

The California State University
Office of the Chancellor
400 Golden Shore
Long Beach, California 90802-4275

(562) 985-2800

Date: March 31, 1999

To: CSU Presidents

From: Charles B. Reed
Chancellor



Subject: Executive Order No. 702 Promulgating Interim Personnel Policies for Unit 3 - Faculty

I am transmitting to you a copy of Executive Order No.702, which adopts interim discipline and grievance procedures for Unit 3 - Faculty.

The March 17, 1999 Trustee Resolution directed that I provide these procedures and policy statements to the campuses.

You may refer questions regarding these policies to Employee Relations at (562) 985-2670.

Attachment

Distribution:

Chancellor's Staff
Vice Presidents for Academic Affairs
Vice Presidents for Administration
Associate Vice Presidents/Deans of Faculty
Office of General Counsel
Employee Relations Staff

The California State University
Office of the Chancellor
400 Golden Shore
Long Beach, California 90802-4275
(562) 985-2800

Executive Order No.: 702
Title: Interim Discipline and Grievance Procedures for Unit 3 - Faculty
Effective Date: March 16, 1999
Supersedes: Executive Order Nos. 301, 245 and 348*

This Executive Order is issued pursuant to authority granted by Education Code Section 89542.5, Title 5, California Code of Regulations, Sections 43525 and 43750, Standing Orders of the Board of Trustees, Chapter III, Section 2 and Committee on Collective Bargaining of the Board of Trustees' Resolution dated March 17, 1999.

Policy 10 from the forthcoming Interim Personnel Manual for Unit 3 - Faculty is adopted as the Interim Grievance Procedure for Unit 3 - Faculty. The attached copy of the policy is made a part of this Executive Order as the California State University Interim Grievance Procedure for Unit 3 - Faculty by this reference.

Policy 19 from the forthcoming Interim Personnel Manual for Faculty is adopted as the Interim Discipline Procedure for Unit 3 - Faculty. The attached copy of the policy is made a part of this Executive Order by this reference. Policy 19 is the California State University Interim Discipline Procedure for Unit 3 - Faculty.

These policies replace those formerly used under the expired collective bargaining agreement with California Faculty Association. Effort has been made to provide interim policies that continue in large part the procedures from the expired contract with necessary revisions to implement the requirements of Education Code Section 89542.5. The procedures implement the Board's action to ensure that in the interim period between collective bargaining agreements, the California State University has the necessary procedures that comply with the University's legal requirements. These procedures are also intended to facilitate the efficient operation of the University.

These procedures shall apply to all academic disciplinary actions for which notices of pending discipline are issued on or after March 16, 1999, and grievances filed on or after March 16, 1999.

Dated: 3/31/99 Charles B. Reed
Charles B. Reed
Chancellor

* Executive Order Nos. 301, 245 and 348 have previously been superseded by collective bargaining agreements with the California Faculty Association.

POLICY 10
GRIEVANCE PROCEDURES

10.1 The purpose of this Policy* is to provide a prompt and effective procedure for the resolution of grievances. The procedures hereinafter set forth shall, except for matters of discipline as set forth in Policy 19 herein, be the sole and exclusive method for the resolution of grievances.**

10.2 Definitions***

As used herein:

- a. The term "grievance" shall mean 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.
- b. The term "grievant" shall mean an employee or group of employees alleging that they have been directly wronged per 10.2a.
- c. The term "employee" in this Policy shall mean a member of the bargaining unit, excluding temporary employees who have been employed for one semester or quarter or less.****

* The Grievance Policies provided herein are intended to comply with the requirements of both the Education Code and HEERA. To the extent there are any conflicts between these Policies and the aforementioned statutes; the statutes shall govern.

** Notwithstanding anything contained in any Unit 3 Policy, the grievance procedure for CFA grievances on behalf of itself (and, to the extent permitted by Education Code Section 89542.5, on behalf of a unit member or a group of unit members) shall be the procedure described in Article 10 of the Collective Bargaining Agreement between The Board of Trustees of The California State University and The California Faculty Association in effect on March 15, 1999, except that all provisions concerning arbitration shall not apply to these grievances.

*** Definitions of terms not defined herein shall be as defined in Article 2 of the Collective Bargaining Agreement between The Board of Trustees of The California State University and The California Faculty Association in effect on March 15, 1999, except as modified by CSU Policies adopted pursuant to the Board of Trustees' Resolution of March 17, 1999.

**** The grievance procedure for temporary employees who have not been employed for more than one semester or quarter shall be the procedure described in Article 10 of the Collective Bargaining Agreement between The Board of Trustees of The California State University and The California Faculty Association in effect on March 15, 1999, except that all provisions concerning arbitration shall not apply to these grievances.

- d. The term "appropriate administrator" as used in this Policy shall mean the individual who has been designated by the President to act pursuant to the procedures set forth in this Policy.
- e. The terms "respond" and "file" as used in this Policy shall mean either personal delivery or delivery through the U.S. mail, certified mail, return receipt requested. If personal delivery is used, the grievant or appropriate administrator shall provide a written receipt. If certified mail is used, the return receipt shall establish the date of delivery. The terms "respond" and "file" as used in regards to Level II of this Policy shall also mean transmittal by telefax. If telefax transmittal is used either to file or to respond at Level II, the telefax transmittal cover letter must be returned and shall include the signature of the receiving party acknowledging receipt, as well as the date of receipt. A response or filing at Level II shall not be considered accomplished in the absence of such date and signature on the cover letter.
- f. The term "faculty status matter" as used in this Policy shall mean a dispute involving solely a decision not to reappoint, promote, or tenure.

10.3 Grievance Forms

- a. All grievances, requests for review, or appeals shall be submitted in writing on the form attached to these Policies 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, the designated faculty adviser or counsel 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 Policy. 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 refileing utilizing the appropriate form shall take place within seven (7) days of receipt of the appropriate form.

Grievance Procedure

10.4 Level I - Faculty Hearing Committee

- a. A grievant eligible to grieve pursuant to 10.2 of this Policy 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. The grievant shall state clearly and concisely on a grievance form:
 - 1. a description of the grounds of the grievance including names, dates, places, times, necessary for complete understanding;

2. a proposed remedy;
 3. 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 his/her signature;
 4. the name and address of the grievant's designated faculty adviser or counsel, if any; and
 5. the date of submission.
- b. 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, during which period 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 liberally granted unless to do so would seriously impede resolution of the grievance.
1. Upon request of the grievant during the postponement period(s), the President shall arrange an informal conference between the appropriate administrator and the grievant.
 2. 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 I hearing 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.
 3. The grievant shall have the right to representation by a faculty adviser or counsel of his or her choice during attempts at informal resolution of the grievance.
- c. Within fourteen (14) days after the Level I filing, the President shall submit the grievance for hearing before a faculty hearing committee composed of full-time faculty members, selected by lot from a Panel elected by the campus faculty. The grievance hearing shall be open to the public at the option of the person aggrieved. 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. The hearing shall be held at a mutually acceptable time and location. The faculty hearing committee shall make a recommendation to the President in writing, with a copy to the grievant, no later than fourteen (14) days after the Level I hearing. Such

recommendation shall include a statement of reasons for any denial or granting of the grievance.

10.5 Level II - Presidential Review

- a. The President shall review the matter and issue a decision no later than twenty-one (21) days after receipt of the Level I recommendation.
- b. If there is disagreement between the faculty hearing committee's recommendation and the President's decision, the matter shall go before an arbitrator whose decision shall be final. Within forty-two (42) days after receipt of the decision at the previous level or the expiration of the time limits for making such decision, the grievant may request arbitration by giving notice to that effect, by certified mail, return receipt requested, directed to the Office of Employee Relations. The grievant may also request arbitration by transmittal by telefax. If telefax transmittal is used the cover letter must be returned and shall include 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.

10.6 Arbitration

Unless the specific language of this Policy is in conflict, the arbitration procedure shall be conducted in accordance with the rules of the AAA, subject to the policies below:

- a. 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.
- b. Any grievance filed into arbitration shall be considered withdrawn if the parties to the arbitration have not, within twelve (12) months of the date of filing to arbitration from Level II, agreed upon a date and scheduled the case for hearing with the arbitrator assigned to the case. This policy shall be extended for an additional thirty (30) days at a time, in cases where the grievant has agreed to dates proposed by an arbitrator which are unacceptable to the CSU.
- c. 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.
- d. The arbitrator shall have no authority to add to, subtract from, modify, or amend any CSU Policy.

- e. The authority of an arbitrator with respect to granting appointment, reappointment, promotion, or tenure shall be as follows:

In cases involving appointment, reappointment, promotion, or tenure, 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 find that an error in procedure will overturn an appointment, reappointment, promotion, or tenure decision on the basis that proper procedure has not been followed unless:

1. there is clear and convincing evidence of a procedural error; 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, reappointment, promotion or tenure except in extreme cases where it is found that:

1. the final campus decision was not based on reasoned judgment;
2. *but for that, it can be stated with certainty that appointment, reappointment, promotion, or tenure would have been granted;* and
3. 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.

In the event the CSU seeks to vacate an arbitration award in the manner prescribed by the California Code of Civil Procedure, the court may, among the other matters it considers, determine whether or not the arbitrator has exceeded his/her authority with respect to the foregoing.

- f. A final decision or award of the arbitrator shall be made within thirty (30) calendar days after the close of the hearing. Such decision or award shall be binding upon the CSU and the employee(s) affected thereby.

- g. The cost of the arbitration, excluding advocate, unilateral withdrawal, postponement, or cancellation fees, shall be borne by the CSU. Expenses for witnesses, however, shall be borne by the party who calls them.
- h. The standard of review for the arbitrator in other than faculty status cases is whether the CSU directly wronged the grievant in connection with the rights accruing to his or her 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.
- i. The grievant and the CSU may mutually agree to invoke the "Streamlined Labor Arbitration Rules" of the AAA for the hearing of a case.
 - 1. Within ten (10) days from the date the hearing is closed, the arbitrator shall issue to the parties a written award stating his/her 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 CSU and the employee(s) affected thereby.
 - 2. At the request of either party, the arbitrator shall provide a complete written rationale for his/her award including findings, reasons, and conclusions on the issue(s) submitted no later than thirty (30) days after the award is issued. Copies of this rationale for the award shall be provided to the parties.
 - 3. The written rationale for the award shall be considered part of the award for the purpose of appeal and the statutory period for appeal shall be considered to commence upon receipt of the rationale from the arbitrator.
- j. If an arbitrability question exists, the arbitrator shall determine the arbitrability question prior to hearing the formal presentations of the parties on the merits of the grievance.
- k. An arbitrator's award may or may not be retroactive as the equities of each case may demand, but in no case shall an award be retroactive to a date earlier than thirty (30) days prior to the date the grievance was initially filed in accordance with this Policy or the date on which the act or omission occurred.

Faculty Status Dispute Procedure

- 10.7 A faculty unit employee who has a dispute pertaining to a faculty status matter as defined by policy 10.2f shall notify the President in writing of the dispute within twenty-one (21) days from the receipt of the negative decision.

10.8 Any action in processing the dispute formally shall be postponed for a period of up to twenty-five (25) days, during which period the employee shall pursue efforts to resolve the dispute informally and shall be entitled to a good faith review of the issue(s) presented. Upon the employee's further written request, additional twenty-five (25) day extensions shall be liberally granted unless to do so would seriously impede resolution of the dispute. This effort at informal resolution shall be mandatory for all faculty status matters as defined in Article 10.2f. At the completion of a mandatory twenty-five (25) day period, or agreed-upon extensions thereof, unresolved faculty status matters shall be processed as provided for in policies 10.9 and 10.10.

10.9 If a dispute pertaining to a faculty status matter is not resolved to the employee's satisfaction through informal efforts, the employee may request a hearing by a faculty hearing committee. Such a request shall be made no later than thirty-two (32) days after serving notice of a dispute pursuant to policy 10.7. This time period shall be extended for a period equal to any mutually agreed upon extension of the twenty-five (25) day mandatory informal described in policy 10.8.

10.10 Faculty Hearing

- a.. The membership of the faculty hearing committee to hear a specific faculty status matter shall be selected by lot from the Panel established pursuant to policy 10.4c and consist of three (3) members and one (1) alternate. No employee may be eligible for membership on a specific faculty hearing committee if he/she has been directly involved with or a party to matters related to a grievance submitted by the employee to a faculty hearing.
- b. The faculty hearing committee shall begin hearing the faculty status matter within twenty-one (21) days of its selection by lot. The committee's review shall be limited to a consideration of the grievant's Personnel Action File; all written recommendations, rebuttals, and responses related to the faculty status matter; any written statement by the affected employee as to why his/her original review was inappropriate; and the Employer's written response to any allegations made by the affected employee. Except for presentations of the grievant and the administrator, including relevant testimony of witnesses, the committee's review will be made from the documents set forth in this section.
- c. The proceeding set forth in 10.10b above shall be open to the public at the option of the grievant and shall be a hearing. 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.

- d. No later than forty (40) days after its selection, the faculty hearing committee shall submit to the President and the grievant a written report of its findings and recommendations. All written materials considered by the faculty hearing committee, shall be forwarded to the President. When the faculty hearing committee has complied with this section, it shall be discharged of its duties.
- e. The President shall consider the faculty hearing committee's recommendations and all forwarded materials. The President shall, no later than fourteen (14) days after receipt of the faculty hearing committee's report and any other forwarded materials, notify the affected employee and the faculty hearing committee of his/her final decision, including the reasons therefor. If there is a disagreement between the faculty hearing committee's recommendation and the President's decision to grant or deny retention (i.e., an additional one-year appointment), promotion, or tenure, the matter shall go before an arbitrator whose decision shall be final. Any such arbitration shall be subject to the timelines set forth in policy 10.5b, above and shall be conducted as set forth in policy 10.6, above.

Mediation

10.11 Formal grievances and faculty status disputes 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 grievant 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 agreement of both parties.
- c. The timelines and order of the scheduling of grievances for arbitration pursuant to this Policy shall not be affected by the parties' desire to invoke mediation.
- d. The parties shall select the mediator by mutual agreement.
- 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

- 10.12 Wherever a time limit is provided by this Policy, 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 Office of the Chancellor. It is understood that the purpose of the procedure is to resolve grievances promptly and that extensions shall be sought only for good cause.
- 10.13 When meetings, conferences, or arbitration hearings are held under this Policy, employees who are entitled to attend 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.
- 10.14 No reprisals shall be taken against any employee for the filing and processing of any grievances.
- 10.15 Except for good cause shown, only those events and issues cited in the initial filing at Level I may be considered at subsequent levels.
- 10.16 A failure to grant promotion due to a lack of available funds shall not be grievable.
- 10.17 After the grievance has been filed at Level I, the designated faculty adviser or counsel and the grievant shall be provided reasonable release time for the purpose of preparation and presentation of the grievance at Levels I and II, provided that such release time shall not conflict with any scheduled classes and office hours.
- 10.18 Upon failure of the Employer or its representatives to provide a decision within the time limits provided in this Policy, the grievant may appeal to the next step. Upon the failure of the grievant to file an appeal within the time limits provided in this Policy, the grievance shall be deemed withdrawn.
- 10.19 In cases where it is necessary for the grievant or the designated faculty adviser or counsel to have information for the purpose of investigating a grievance, the grievant or his/her designated faculty adviser or counsel shall make a written request for reasonably specific information to the appropriate administrator. The grievant or his/her designated faculty adviser or counsel shall have the right to receive such information not defined as confidential or personal pursuant to the Information Practices Act of 1977 or HEERA, which would assist in adjusting the grievance.

- 10.20 A decision to submit a grievance to arbitration shall be a waiver of all other remedies except as provided otherwise by statute.
- 10.21 A grievance settled prior to the issuance of an arbitrator's award shall not set a precedent.
- 10.22 A grievance may be withdrawn at any time. The grievant shall not file any subsequent grievance on the basis of the same event.
- 10.23 The CSU and the grievant may mutually agree to consolidate grievances on similar issues at any level.
- 10.24 No resolution of any individually processed grievance shall be inconsistent with the terms of these Policies. 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.
- 10.25 All grievance files and/or the content of grievance meetings shall be confidential. Grievance records shall be kept in a file separate from the grievant's Personnel Action File.
- 10.26 Time limits shall be considered tolled where personnel are unavailable due to illness, vacations, or professional reasons.

Grievance Administration

- 10.27 From time to time, the CFA Central Office and the Office of the Chancellor shall compare grievance records.
- 10.28 Grievance rights pursuant to this Policy shall not be curtailed on the last date of employment if said grievance rights are exercised in accord with policy 10.4 and such other filing requirements as may apply.

THE CALIFORNIA STATE UNIVERSITY
INDIVIDUAL GRIEVANCE FORM
UNIT 3

Name: _____

Date of Submission to Campus President: _____

Classification: _____

Name of Representative: _____

Department or
Equivalent Unit: _____

Address of Rep: _____

Campus: _____

Campus Telephone: _____

The named representative is an agent of CFA:

Yes No

Signature: _____

Date of Informal Meeting: _____

LEVEL OF FILING

Level I - Formal (Faculty Hearing Committee)

Date: _____

Level II - Review (President)

Date: _____

Brief description of the grounds of the grievance (including names, dates, places, times, etc.,
necessary for complete understanding):

Proposed remedy:

Response:

Level I

Level II

Signature: _____

Title: _____

Date: _____

POLICY 19

DISCIPLINARY ACTION PROCEDURE

Scope of Disciplinary Action

- 19.1 This Policy* 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.
- 19.2 Disciplinary action shall not include denial of appointment, separation during a temporary appointment, rejection during probation, denial of tenure, denial of promotion, reappointment, reassignment, transfer, layoff, reprimand, temporary suspension with pay, or any other personnel action or recommendation or decision except those in 19.1 of this Policy. Recommendations or decisions in the appointment, reappointment, probation, tenure, promotion, reassignment, transfer, layoff, reprimand, or temporary suspension processes are not disciplinary actions for the purpose of this Policy and are not subject to the disciplinary action procedures of this Policy.

Informal Resolution Prior to Notice of Pending Disciplinary Action

- 19.3 Nothing contained in this Policy shall be interpreted to preclude a voluntary attempt by the parties to informally resolve potential disciplinary actions, prior to the notice of pending disciplinary action. *Attempts at informal resolution may not occur in cases that involve either the safety of campus persons or property, or the disruption of campus programs and/or operations.* 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.

* The Disciplinary Action Procedure Policies provided herein are intended to comply with the requirements of both the Education Code and HEERA. To the extent there are any conflicts between these Policies and the aforementioned statutes, the statutes shall govern. Definitions of terms not defined herein shall be as defined in Article 2 of the Collective Bargaining Agreement between The Board of Trustees of The California State University and The California Faculty Association in effect on March 15, 1999, except as modified by CSU Policies adopted pursuant to the Board of Trustees' Resolution of March 17, 1999.

** The Disciplinary Action Procedure for temporary employees who have not been employed for more than one semester or quarter shall be the procedure described in Article 19 of the Collective Bargaining Agreement between The Board of Trustees of The California State University and The California Faculty Association in effect on March 15, 1999, except that all provisions concerning arbitration shall not apply to these Disciplinary Actions.

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 certified mail return receipt requested to the affected faculty unit employee. 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 appropriate administrator designated by the President to review the matter;
 - e. the right of the faculty unit employee to appeal pending disciplinary action and to have the matter heard; and
 - f. a copy of this Policy.

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 to 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 seven (7) 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 appropriate administrator, the faculty unit employee and a designated faculty adviser or counsel, if any, may meet with the appropriate administrator 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 directed to the appropriate administrator within seven (7) days of the meeting or within fourteen (14) days of the notice of pending disciplinary action in the cases when no meeting takes place. A copy of such written response may be provided to

the President. The appropriate administrator designated by the President shall not have been directly involved in the initiation of the pending disciplinary action.

- 19.8 Based upon the review and the response, if any, of the affected faculty unit employee, the appropriate administrator shall issue a report to the President within five (5) days of the response of the affected faculty unit employee or within fifteen (15) days of the notice of pending disciplinary action in cases when no response is submitted. The President shall consider the report of the appropriate administrator.
- 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 policies 19.12a and 19.12b. In applicable cases this notice shall be the notice issued by the CSU for purposes stated in Education Code Section 89538 and Section 89539.

Disciplinary Action Appeal Process

- 19.10 A faculty unit employee as specified policy 19.1 may appeal a pending disciplinary action by selecting one of the two following appeal options:
- a. Within ten (10) days of receipt of the notification pursuant to policy 19.9 above, a faculty unit employee may file a written notice of appeal with the President in accordance with the Disciplinary Action Faculty Hearing/Arbitration Procedure, policies 19.13 - 19.21 below. Such a notice of appeal shall include the name and title of the faculty of his or her choice, if any. 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 policy 19.9 above, a faculty unit employee 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. 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 twenty (20) days of receipt of the notification pursuant to policy 19.9 above.
- 19.11 Filing the notice of one (1) of the two (2) disciplinary action appeal options pursuant to policy 19.10 above shall constitute a final and binding decision by the affected faculty unit employee.

Imposition of Sanction

- 19.12 a. If, pursuant to policy 19.10a, the affected faculty unit employee notifies the President of an appeal involving the sanction of suspension without pay for thirty (30) days or less, the grievant and the CSU may agree that the sanction shall be held in abeyance pending a final decision and its implementation.
- b. If, pursuant to policy 19.10a, 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.

Disciplinary Action Faculty Hearing/Arbitration Procedure

- 19.13 a. Following receipt of an appeal under Section 19.10a, the President or designee shall arrange for a disciplinary hearing by a 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 policy 10.4c, which shall make a recommendation to the President.
 - (2) The disciplinary hearing shall be open to the public at the option of the faculty unit employee charged in the 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.
- b. If the President agrees with the decision or sanction recommended by the faculty hearing committee, the President's decision is final and shall be implemented. If the President disagrees with the recommendation of the faculty hearing committee, the matter shall go before an arbitrator whose decision shall be final. Any such appeal must be filed with the President's office no later than 10 days after the President's decision.
- c. 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.

- 19.14 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.
- 19.15 Within ten (10) days from the date the hearing is closed, 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.
- 19.16 The arbitrator shall provide a complete written decision setting forth his/her findings, reasons, and 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.
- 19.17 The Voluntary Labor Arbitration Rules of the American Arbitration Association shall apply except when the specific language of this Policy is in conflict, in which case the specific language of this Policy shall apply.
- 19.18 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.
- 19.19 The arbitrator shall have no power to alter, add to, detract from, or amend any CSU Policy. 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 any CSU Policy.
- 19.20 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.
- 19.21 Each party shall bear the expenses of preparing and presenting its own case. The affected faculty unit employee, the designated faculty adviser or counsel, 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.

Pre-Sanction Suspension

- 19.22 When the President determines it is in the best interests of the campus, he/she may suspend with pay a faculty unit employee who has been served with a Notice of Pending Dismissal, Demotion, Suspension Without Pay pursuant to 19.4 of this Policy. Such a suspension may continue until imposition of sanction or a final award pursuant to this Policy or pursuant to Education Code Section 89539.
- 19.23 The affected faculty unit employee shall be notified in writing of such a suspension with pay. The President may terminate such a suspension at

any time. The affected faculty unit employee shall be notified in writing of such a termination.

Pre-Sanction Reassignment

19.24 When the President determines it is in the best interests of the campus, he/she may reassign a faculty unit employee who has been served with a Notice of Dismissal, Demotion, Suspension Without Pay pursuant to policy 19.4 of this Policy. 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 Policy or pursuant to Education Code Section 89539. The affected faculty unit employee shall receive written notification of reassignment and a written notification of termination of reassignment, when appropriate. Such a reassignment shall not be considered a punitive reassignment.