



Date: October 31, 2022

To: Kris Bezdecny, Chair
Academic Senate

From: Heidi Riggio, Chair
Faculty Policy Committee

Copies: D. Fazzi, E. Porter, R. Roquemore, V. Salcido

Subject: **Proposed Policy Modification for Chapter VI (Section E: Employment Policies and Procedures) of the *Faculty Handbook*: FPC 21-3.8: *Disciplinary Action Procedures for Academic Personnel***

The current Faculty Handbook policy on Disciplinary Action Procedures is largely empty except for reference to Article 19 of the Collective Bargaining Agreement. FPC added language to the policy to affirm the right of Cal State LA faculty members to due process (fair process and procedures, the right to defend oneself against allegations of wrongdoing) in disciplinary actions. Specifically, faculty must be notified of the consideration of disciplinary action(s) prior to pending disciplinary action; that faculty have the right to be informed of any allegations against them and copies of any evidence, statements, or documents (as per Weingarten rights) prior to pending disciplinary action; that faculty have a right to submit information, including evidence and names of witnesses, to Cal State LA administrators prior to pending disciplinary action; and that faculty have a right to meet with administrators (and a right to be accompanied by a CFA or faculty representative at such meetings) prior to pending disciplinary action. The language “prior to the notice of pending disciplinary action” is taken directly from Article 19.3 of the Collective Bargaining Agreement. This modification is consistent with Article 19 of the Collective Bargaining Agreement.

FPC deliberated about FPC 21-3.7 at its meetings of September 18, September 25, October 4, October 18, October 25, November 1, November 8, and November 15, 2021. FPC voted unanimously to approve the policy modification FPC 21-3.7, *Disciplinary Action Procedures for Academic Personnel*, on November 15, 2021.

This modification was approved by the Academic Senate in Spring, 2022, but returned unsigned by President Covino in August, 2022, on the basis that “*It is beyond the purview of the Academic Senate to create policy for items that address the terms and conditions of employment that were bargained for between the CFA and the CSU.*” In rebuttal to that statement, the charge of Faculty Policy Committee (Faculty Handbook Chapter II) includes recommending policy on “all matters concerning the faculty,” including “*personnel matters,*” which are defined in the policy on Personnel Committees as including discipline matters (Faculty Handbook, Chapter VI, Section B) (the FPC Charge includes a hyperlink to the definition of personnel matters in the Personnel Committees policy).^{*} Modifying the current Handbook policy addressing Disciplinary Action Procedures for Academic Personnel is within the charge of FPC. The President is acting inconsistently with the Faculty Handbook when he states that the Academic Senate and its Committees have no role in addressing faculty personnel matters, including discipline.

In a response to an Intent to Raise Questions about FPC’s right to make policies about items contained in the Contract, the University indicated that “past practice” of the University is important. This policy modification is consistent with past practice as indicated in the FPC Charge contained in Chapter II of the current Faculty

Handbook. The University in its response also indicated that this policy “expands on” what is in the Contract. That is exactly right, many current Handbook policies expand on what is in the Contract. It is not a violation of the Contract to expand on what is in the Contract.

Finally, although FPC did its due diligence and consulted extensively with many parties, including CFA, regarding the consistency of this new policy with Article 19 in the Contract and concluded that it is consistent with the Contract, Executive Committee of the Senate also consulted with CFA and was informed that this policy modification is consistent with the Contract.

FPC engaged in additional deliberation about FPC 21-3.8 at its meetings of September 12, 19 and 26, 2022 and voted unanimously to resubmit this policy modification to the Academic Senate on September 26, 2022.

The following points summarize the proposed changes to the policy:

- Lines 3-6: Reference to governing documents is added, including Article 19 of the Collective Bargaining Agreement; CSU Executive Order 1096 (revised), which governs investigations of harassment, retaliation, dating violence, and other investigations on campus and mandates that all parties have the opportunity to present information before any decisions are made or actions taken; and the U.S. Supreme Court decision that established Weingarten Rights.
- Lines 7-8: Asserts that Cal State LA faculty have a right to due process in all procedures surrounding disciplinary actions.
- Lines 8-10: Language indicates that the appropriate Cal State administrator(s) will notify any faculty person for whom disciplinary action(s) are being considered prior to the notice of pending disciplinary action.
- Lines 11-14: Language indicates that faculty members have a right to be informed of allegations against them and to receive copies of any evidence and documentation prior to the notice of pending disciplinary action.
- Lines 14-17: Language indicates that faculty have the right to provide information and evidence to the appropriate Cal State administrator(s) prior to the notice of pending disciplinary action.
- Lines 17-20: Language indicates that faculty have the right to meet with appropriate Cal State administrator(s) prior to the notice of pending disciplinary action.
- Lines 20-21: Language indicates that faculty have the right to be accompanied by a CFA or faculty representative(s) when they attend meetings with administrators.
- Lines 21-22: Language indicates that disciplinary action(s) should be corrective and not punitive whenever possible.
- Lines 23-24: Language refers faculty members and others to Article 19 of the Collective Bargaining Agreement for information about such procedures.

***The Faculty Policy Committee**

(Senate: 4/15/69, 8/1/72, 3/28/79, 2/10/81, 11/11/81 [EA], 8/4/82, 3/6/90, 8/17/99, 5/20/03; President: 4/21/69, 8/22/72, 4/24/79, 11/22/82, 4/5/90, 9/17/99, 9/5/03; Editorial Amendment: 9/00, 8/01, 11/07, 1/27/16 [EA])

Charge. The Faculty Policy Committee has the following responsibilities:

1. To recommend policy to the Academic Senate on all matters concerning the faculty that are not specifically reserved to the bargaining agent. This includes but is not limited to the following:
 - a. The committee shall develop policies and review procedures for faculty development programs, including grants, awards, publications and research.
 - b. The committee shall deal with **any personnel* matter** that may be assigned to it by the President or the Academic Senate.

Personnel Committees

(Senate: 5/30/89, 4/15/03, 5/31/11, 8/3/11 [EA], 5/9/17; President: 8/8/89, 9/25/03, 8/26/11, 5/30/17; Editorial Amendment: 9/99, 9/00; 8/01, 3/1/18 [EA])

Collective Bargaining Agreement between the California State University and the California Faculty Association, especially Articles 2, 10, 12, 13, 14, 15, 27, 28, and 29.

A faculty personnel matter is defined as a matter pertaining to personnel recommendations and personnel actions regarding a faculty unit employee. Such matters may include appointment, retention, tenure, promotion, retreat rights, **discipline**, grievance, appeals, personal and professional leaves of absence, sabbatical leaves, difference-in-pay leaves, and other awards involving a member of the faculty. Within this same context, a faculty personnel matter is further defined to include incompatibility of employment, nepotism, academic freedom and professional ethics, and other such matters.



Date: November 15, 2021

To: Talia Bettcher, Chair
Academic Senate

From: Heidi Riggio, Chair
Faculty Policy Committee

Copies: A. Avramchuk, D. Fazzi, J. Lazo-Uy, R. Roquemore, V. Salcido

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1 **Disciplinary Action Procedures for Academic Personnel**

2 (Senate: 11/14/89; President: 12/4/89)

3 GOVERNING AND OTHER RELEVANT DOCUMENTS: ARTICLE 19 OF THE
4 COLLECTIVE BARGAINING AGREEMENT; CSU EXECUTIVE ORDER 1096
5 (REVISED); *NATIONAL LABOR RELATIONS BOARD V. J. WEINGARTEN INC., 1975*
6 (WEINGARTEN RIGHTS).

7 CAL STATE LA FACULTY HAVE A RIGHT TO DUE PROCESS IN DISCIPLINARY
8 ACTIONS. THE APPROPRIATE CAL STATE LA ADMINISTRATOR(S) MUST NOTIFY
9 ANY FACULTY MEMBER FOR WHOM DISCIPLINARY ACTION(S) ARE BEING
10 CONSIDERED PRIOR TO THE NOTICE OF PENDING DISCIPLINARY ACTION.
11 FACULTY MEMBERS HAVE A RIGHT TO INFORMATION ABOUT ALLEGATIONS
12 MADE AGAINST THEM AND TO RECEIVE COPIES OF ANY DOCUMENTS,
13 WITNESS STATEMENTS, OR OTHER EVIDENCE PRIOR TO THE NOTICE OF
14 PENDING DISCIPLINARY ACTION. FACULTY MEMBERS HAVE A RIGHT TO
15 PROVIDE STATEMENTS, INFORMATION, NAMES OF POSSIBLE WITNESSES, AND
16 ANY OTHER EVIDENCE TO APPROPRIATE CAL STATE LA ADMINISTRATOR(S)
17 PRIOR TO THE NOTICE OF PENDING DISCIPLINARY ACTION. FACULTY
18 MEMBERS HAVE A RIGHT TO MEET WITH APPROPRIATE CAL STATE LA
19 ADMINISTRATOR(S) PRIOR TO THE NOTICE OF PENDING DISCIPLINARY
20 ACTION. FACULTY WHO ATTEND SUCH MEETINGS HAVE A RIGHT TO BE
21 ACCOMPANIED BY CFA AND/OR FACULTY REPRESENTATIVE(S). DISCIPLINARY
22 ACTIONS SHOULD BE CORRECTIVE AND NOT PUNITIVE WHENEVER POSSIBLE.

23 This i Information ON DISCIPLINARY ACTION PROCEDURES is found in Article 19 of
24 the COLLECTIVE BARGAINING AGREEMENT. **Agreement.**

