back).

## VIII. Tips for Faculty Hearing Committees

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### ***Do***

- Create a positive environment where everyone (especially the faculty member) feels heard and respected.
- Accept evidence in an orderly manner. Be very clear about what is going into the official record and handle it carefully. Mark all evidence, indicating who submitted it and giving it a number in sequence. Keep all exhibits in sequence with the official record (audio tape). Keep a clear list of exhibits entered.
- Make sure you find out the source of the evidence you are hearing. Did the witness hear the conversation she is testifying to, or did she hear about it in the rumor mill? Did the witness establish personal knowledge of the facts? The reliability of evidence will affect the weight that should be given to the evidence in making factual determinations.
- Be clear as to what is evidence BASED UPON PERSONAL KNOWLEDGE, and what is not based on personal knowledge. Direct evidence generally means that a witness testified about things personally observed. Indirect evidence is usually something the witness did not personally observe, but learned about through someone else. Different kinds of testimony should be given different amounts of weight when it comes time to weigh the evidence. Committee members should discourage grievants from spending too much time on unreliable or irrelevant evidence.
- Ask questions if important facts are not clear to you.
- Write a clear, understandable decision indicating the Faculty Hearing Committee's decision, stating what evidence was relied upon in reaching the decision, and setting forth the reasoning on which the decision is based.

### ***Don't***

- Let the hearings get out of control. The Faculty Hearing Committee's job is to create a forum where both sides can present their case in an orderly and dignified manner. If this is not happening, do not be afraid to control the situation. Take a short break. When you return, set some ground rules for respectful communication.
- Forget or be afraid to ask questions related to any facts that will influence your decision.
- Be afraid to discuss any concerns about the case with the advocates, in case they can clarify anything.

## **IX. Acknowledgements**

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California Faculty Association and the California State University hope that this document provides a constructive, peer-led avenue of dispute resolution in the CSU.

## California Education Code § 89542.5

(a) The Trustees of the California State University shall establish grievance and disciplinary action procedures for all academic employees, including all temporary employees who have been employed for more than one semester or quarter, whereby all of the following requirements are satisfied:

(1) Grievances and disciplinary actions shall be heard by a faculty hearing committee composed of full-time faculty members, selected by lot from a panel elected by the campus faculty, which shall make a recommendation to the president of the state university.

(2) The grievance or disciplinary hearing shall be open to the public at the option of the person aggrieved or the person charged in a disciplinary hearing.

(3) Each party to the dispute shall have the right of representation by a faculty adviser or counsel of his or her choice and to be provided access to a complete record of the hearing.

(4) If there is disagreement between the faculty hearing committee's decision and the state university president's decision, the matter shall go before an arbitrator whose decision shall be final.

(5) The costs incurred in arbitration shall be paid by the state university.

(6) If the parties cannot agree upon an arbitrator, either party may petition the Federal Mediation Service, the State Conciliation Service, or the American Arbitration Association for a list of seven qualified, disinterested persons, from which list each party shall alternate in striking three names, and the remaining person shall be designated as the arbitrator.

(7) The grievance procedure established pursuant to this section shall be exclusive with respect to any grievance that is not subject to a State Personnel Board hearing. In the case of a grievance or disciplinary action that is subject to a State Personnel Board hearing, pursuant to Sections 89535 to 89539, inclusive, and Section 89542, the procedures provided for in those sections or those provided for in this section may be utilized. The academic employee shall have the choice of which procedures shall be utilized.

(b) For purposes of this section, a "grievance" is an allegation by an employee that the employee was directly wronged in connection with the rights accruing to his or her job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like. A grievance does not include matters, such as the salary structure, which require legislative action.

(c) If a memorandum of understanding is agreed to pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, and it provides for merit pay for academic employees of the university, the arbitration provisions of this section shall not apply to grievances concerning merit pay.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that, if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

## ARTICLE 10

### GRIEVANCE PROCEDURES

10.1 The purpose of this Article is to provide a prompt and effective procedure for the resolution of disputes. The procedures hereinafter set forth shall, except for matters of discipline as set forth in Article 19 herein, be the sole and exclusive method for the resolution of disputes arising out of issues covered by this Agreement and those matters subject to grievance under Section 89542.5 of the Education Code. It is the express understanding of the parties that these procedures meet or exceed the requirements of the Education Code pursuant to Government Code Section 3572.5 (3)(b)(1).

#### Definitions

10.2 As used herein:

- a. The term "grievance" when filed by the CFA shall mean an allegation that the CFA, an employee, or a group of employees, have been directly wronged by a claimed violation, misapplication, or misinterpretation of a specific term or provision of this Agreement. The CFA may only file a grievance under the contractual grievance process pursuant to provision 10.22.
- b. The term "grievance" when filed by an employee, or group of employees, under either the statutory grievance process pursuant to provision 10.11, or the contractual grievance process pursuant to provision 10.22, shall mean an allegation that the employee was directly wronged in connection with the rights accruing to his or her job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like, including but not limited to rights arising under this Agreement. A grievance does not include matters such as salary structure, which requires legislative action, and Equity Increases as defined in Article 31, which provide for their own binding appeals processes.
- c. The term "grievant" or "grievants" shall mean:
  1. For statutory grievances: any faculty unit employee(s) who has/have been employed for more than one semester or quarter

who allege(s) s/he/they has/have been directly wronged in connection with the rights accruing to his or her job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like, including but not limited to rights arising under this Agreement, either individually or as a group.

2. For contract grievances filed by an employee(s): any faculty unit employee(s) who allege(s) s/he/they has/have been directly wronged in connection with the rights accruing to his or her job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like, including but not limited to rights arising under this Agreement, either individually or as a group.

3. The term "grievant" shall also mean the CFA when alleging a grievance on behalf of itself, or on behalf of a unit member or a group of unit members in accordance with provision 10.2(a). The CFA shall not grieve on behalf of unit members who do not wish to pursue individual grievances.

d. The term "employee" in this Article shall mean a member of the bargaining unit.

e. The term "appropriate administrator" as used in this Article shall mean the individual who has been designated by the President to act pursuant to the procedures set forth in this Article.

f. The terms "respond" and "file" as used in this Article shall mean either personal delivery or delivery through the U.S. mail, certified mail, return receipt requested, facsimile, or electronically through use of email. If personal delivery is used, the grievant or appropriate administrator shall provide a written receipt to the person delivering the document. If certified mail is used, the return receipt shall establish the date of delivery. If facsimile is used either to file or to respond at Level II, the facsimile transmittal cover letter shall serve as receipt. If electronic mail is used, the receiving party shall acknowledge receipt. A response or filing shall not be considered accomplished in the absence of acknowledgement consistent with this provision of the Agreement.

## Grievance Forms

- 10.3
- a. All grievances, requests for review or appeals shall be submitted in writing on the form attached to this Agreement as Appendix E, and shall be signed by the grievant(s). Except for the initial filing of a grievance, if there is difficulty in meeting any time limit, a CFA representative may sign the grievance form for the grievant.
  - b. The appropriate administrator may refuse consideration of a grievance not filed on a grievance form required by this Article. In the event the potential grievant does not file on the prescribed form, the appropriate administrator shall provide the potential grievant with a copy of the appropriate form. Subsequent re-filing utilizing the appropriate form shall take place within seven (7) days of receipt of the appropriate form.

## Grievance Procedure

### Level I – Campus Level

- 10.4
- A grievant eligible to grieve pursuant to provision 10.2 of this Article may file a Level I grievance with the President no later than forty-two (42) days after the event giving rise to the grievance, or no later than forty-two (42) days after the grievant knew or reasonably should have known of the event giving rise to the grievance. In all grievances, the grievant shall state clearly and concisely on a grievance form:
- a. with regard to a statutory grievance, the right(s) the grievant alleges were violated as set forth in provision 10.2. When claiming a violation of the Collective Bargaining Agreement, the term or terms of the Agreement alleged to have been violated, misinterpreted, or misapplied;
  - b. a description of the grounds of the grievance including names, dates, places, times, necessary for complete understanding;
  - c. a proposed remedy;
  - d. the name, department or equivalent unit, address at which the grievant shall receive all correspondence relating to the grievance, position/classification of the grievant and the grievant's signature;
  - e. the name and address of the grievant's representative, if any; and
  - f. the date of submission.

- g. No later than the Level I meeting, or the Level II meeting where the grievance is filed directly at that Level pursuant to this provision, the grievant shall identify to the appropriate administrator in writing the source(s) of the right(s) alleged to have been violated.

When CFA is claiming a violation of the Collective Bargaining Agreement, if the grievance derives from an action or decision by the Chancellor's Office or is a case seeking a statewide contract interpretation, CFA may file the grievance directly with the Chancellor's Office, at Level II.

10.5 The grievant may, in the written grievance, request the postponement of any action in processing the grievance formally for a period of up to twenty-five (25) days in order that, the grievant may pursue efforts to resolve the grievance informally, and shall be entitled to a good faith review of the issue(s) presented. The initial postponement request shall be granted, and upon the grievant's further written request, additional twenty-five (25) day extensions shall be granted unless the appropriate administrator makes a determination that to do so would seriously impede resolution of the grievance.

- a. Upon request of the grievant during the postponement period(s), the President shall arrange an informal conference between the appropriate administrator and the grievant.
- b. The grievant may at any time terminate the postponement period by giving written notice to the President that the grievant wishes to proceed with the Level 1 meeting provided for below. If the postponement period, or any extension thereof, expires without the filing of a request for a further postponement, the grievance shall proceed to formal Level I.
- c. The grievant shall have the right to representation by CFA during attempts at informal resolution of the grievance.

10.6 At the time of filing of a grievance by an individual employee or group of employees the grievant shall make an election by using the appropriate grievance form between the two procedures set forth below: (a) Statutory Procedure or (b) Contractual Procedure. Failure of the employee(s) to make an election in the appropriate box on the grievance form as between the Statutory and Contractual Procedures shall result in the automatic processing

of his/her grievance under the Contractual Procedure. In the cases of grievances filed by the CFA, the CFA may not, on behalf of itself or an employee or group of employees, elect to process a grievance under the Statutory Procedure, but must in all cases process its grievances under the Contractual Procedure.

- 10.7 All complaints of discrimination, including those under Article 16, shall be handled pursuant to procedures set forth in relevant CSU executive orders (as mandated by state and federal laws). At the conclusion of those complaint procedures, a Level I meeting shall be held with the grievant and the grievant's representative pursuant to 10.8. After the Level I meeting, the grievance shall proceed in accordance with the provisions of this Article. CFA shall not unreasonably refuse CSU's requests for extensions to the Article 10 timeline in order to complete the discrimination complaint procedures.
- 10.8 Within fourteen (14) days after the Level I filing as provided in provision 10.4, the appropriate administrator shall hold a meeting with the grievant and the grievant's representative, if any, at a mutually acceptable time at the campus where the grievant is employed. At this meeting the grievant shall fully present his/her case, including all relevant facts, arguments and proposed remedies being sought. In the event that the grievant and appropriate administrator cannot successfully resolve the grievance, then the appropriate administrator shall respond in writing to the grievant no later than fourteen (14) days after the Level I meeting. Such response shall include a statement of reasons for any denial of the grievance.

### Faculty Hearing Panel and the Statutory Grievance Process

#### Faculty Hearing Panel Procedures

- 10.9 The panel shall consist of all full-time faculty unit members of Bargaining Unit 3 on a campus.
- 10.10 CSU and CFA shall each designate one individual to serve as panel co-chairpersons for each campus. Service as a member of the panel or the Faculty Hearing Committee, if selected, is a normal obligation of each full-time member of Unit 3 during the periods of the year when required to render services and shall not result in or require additional compensation. Service on Faculty Hearing Committees by full-time Temporary Faculty Unit

Members shall be voluntary. Temporary Faculty Unit Members may opt out of participation. Participation on a Faculty Hearing Committee shall be considered "service" to the campus community for all applicable purposes. Service as the panel co-chairperson shall be voluntary.

### The Statutory Grievance Process

- 10.11 In the event the grievance is not settled to the grievant's satisfaction at the Level I meeting, or by the Level I response by the appropriate administrator, the individual employee grievant (or group of employees) may file a grievance appeal with the Academic Vice President, Provost, President or designee no later than fourteen (14) days after receipt of the Level I response, for hearing before a Faculty Hearing Committee, selected by lot from the Campus Faculty Hearing Panel. The grievant shall attach a copy of the Level I grievance filing and the Level I response together with any documents presented at Level I.
- 10.12 Within seven (7) days after the filing of the grievance appeal as provided in 10.11, the Faculty Hearing Panel Co-chairpersons shall jointly schedule the selection of the Faculty Hearing Committee. The membership of the Faculty Hearing Committee shall be selected by lot from the Campus Faculty Hearing Panel and shall consist of three (3) members and one (1) alternate. No Faculty Hearing Panel member may serve on a Faculty Hearing Committee if s/he has been directly involved with or a party to matters related to the grievance before the Faculty Hearing Committee. Each Faculty Hearing Committee shall be appointed and serve on an ad hoc basis until the Committee has issued its decision on the grievance in question. Participation on a Faculty Hearing Committee shall be considered "service" to the campus community for all applicable purposes.
- 10.13 Upon selection of the Faculty Hearing Committee, the Academic Vice President/Provost or designee shall provide written notice to the grievant, appropriate administrator, and the selected committee members.
- 10.14 A hearing of the grievance 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 grievant is employed.

- 10.15 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.
- 10.16 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 grievant. The standard of review by a Faculty Hearing Committee is the same as the standard of review by an arbitrator as specified below in this Article. The grievant shall have the burden of proving the substance of the grievance by a preponderance of the evidence.
- 10.17 The panel co-chairpersons shall ensure that an official record of the proceedings is taken in a manner agreed to by the parties. If no agreement is reached, the proceedings shall be recorded by the Faculty Hearing Committee and the grievant and the appropriate administrator shall each be provided a single copy of the recording if the grievance is subsequently appealed to arbitration under provision 10.21.
- 10.18 The grievant shall have the right of representation before the Faculty Hearing Committee by a faculty adviser or other representative of his or her choice.
- 10.19 The Faculty Hearing Committee shall file with the appropriate administrator its written grievance decision within fourteen (14) days of the commencement of the hearing. Such decision shall include a statement of reasons for any denial or granting of the grievance. All limitations on the authority of an arbitrator, including those specified in 10.26(i), (j) and (k) below, apply to the recommendations of the Faculty Hearing Committee.

#### Presidential Review

- 10.20 The Faculty Hearing Committee shall provide the President, the grievant, the appropriate administrator, and the grievant's representative (if any) with a copy of its written grievance decision at the time it is issued. Within twenty-one (21) days of the President's receipt of the decision, s/he shall inform the grievant and Faculty Hearing Panel Co-Chairpersons in writing of her/his decision, which may be to accept the decision of the Faculty Hearing Committee; to accept the decision in part and reject the decision in part; or to reject said decision. In the event the President determines to reject the decision of the Faculty Hearing Committee, s/he shall provide a statement of reasons for said decision.

- 10.21
- a. If there is no disagreement between the Faculty Hearing Committee's decision and the President's decision, then the President's decision shall be final and binding.
  - b. If the President rejects a decision of the Faculty Hearing Committee to sustain the grievance in question, the grievant may elect to go before an arbitrator whose decision shall be final and binding.
  - c. Where the President agrees in part, and disagrees in part, with a decision of the Faculty Hearing Committee, then it is only the issue(s) with which the President disagrees that may be appealed to an arbitrator whose decision shall be final and binding. The President's decision on issues on which there is no disagreement shall be final and binding and not subject to arbitration.

Any election for arbitration pursuant to (b) or (c) preceding shall be made by certified mail, return receipt requested, directed to the Office of Labor Relations in the Office of the Chancellor within seven (7) days of receipt of the President's decision. The grievant may also request arbitration by telefax transmittal. If telefax transmittal is used, the receiving party shall fax back a copy of the cover letter with the signature of the receiving party acknowledging receipt, as well as the date of receipt. A telefax transmittal request for arbitration shall not be considered accomplished in the absence of such date and signature on the cover letter. Failure to request arbitration within seven (7) days of receipt of the President's decision shall constitute a waiver of the right to an arbitration hearing, and the President's decision shall be final and binding. Said arbitration shall be conducted according to the rules and procedures set forth in provision 10.26.

### Contractual Procedure

- 10.22
- If the grievant elects to pursue the Contractual Procedure (and in all CFA-filed grievances), within fourteen (14) days after the filing of the grievance, the appropriate administrator shall hold a meeting with the grievant and the grievant's representative, if any, at a mutually acceptable time and location. The appropriate administrator shall respond in writing to the grievant, no later than fourteen (14) days after the Level I meeting. Such response shall include a statement of reasons for any denial of the grievance.

## Level II – Office of the Chancellor

This section is not applicable to any grievance filed under the Contractual Procedure challenging the non-appointment or non-reappointment to a probationary or tenured position or the denial of tenure or promotion.

- 10.23 In the event the grievance is not settled to the grievant's satisfaction at Level I, the grievant may file a Level II grievance with the Office of the Chancellor no later than fourteen (14) days after the Level I response. The grievant shall attach a copy of the previous grievance response together with any documents presented at that level.
- 10.24 A designated individual in the Office of the Chancellor and the representative of the grievant, if any, shall schedule a grievance meeting at the Office of the Chancellor within fourteen (14) days of the Level II filing.
- a. At the Level II meeting the grievant shall identify to the designated individual in the Office of the Chancellor the source(s) of the right(s) alleged to have been violated. The grievant may include additional sources to those cited at any Level I meeting.
  - b. In cases where CFA is the grievant, and is grieving on behalf of a group of employees, the grievant shall define in writing the class(es) of Unit 3 members on whose behalf the CFA is seeking a remedy.
    - i. Where the names of the grievants within the class are known to the CFA at the time of the Level II meeting, then the CFA shall identify the individuals within the class(es) by name.
      - c.
    - ii. Where the CFA claims that it does not have sufficient information available for it to be able to identify the class(es) of grievants by name at the time of the Level II meeting, then the CFA shall nevertheless define the class(es) of grievants to the CSU with sufficient specificity so as to allow the CSU to identify, through further inquiry, the individuals within the said class(es) by name.
  - c. The designated individual in the Office of the Chancellor shall respond no later than fourteen (14) days after the meeting, and the written

response shall specifically address the issues raised in the Level II meeting.

- 10.25 If the grievance is not settled at Level II, then within forty-two (42) days after receipt of the Level II response or the expiration of the time limits for filing such response, the CFA, upon the request of the grievant, may request arbitration by giving notice to that effect, by electronic mail, facsimile, or certified mail, return receipt requested, directed to the designated individual in the Office of the Chancellor consistent with 10.2f. The CFA may also request arbitration by electronic mail, facsimile, or certified mail, return receipt requested, directed to the designated individual in the Office of the Chancellor consistent with 10.2f. Representation at arbitration shall be by CFA only.

### Arbitration

- 10.26 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:
- a. The parties shall meet within thirty (30) days of the ratification of this Agreement to select a panel of twenty (20) 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.
  - b. 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 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, or any new cases that would otherwise have been scheduled for that arbitrator by virtue of the procedure detailed in 10.26(d), 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 his/her removal prior to the receipt by the parties of any of his/her pending awards.

- c. Grievances with continuing financial back pay liability, and grievances alleging an unsafe work environment, shall be scheduled for hearing in arbitration in the chronological order of their appeal to arbitration, prior to both the scheduling of any grievances with no continuing financial back pay liability, or any grievance which does not allege an unsafe work environment. The parties recognize that from time to time it may be in the interest of both parties by mutual agreement to schedule cases for arbitration in other than chronological order. Absent such mutual agreement, arbitration hearings shall be scheduled in the same chronological order in which each case was appealed to arbitration.
- d. Any grievance, except those involving the denial of promotion, filed to arbitration shall be considered withdrawn if the parties have not, within twelve (12) months of the date of filing to arbitration, agreed upon a date and scheduled the case for hearing with the arbitrator assigned to the case. Disputes involving the denial of promotion shall be considered withdrawn if the parties have not, within eighteen (18) months of the date of filing to arbitration, agreed upon a date and scheduled the case for hearing with the arbitrator assigned to the case. In each case, this provision shall be extended for an additional thirty (30) days at a time, in cases where the Union has agreed to dates proposed by an arbitrator which are unacceptable to the CSU, or in cases where the CSU has not responded to the dates proposed by the Union. In order to assign arbitrators to cases and schedule hearings as expeditiously as possible, the parties shall observe the following procedures: Following selection of the panel, arbitrators shall be assigned numbers in alphabetical order by last name. Cases shall then be assigned at first instance to arbitrators in the order established by lot, and sequentially thereafter by reference to that established order.
- e. If any arbitrator assigned to hear a case through the procedure set forth in 10.26(d) is unable to offer at least one hearing date within one hundred and ten (110) days of the date s/he was assigned the case, the case shall be reassigned to the next arbitrator in the rotation, who shall be required to offer at least one hearing date within one hundred and ten (110) days of being assigned the case. If the next arbitrator in the

rotation is not able to offer a date within one hundred and ten (110) days, then the process shall be repeated.

- f. 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.
- g. In the event that vacancies occur in the agreed upon panel whether by challenge or unavailability of an arbitrator, such vacancies shall be filled by mutual agreement within fourteen (14) days of the date of the vacancy. If mutual agreement is not possible, each party shall submit to the other a list of five (5) preferred replacement arbitrators. The parties shall alternately strike from the combined list of ten (10) arbitrators until a single name remains who shall be designated as the replacement arbitrator. Option for the first strike shall be determined by a coin toss.
- h. 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.

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 a separate hearing, if any, on the merits of the grievance.

- i. The arbitrator's award shall be based solely upon the evidence and arguments appropriately presented by the parties in the hearing, the record of the Faculty Hearing Committee (if any) and upon any post-hearing briefs. Upon mutual agreement of the grievant and the CSU, a grievance may be submitted to an arbitrator for final determination based solely on the record of the Faculty Hearing Committee, documents and briefs submitted by the parties, without need for a hearing.

- j. The arbitrator shall have no authority to add to, subtract from, modify, or amend the provisions of this Agreement.
- k.
  - 1. The standard for review of the arbitrator in statutory cases or contractual cases filed by individual faculty, except in grievances challenging the non-appointment or non-reappointment to a probationary or tenured position or the denial of tenure or promotion, is whether the CSU directly wronged the grievant(s) in connection with the rights accruing to their job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like. The arbitrator may not review matters, such as the salary structure, which require legislative action or merit pay.
  - 2. The standard for review for the arbitrator in contractual cases filed by CFA is whether the CFA, an employee or a group of employees have been directly wronged by a claimed violation, misapplication or misinterpretation of a specific term or provision of this Agreement.
- l. The standard of review of an arbitrator in grievances challenging the non-appointment or non-reappointment to a probationary or tenured position or the denial of tenure or promotion shall be as follows:

In grievances challenging the non-appointment or non-reappointment to a probationary or tenured position or the denial of tenure or promotion, the arbitrator shall recognize the importance of the decision not only to the individual in terms of his/her livelihood, but also the importance of the decision to the institution involved. The arbitrator shall not substitute his/her judgment for the decision of the President made in the RTP process, but may correct violations of procedure or arbitrary, capricious, or discriminatory decisions by a President only as follows:

The arbitrator shall not find that an error in procedure will overturn an appointment or re-appointment to a probationary or tenured position, promotion, or tenure decision on the basis that the proper procedure has not been followed unless:

1. The arbitrator finds on a preponderance of evidence that a procedural error occurred; and
2. that such error was prejudicial to the decision with respect to the grievant.

The normal remedy for such a procedural error will be to remand the case to the decision level where the error occurred for reevaluation, with the arbitrator having authority in his/her judgment to retain jurisdiction.

An arbitrator shall not grant appointment or re-appointment to a probationary or tenured position, promotion, or tenure, except in extreme cases where it is found on clear and convincing evidence that:

3. The final campus decision was not based on reasoned judgment;
4. but for that, it can be stated with certainty that appointment or re-appointment to a probationary or tenured position, promotion, or tenure would have been granted; and
5. no other alternative except that remedy has been demonstrated by the evidence as a practicable remedy available to resolve the issue.

The arbitrator shall make specific findings in his/her decision as to the foregoing.

- m. In arbitrations in which the CFA (or its agent) is either a grievant or a grievant's designated representative, the cost of the arbitrator's fee, including any cost of a transcript requested by both parties, shall be borne equally by the parties except
  1. In all cases, each party shall bear the costs of its advocate(s).
  2. Unilateral withdrawal, unilateral postponement and unilateral cancellation fees shall be borne by the party who requests the withdrawal, postponement or cancellation.
  3. Expenses for witnesses shall be borne by the party who calls them.

4. In arbitrations in which the CFA is neither a grievant nor a grievant's designated representative, the costs incurred in arbitration shall be paid by the CSU in accordance with Education Code Section 89542.5.
- n. A final decision or award of the arbitrator shall be made within thirty (30) calendar days after the submission of briefs, and/or the close of the hearing where the parties have agreed not to submit post-hearing briefs. Such decision or award shall be binding upon the CFA, the CSU, and the employee(s) affected thereby.

Grievances Pertaining to the Appointment, Reappointment, Work Assignments or Careful Consideration per Article 12 of Temporary Faculty: Permanent Umpire

10.27 If a grievant pursuing a grievance on a matter pertaining solely to appointment, reappointment, or work assignment under Article 12 is not satisfied with the resolution of her/his grievance by the Faculty Hearing Committee process, including presidential review (provisions 10.20 through 10.21), or by the Office of the Chancellor at Level II, then in lieu of the arbitration procedures set forth elsewhere in this Article, the grievant may submit the grievance to a special, permanent Article 12 Umpire jointly selected by CFA and CSU who shall hear all such grievances thus appealed. The deadlines for submission of the grievance to the Article 12 Umpire shall be the same as specified for submissions to Arbitration under this Article. The Umpire shall schedule a hearing on such cases within thirty (30) days of the Umpire's receipt of the appeal at a time and place acceptable to the parties. Since time is frequently of the essence in rendering a remedy that is meaningful for both temporary faculty members and the departments that need to make real time hiring decisions, hearing procedures shall be as determined by the Umpire, consistent with the principles of due process and the goals of expedition and efficiency, but shall provide for no more than one (1) day of hearing except by written agreement of the parties. Except upon the written agreement of the parties in a particular case, no briefs shall be filed. The Umpire's decision sustaining or denying the grievance shall be issued in the form of a bench ruling after a brief study period at the conclusion of the hearing, but in no event later than three (3) days from the close of the hearing, and need not include supporting rationale unless requested by a party. The Umpire's decision shall not set a precedent, and it shall not be cited in any other administrative or legal forum.

- 10.28
- a. The parties shall meet within thirty (30) days of the ratification of this Agreement to select an umpire to hear cases pursuant to Sections 10.27-29 of this Agreement. If no agreement is reached, each party shall designate three (3) arbitrators for possible selection. The parties shall alternately strike from the combined list of six (6) arbitrators until a single name remains who shall be designated as the Umpire. Option for the first strike shall be determined by a coin toss.
  - b. If the Umpire thus selected is unable to provide the number of hearing dates required by provision 10.28(d), this process shall be repeated using another list of six (6) names designated by the parties until an Umpire is selected who can fulfill the requirements of Section 10.28(d). It shall not be a bar that any individual so designated had previously been submitted in any previous stage of this process. This process shall also be used if an Umpire selected withdraws from this position after selection and acceptance of the appointment.
  - c. The term of the Umpire shall be one (1) year from the date of selection. At the end of this term, either party may decline the reappointment of the umpire. If an appointment is not renewed, the process described in the preceding will be repeated using a new group of six (6) nominees if mutual agreement on a successor Umpire is not reached.
  - d. Upon selection by the parties, the Article 12 Umpire shall be scheduled for a minimum of two (2) hearing dates per month for the resolution of the previously-referenced temporary faculty Article 12 cases, unless there are insufficient pending cases to warrant the scheduling of the minimum two (2) hearing dates.

The costs of the Umpire procedures shall be allocated as provided in provision 10.26 for standard arbitration proceedings.

- 10.29
- By mutual written agreement of the parties, issues other than grievances pertaining solely to appointment, reappointment or work assignment under Article 12 may be referred to the Umpire for adjudication through this Umpire procedure, provided that at least one of the issues being grieved pertains to appointment, reappointment or work assignment under Article 12.

## Mediation

- 10.30 Grievances appealed to arbitration under the Contractual Procedure or the Statutory Procedure may be subject to mediation in accordance with the following:
- a. The party requesting mediation shall request mediation within thirty (30) calendar days after the Union has filed a request for arbitration. This time period may be waived upon the mutual agreement of both parties.
  - b. Grievances shall not proceed to mediation except by the mutual written agreement of both parties.
  - c. The timelines and order of the scheduling of grievances for arbitration pursuant to this Article shall not be affected by the parties' desire to invoke mediation.
  - d. The parties shall establish a panel of three (3) mediators by mutual agreement, who shall serve in alphabetical rotation. Members of the arbitration panel established pursuant to this Article shall not be eligible to serve on this mediation panel.
  - e. The procedures set forth in California Evidence Code Section 1152.5 shall be applicable to mediation conducted pursuant to this Agreement.
  - f. All costs of mediation shall be borne equally by both parties.
  - g. The recommendations of a mediator, if any, shall be advisory only and shall not be binding upon the parties. If the parties agree to accept the mediator's recommendation, the decision shall be reduced to writing and signed by both parties. Neither party shall enter into evidence at a subsequent arbitration hearing any recommendation(s) of the mediator.

## General Provisions

- 10.31 Wherever a time limit is provided by this Article, the participants at that level may extend the period by mutual consent in writing. However, the time limit for filing the initial grievance at Level I may only be extended by the

President. It is understood that the purpose of the procedure is to resolve grievances promptly and that extensions shall be sought only for good cause.

- 10.32 When meetings, conferences, Faculty Committee hearings or arbitration hearings are held under this Article, employees who are entitled to attend, including Faculty Hearing Committee members, or who are called as witnesses by a party, shall be excused for that purpose from other duties without penalty, provided that arrangements are made for coverage of the employee's duties.
- 10.33 No reprisals shall be taken against any employee for the filing and processing of any grievances.
- 10.34 a. Except for good cause shown, only those events, issues, and sections of this Agreement cited in the initial filing at Level II may be considered at subsequent levels.
- b. In cases where the CFA is the grievant, only the CFA and those members of the class described pursuant to provision 10.24(b), shall be eligible for a remedy.
- 10.35 After the grievance has been filed at Level I, a representative and the grievant shall be provided reasonable release time for the purpose of preparation and presentation of the grievance at Levels I and II or the Faculty Hearing Committee, provided that such release time shall not conflict with any scheduled classes and office hours.
- 10.36 Upon failure of the Employer or its representatives to provide a decision within the time limits provided in this Article, the grievant or CFA, where appropriate, may appeal to the next step. Upon the failure of the grievant or CFA, where appropriate, to file an appeal within the time limits provided in this Article, the grievance shall be deemed resolved by the decision at the prior step.
- 10.37 In cases where it is necessary for the grievant or his/her representative to have information for the purpose of investigating a grievance, the grievant or his/her representative shall make a written request for reasonably specific information to the appropriate administrator. The grievant or his/her representative shall have the right to receive, within thirty (30) days, such information not protected from disclosure under the laws and regulations

governing the right of privacy that would assist in adjusting the grievance. The CSU shall notify the grievant or his/her representative whenever the information cannot be provided within this thirty (30) day period. Such notification shall include the grounds on which the CSU has determined that the requested information is protected from disclosure.

- 10.38 When a party has made a request for data or documents it is legally entitled to receive, and if an arbitrator determines that the responding party failed to provide such data or documents in a timely manner, then the party failing to provide the materials may be prohibited from introducing or relying upon that material in the arbitration hearing. Among the factors to be considered in determining whether the failure to produce such data or documents in a timely manner should lead to their exclusion are the availability of the data or documents, the form in which the material is available, and the amount of labor involved in producing the materials, as well as the cost of such production. Production shall include providing access to data and documents readily available on line.
- 10.39 A decision to submit a grievance to arbitration shall be a waiver of all other remedies except as provided otherwise by statute.
- 10.40 A grievance settlement shall not set a precedent, except as otherwise mutually agreed in writing by the CSU and the CFA.
- 10.41 A grievance may be withdrawn at any time. The grievant is then prohibited from filing any subsequent grievance on the basis of the same event.
- 10.42 The CSU and CFA may mutually agree to consolidate grievances on similar issues at any level.
- 10.43 No resolution of any individually processed grievance shall be inconsistent with the terms of this Agreement. The CSU will not agree to a resolution of the grievance until the CFA has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response. If the CFA is neither a party to the proceeding nor the grievant's designated representative in the proceeding, any recommendation of the Faculty Hearing Committee or decision of an Arbitrator shall not operate as a precedent.
- 10.44 The parties acknowledge that grievance records, including grievance files and the content of grievance meetings, may contain information subject to the

right of privacy. Grievance records shall be kept in a file separate from the grievant's Personnel Action File, and may be used in arbitrations. Access to information in grievance records is limited to personnel having legitimate business reasons to access it.

- 10.45 Time limits shall be considered tolled when personnel are unavailable due to illness, vacations, or professional reasons.

#### Grievance Administration

- 10.46 From time to time, the CFA Central Office and the Office of the Chancellor shall compare grievance records for the purpose of developing and maintaining a common systemwide grievance docket.

- 10.47 Grievance rights pursuant to this Article shall not be curtailed on the last date of employment if said grievance rights are exercised in accord with provision 10.4 of this Article and such other filing requirements as may apply.

## 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 or served by U.S. mail to the affected faculty unit employee. When U.S. 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 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 meet with the Reviewing Officer designated by the President and his/her 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 his/her 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 s/he files his/her notice of appeal:
- a. Within ten (10) days of receipt of the notification pursuant to provision 19.9, a faculty unit employee or his/her 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 his/her 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 his/her 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. 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 s/he has 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 his/her 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 his/her duty to mitigate damages; and/or any earnings that the employee should have received had the employee complied with his/her 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 s/he agrees or disagrees 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 his/her 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, the faculty unit employee or his/her 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 his/her removal prior to the receipt by the parties of any of his/her 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 he/she may offer his/her 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 he/she may offer his/her 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 he/she may offer his/her 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 he/she may offer his/her 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.

#### 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 his/her duty to mitigate damages, and/or any earnings that the employee should have received had the employee complied with his/her 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, his/her 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 his/her 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, s/he 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, s/he 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.