

IN THE MATTER OF THE ARBITRATION BETWEEN

SANG HEA KIL,)
)
 Grievant and Appellant,)
)
 and)
) Case No. CFA No. 2025-164
 BOARD OF TRUSTEES OF THE)
 CALIFORNIA STATE UNIVERSITY) **ARBITRATION AWARD**
 (ON BEHALF OF SAN JOSE STATE)
 UNIVERSITY),)
)
 Employer and Respondent.)
 _____)

I. INTRODUCTION

Appellant Dr. Sang Hea Kil (“Dr. Kil”) appeals the termination of her employment as a tenured professor at San Jose State University (“SJSU”) by her employer, Respondent Board of Trustees of the California State University (“CSU”).¹ The grounds for termination were “unprofessional conduct” and “failure or refusal to perform the normal and reasonable duties of [her] position” as set forth in Education Code §89535(b) and (f). Pursuant to Article 19 of the Collective Bargaining Agreement (“CBA”) between CSU and the California Faculty Association (“CFA”), of which Dr. Kil is a member, Dr. Kil initially appealed her termination to a Faculty Hearing Committee (the “FHC”). The FHC made certain findings in favor of, and against, Dr. Kil and concluded that although she violated certain University policies, the violations did not warrant the imposition of one of the available statutory sanctions (suspension, demotion, or dismissal). SJSU’s President agreed with the FHC’s findings against Dr. Kil, but

¹ SJSU and/or CSU are at times hereinafter referred to as “the University.”

disagreed with the findings in her favor. Under Article 19 of the CBA, the findings with which the President agreed are deemed final, binding, and not subject to arbitration. The findings with which the President disagreed, including that no disciplinary sanction is warranted, are the subject of this appeal.

A five-day arbitration hearing was held before the undersigned on March 2, 3, 4 and 5, 2026 on the SJSU campus and on March 10, 2026 via Zoom. At the hearing, Dr. Kil was represented by V. Jesse Smith, CFA Representation Specialist, and CSU was represented by Susan Westover, Esq. and Katherine A. Winder, Esq., CSU Office of General Counsel. Dr. Kil was present at the hearing as was CSU representative Julianne Kimiko Miyashiro.

The following 21 witnesses testified at the hearing: Jeanne Durr; Jennifer Sclafani; Dr. Cynthia Teniente-Matson; Dr. Vincent Del Casino; Dr. Jeffrey Blutinger; Dr. Linda Landau; Dr. Philip Heller; SJSU Police Chief Michael Carroll; Dr. Jon Tucker; Jesilyn Faust; Zaid Syed; Maaz Adil; Kathy Lin; Dr. Kristin Dukes; Soma Sen; Dr. Marcos Pizarro; Dr. Hank Reichman; Dr. Sang Kil; Clarissa Mae Calimbas; Amy Prause; and Alexandra Froelich Hankinson.

The following exhibits were admitted into evidence: CSU's Exhibits CSU-1 through CSU-35, Video Exhibits CSU-V1 through CSU-V26, and CFA's Exhibits CFA-1 through CFA-5. The parties submitted simultaneous Post-Hearing/Closing Briefs on May 8, 2026 and Reply Briefs on May 22, 2026.

Having read and considered the parties' arguments in their papers and considered the testimony and documentary evidence introduced at the hearing as well as counsel's arguments therein, the undersigned hereby issues the following Arbitration Award.

II. FACTS²

A. Dr. Kil's Tenure at SJSU

Dr. Kil received her Ph.D in Justice Studies from Arizona State University in 2006. She was appointed to the faculty of the Department of Justice Studies at SJSU in 2007 (CSU-4.10 at 1945-1948), granted tenure in 2013, and thereafter promoted to full Professor. (Reporter's Transcript ["RT"] Day 4 at 52:2-56:1) Dr. Kil has been teaching for approximately 25 years, 17 of which as a professor at SJSU until her suspension in 2024 and dismissal in 2025. (*Id.*)

Dr. Kil describes herself as a "scholar activist." Her Curriculum Vitae summarizes decades of scholarship, advocacy, and professional and community activities related to social justice issues as well as service to her academic community, for which she has been recognized by CSU and others. (CSU-4.3 [Exh. 67] at 1834-1861.) Notably, Dr. Kil is a published author, whose 2019 book "Covering the Border War: How the News Media Create Race, Crime, Nation and the USA-Mexico Divide" was awarded "Outstanding Academic Title: Media and Communications," by *Choice* magazine (a publishing unit of the Association of College and Research Libraries). In 2016, SJSU awarded Dr. Kil a Faculty Award for Global Citizenship, and in 2018-2019 SJSU awarded her a CHHS Lifetime Faculty Service Award.

² The findings of fact that follow are necessary to the Arbitration Award. They are derived from the testimony and documentary evidence presented at the hearing. To the extent that any of these findings differ from any party's position, that is the result of determinations by the arbitrator as to credibility and relevance, burden of proof considerations, legal principles, and the weighing of the evidence, both oral and written.

Dr. Kil's social justice activities include advocacy for the Palestinian people, both on campus and within her union. In Summer 2016, Dr. Kil visited the occupied territories of Palestine with a Palestinian Arab research group and thereafter began bringing Palestinian scholars and others to campus. (RT Day 4 at 80:6 -22.) Dr. Kil served as Co-chair of CFA's Palestinian, Arab, Muslim (PAM) Caucus and was a founding member of SJSU's Faculty for Justice in Palestine. At the time of her termination, she was serving as the Faculty Advisor to Students for Justice in Palestine ("SJP"), a recognized student organization ("RSO") at SJSU.³

Prior to her termination, no disciplinary action had been taken against Dr. Kil nor had she been found to have violated any University policies during her 17 years of employment at SJSU.

B. The Three Events

In Fall 2023 and Spring 2024, following the October 7, 2023 Hamas attack on Israel and Israel's military response in Gaza, there were numerous pro-Palestinian protests and encampments on American university campuses, including other campuses in the CSU system. Some of the protests were non-violent, notably the peaceful encampment at San Francisco State University ("SFSU") in late-April 2024, in which Dr. Kil participated; others resulted in property damage, violence, clashes with law enforcement, and arrests.

Within that context, Dr. Kil's conduct during three non-violent, pro-Palestinian protests (including an encampment) at SJSU between February and May 2024 resulted in

³ Dr. Kil has also served as tri-chair of the Asian Pacific Islander Desi Americans Caucus within CFA and serves as co-chair of the California Scholars for Academic Freedom.

her dismissal. The relevant facts and circumstances of each such protest and Dr. Kil's alleged misconduct during them are summarized below.

1. The February 19, 2024 Sweeney Hall Protest

a. From Classroom Lecture to Public Talk

In Spring 2024, Dr. Linda Landau, an English and Comparative Literature Professor at SJSU, was teaching a Holocaust Literature class. While studying the novel "The Oppermanns," which takes place in the 1930s and includes characters fleeing Germany to Palestine, Dr. Landau invited Professor Jeffrey Blutinger to give a lecture providing historical context to the events and references in the novel. (RT Day 2 at 58:2-58:20.) Dr. Blutinger is a Professor of History at CSU Long Beach and its Director of Jewish Studies. He teaches a course on Modern Israel and has written about "Holocaust memory" in Israel. (RT Day 2 at 6:24-8:4, 12:24-13:3, 14:9-12.)

At some point, the initial purpose of Dr. Blutinger's classroom lecture changed. Dr. Landau testified: "We decided that we would bring [the lecture] up to date since this was post-October 7 and there was so much agitation on campus." (RT Day 2 at 58:24-59:1.) The title of the lecture became "Constructing a Just Solution: Where Do Israelis and Palestinians Go from Here," and Dr. Landau and Dr. Vicky Harrison, the coordinator of Jewish Studies at SJSU, decided to move the lecture to the Dr. Martin Luther King, Jr. ("MLK") Library "and invite an open discussion, dialogue."⁴ (*Id.* at 58:21-59:14.)

Dr. Blutinger testified: "My goal was just to teach the students. But they [Drs. Landau and Harrison] wanted me to also speak to the wider community. They thought there would be a community of interest in how to achieve peace." (*Id.* at 15:17-25.)

⁴ The MLK Library is a unique public forum comprised of a university library and public library.

After the Blutinger talk was advertised, CSU administrators learned about a planned protest. Provost Vincent Del Casino (“Provost Del Casino”) testified that approximately a week before the scheduled talk, he became aware of conversations between campus police, Student Affairs and others as to whether the talk would still be open to the public or made private. (RT Day 1 at 244:18-245:10.) President Cynthia Teniente-Matson (“President Teniente-Matson”) and Director of Student Involvement Jon Tucker (“Tucker”) both testified that they became aware of a possible protest the weekend or day before Monday, February 19, 2024. (*Id.* at 160:15-161:1, RT Day 2 at 147:18-148:6.)

On Sunday evening, February 18, Tucker sent an email to “everyone” (recipient list not shown) regarding “a possible protest of an event on campus on Monday” with a link to the TPM Policy page on SJSU’s website. (CSU-4.3 [Exh. 54].) Dr. Kil responded, noting that the text of the policy was not yet available through the link” and asking, “how will one know what the policy is if you do not provide it?” (*Id.*) Tucker replied on the morning of February 19 that the drop-down menus in the link provides some guidance on the policy, “including location being outside” and “not disrupting academic . . . activities.” (*Id.*) The drop-down menu (CSU-4.8) does, in fact, provide guidance, including the requirement that freedom of expression activities be conducted in a manner that does not create excessive noise or unreasonably interfere with classes in session. (*Id.* at 1933.) Dr. Kil responded: “[I] really need to see the policy and not just an interpretation of it.” (*Id.*)

Also on the morning of February 19, Dr. Kil sent an email to representatives of sponsors of the lecture in the Departments of History and English and Comparative

Literature as well as the Office of Diversity, Equity and Inclusion, requesting that they withdraw their sponsorship of Dr. Blutinger’s lecture. In her email, Dr. Kil criticized Dr. Blutinger for refusing to recognize the “Palestinian genocide” and opined that sponsoring the event might be seen as a collaboration in “the campaign to erase and deny the genocide.” She concluded with her opinion that Dr. Blutinger’s “words” present a danger to SJSU students, particularly students in SJP. (CSU-13 at 2194.)

Some students in SJP informed Dr. Kil that they planned to attend the Blutinger talk at the MLK Library and do a silent protest with possible “banner drop.” Dr. Kil told them that she also planned to attend and ask Dr. Blutinger a question during the Q&A portion of the lecture. (RT Day 4 at 83:4-84:14.)

b. From Public Talk to Classroom Lecture

On February 19, approximately 30 to 45 minutes before Dr. Blutinger’s talk was scheduled to begin, Michael Carroll, Chief of the SJSU University Police Department (“Chief Carroll”), decided that the MLK Library was not a safe venue for the talk. (RT Day 2 at 114:15-17, 116:18-20.) His safety concerns included the volume of people he anticipated would attend and protest, the location of the room reserved for the talk and the fact that it had only one door (which was not conducive to an “emergency rescue of the presenter,” if necessary), and generally the fact that any member of the public had free access to the MLK Library. (*Id.* at 114:19-115:20.)

Given his safety concerns, Chief Carroll decided “to pivot” and move the talk to “the original [Dr. Landau’s] classroom” in Sweeney Hall. Chief Carroll preferred the Sweeney Hall venue because the building is a “secure building” with card-key controlled entry, and the classroom has a front and rear door that would facilitate any necessary

emergency rescue. (*Id.* at 115:24-116:17.) Dr. Landau emailed her students to notify them that the talk had been moved to Sweeney Hall.

When Dr. Kil arrived at the MLK Library, she did not see any signs or other communication notifying students and members of the public that the talk had been moved. Somehow word got out, and Dr. Kil and the others gathered at the MLK Library walked over to Sweeney Hall, assuming the talk was still open to the public. When they arrived, they were met in the hallway outside the classroom by campus police who were checking IDs with Dr. Landau's assistance to identify and admit only her students. (*See* RT Day 4 at 87:25-88:25.) As Dr. Kil testified: "I went to go see a public lecture at a public location [a]nd . . . ended up in a militarized hallway." (*Id.* at 90:17-19.)

Chief Carroll arrived at Sweeney Hall around 10 minutes before the lecture began and estimated that there were approximately 30 to 40 people in the hallway. He did not know how many were students or members of the public and stated that he saw "no problem" with them remaining in the hallway "as long as they were quiet." (RT Day 2 at 120:1-12.)

CSU submitted police bodycam footage of the hallway and video taken inside the classroom as events unfolded. (*See* CSU-V1 – CSU-V26.) In the early footage, the people in the hallway are seen standing and later sitting against the walls, talking with one another, looking at their cellphones, or taking cellphone pictures or videos. (*Id.*) Dr. Kil is seen standing silently across from the front door of the classroom behind a "Free Palestine" banner or holding up her cellphone to document the protest. (*See* CSU-V1 & CSU-V2.)

Once the class began, it became evident that those gathered in the hallway, who came to hear (and protest) a public talk on a matter of urgency to them, were being excluded. (*Id.* at 120:13-23.) Dr. Kil testified that one of the SJP students came up to her and asked whether the University’s time, place, and manner (“TPM”) policy permitted them to make noise outside of the classroom, and Dr. Kil responded that she had asked for the policy and not been given it, and that she “assumed we still have constitutional rights.” (RT Day 4 at 93:12-94:1.) At some point thereafter, chanting began. Chants included “Free Palestine” and “From the River to the Sea.”⁵ The chants also included “Shut It Down.” One brief video segment shows Dr. Kil standing behind her banner, wearing a black COVID-type face mask, joining in that chant.⁶ (*See* CSU-V7.) At no time was Dr. Kil seen leading any of the group chants or stomping her feet.

A “flashpoint” was reached when Dr. Jonathan Roth, a pro-Israel History professor at SJSU, entered the hallway and, after demanding that Provost Del Casino “get control of this,” walked toward the protesters and began videotaping them with his

⁵ Dr. Landau testified that one of the chants she heard was “Death to the Jews.” (RT Day 2 at 63:24-64.1, 86:5-11.) No such chant was heard in any of the 26 videos submitted by CSU. In response to questions from the arbitrator, Dr. Landau conceded that “Death to the Jews” was not one of the organized chants of the protesters. (*See id.* at 85:11-88:13.) Rather, from her perspective, having lived in Israel for nearly 40 years (*id.* at 64:21-22), the protesters’ chants, such as “From the River to the Sea,” had the same meaning as “Death to the Jews.” Had the protesters been chanting “Death to the Jews”—which leaves nothing to interpretation and goes far beyond criticism of the State of Israel—this would be a very different case. But that is not what occurred. Indeed, in response to Dr. Landau’s accusation, Dr. Kil strongly condemned such violent, antisemitic language, stating: “[I]f anyone ever said anything like ‘Kill the Jews’ in front of me, I would be one of the first people to disrupt that type of violence. That can’t happen around me, and it shouldn’t happen on campus.” (RT Day 4 at 118:17-21.)

⁶ Provost Del Casino, who was in the hallway with Dr. Kil during the protest, testified that when he asked her to move the protest outside, she responded that they were there to disrupt. Dr. Kil testified that Provost Del Casino directed her, as SJP Faculty Advisor, to disperse the protesters, and that she responded that she did not have that power, that it was not an SJP event, and that they were there to disrupt the University’s silence on the “genocide” in Gaza. (RT Day 4 at 114:2-115:14.) Whatever Dr. Kil may have meant when she admittedly used the term “disrupt” during what she described as a heated exchange with Provost Del Casino, by the time the protesters were chanting “Shut It Down,” their intent to disrupt the classroom lecture was evident.

cellphone camera. (RT Day 2 at 120:24-121:15.) One of the protesters put her hand up to block Dr. Roth's camera and he grabbed and bent or twisted her arm to move it away. Other protesters came to her aid and a brief scuffle ensued between protesters, Dr. Roth, and campus police. Campus police promptly removed Dr. Roth from the building, but the incident increased the tension and noise in the hallway. (See CSU-V5 & V7.)

When Chief Carroll felt the noise had gotten so loud that students in the classroom could not hear, he made the decision to "shut down" the lecture. Dr. Blutinger testified he would have continued teaching had the police not told him to stop and escorted him and the students out of the classroom to a "safe location." (RT Day 2 at 39:1-4, 122:16-123:4.) When asked why he did not clear the protesters out of the hallway instead, Chief Carroll responded:

"I didn't want my officers to engage the students [in the hallway] because I'm really big on the optics. I don't want my officers to be seen in a way that they're being aggressive. I don't want to cause any injury. I don't want anyone to misconstrue what the officers were doing. Because even a simple guiding someone as a police officer, it doesn't look good on camera."

(*Id.* at 123:5-14.) Once it became apparent that the class was no longer going on, the protesters can be seen leaving the hallway in an orderly fashion, and the protest continued outside the building.

Dr. Kil testified that Tucker emailed a copy of the University's 2024 TPM Policy to her approximately eight days after the February 19 protest and that she "skim read it." (RT Day 4 at 94:25-95:16.) In addition, on March 14, 2024, Student Organizations sent an email to RSOs and faculty advisors, including Dr. Kil, with a link to the 2024 TPM Policy.

2. The May 8, 2024 Protest

On May 8, 2024, a sit-in protest of the killing in Gaza was held on the Smith and Carlos Lawn—an authorized location for free speech activities on campus—as part of a CSU systemwide “day of action.” Dr. Kil learned about the protest from her students in SJP, which was participating in the event. (*See* CSU-32.)

During the protest, when participants were asked to “step up and say something,” Dr. Kil gave an impromptu speech. By her account, she discussed the positive things she observed during the encampment at SFSU, in which she had just participated the week before. She criticized efforts to use time, place, and manner policies, in her opinion, to repress pro-Palestinian speech. And she expressed her opinion that if students were thinking of doing an encampment, it was not too late (before graduation). (RT Day 4 at 126:5-129:4.) Two CSU administrators who attended the May 8 protest testified that, during her speech, Dr. Kil expressly encouraging students to violate the TPM Policy and set up an encampment. (*See* CSU-35 & CSU-36.)

3. The May 13 through 26, 2024 Encampment

On May 13, 2024, SJSU students started an encampment on campus, which continued through May 26, 2024. Dr. Kil stayed at the encampment for two days and three nights. (RT Day 4 at 142:23-143:2.) She was reportedly asked by the student organizers to speak to the media on their behalf, which she did. (*Id.* at 145:19-25.) The students also designated Dr. Kil as their liaison with the SJSU administration and included as the last of their nine demands that the University end its investigation of Dr. Kil for her pro-Palestinian speech. (RT Day 3 at 16:7-19:6; CSU-33.) Dr. Kil

testified that she had asked the students to consider including this demand, but left it up to them to decide whether to do so. (*See id.*)

III. UNIVERSITY POLICIES ALLEGELY VIOLATED BY DR. KIL

A. SJSU's Time, Place, and Manner Policies

1. 2024 Presidential Directive on Freedom of Expression and Time, Place, and Manner

The Presidential Directive on Freedom of Expression and Time, Place, and Manner (the “2024 TPM Policy” or “TPM Policy”) has an effective date of January 1, 2024 (CSU-4.5 at 1892-1909) although its full text had not been provided to the SJSU community until after the February 19, 2024 protest. The Policy expresses SJSU’s commitment to freedom of speech while preserving its right to establish TPM limitations “to ensure that individuals and groups exercising their legitimate rights do not infringe on the rights of others or disrupt the educational process or other operations of the University.” (*Id.* at 1896.) As stated in the 2024 TPM Policy: “One of the University’s principal values is to serve as a place where differing points of view converge and to respect the rights of others to express themselves.” According to the Policy, the appropriate way to counteract speech with which a community member disagrees “is through discourse, criticism, and the expression of contrary points of view,” including addressing objections to the responsible organization of individual.” (*Id.* at 1895.)

The 2024 TPM Policy prohibits freedom of expression activities that, among other things, “interfere with or disrupt the conduct of University essential business operations,” “creat[e] excessive noise,” or “unreasonably interfere with classes in session.” (*Id.* at 1897, 1899.) The policy further prohibits camping on University

property without written permission from Facilities Development and Operations as well as assemblies, marches, and demonstrations inside University buildings, including near classes in session. (*Id.* at 1899-1900.)

The 2024 TPM Policy provides that “[t]he University Policy Department has authority to ensure protection of freedom of expression and constitutional rights, participant safety, and, if needed, to implement dispersal procedures only when participants have exceeded the limits of their constitutional rights or exceeded the general limitations of this directive.” (*Id.* at 1901.)

2. 2022 Interim Presidential Directive on Freedom of Expression and Time, Place, and Manner

The 2024 TPM Policy was immediately preceded by the Interim Presidential Directive on Freedom of Expression and Time, Place, and Manner (the “2022 TPM Policy”), which became effective on July 1, 2022. (CSU-4.4 at 1872-1891.) The relevant language in the 2022 TPM Policy related to disruption of University operations, interference with classes in session, excessive noise, camping, and police enforcement is substantially the same as, if not identical to, the language of the 2024 TPM Policy. (*See id.* at 1875-1876, 1879-1881.)

B. SJSU Policy S99-8 on Academic Freedom and Professional Responsibility

SJSU Policy S99-8 on Academic Freedom and Professional Responsibility (“Policy S99-8”) is an aspirational policy. (*See* CSU-4.6 at 1910-1919.) By its terms, S99-8 provides “standards” that are “ideals to which all faculty members should aspire.” (*Id.* at 1913.) Those ideals include responsibilities to foster a campus environment that supports a robust discussion of issues (including political and societal issues) and

promotes respect for the opinions of others, and to show due consideration for diverse opinions. (*Id.* at 1914, 1916.)

C. CSU Executive Order 1068 on Advisor Responsibilities to RSOs

CSU Executive Order 1068 on Advisor Responsibilities to RSOs (“EO 1068”) establishes CSU system-wide policies, procedures and guidelines for student organizations and activities, including a section on the role of student organization advisors. (CSU-4.7 at 1921-1928.) The policy describes some of the common roles of an advisor as a “mentor, team builder, motivator, role model, educator, institutional policy interpreter, source of information and ideas, and liaison between the organization and university administration.” (*Id.* at 1927.) Duties and expectations of an advisor include “helping the group understand the university’s policies and guidelines.” (*Id.*)

IV. PROCEDURAL HISTORY

A. The Outside Investigation

On April 25, 2024—more than two months after the February 19, 2024 protest—SJSU notified Dr. Kil that it had hired an outside investigator to report on whether her conduct during the February 19, 2024 protest violated University policies. (CSU-16.) Between February 19 and April 25, 2024, no SJSU administrator contacted Dr. Kil regarding her conduct during the protest.

On May 24, 2024, SJSU notified Dr. Kil that the scope of the outside investigation had been expanded to include her conduct during the May 8, 2024 protest.

(CSU-18.) Also on May 24, 2024, SJSU placed Dr. Kil on a paid suspension (administrative leave), effective immediately. (CSU-19.)⁷

The outside investigation was extensive, including transcribed interviews of approximately 30 people, compilation and review of social media posts, videos, photographs, voice mail messages, and other documents. The investigation report was issued on April 21, 2025 (CSU-4.3)—11 months after Dr. Kil was placed on paid administrative leave. The report concluded that Dr. Kil’s conduct during the February 19 and May 8, 2024 protests violated the TPM Policy, Policy S99-8, and EO 1068.

B. Notice of Pending Discipline

On June 12, 2025, CSU initiated disciplinary action against Dr. Kil by issuing a Notice of Pending Discipline (“NOPD”) pursuant to Article 19.4 of the CBA. (CSU-1 at 0093-0094, CSU-4 at 0351-0366.) The NOPD is signed by Jeanne Durr (“Durr”), Interim Senior Associate Vice President, University Personnel, who testified that she made the decision to terminate Dr. Kil. Relying substantially on the findings of the outside investigator, the NOPD concludes that Dr. Kil’s violation of University policies during the two protests and the encampment constituted “unprofessional conduct” and a “failure or refusal to perform the normal and reasonable duties of her position” within the meaning of Education Code §89535(b) and (f) and thus cause for disciplinary action. The NOPD further concludes that Dr. Kil’s conduct was so egregious as to warrant dismissal. The NOPD informed Dr. Kil of her right to meet with and have the Notice

⁷ CSU states, and Dr. Kil does not dispute, that she was paid her salary from the date of her suspension on May 24, 2024 through the effective date of her termination, November 26, 2025. (See CSU-11, CSU-19, CSU-20.)

reviewed by a Review Officer, Jennifer Sclafani (“Sclafani”). (See CSU-1 at 0094-95 [CBA, Art. 19.7, 19.8 & 19.9 describing the “*Skelly*” review process].)

C. The *Skelly* Review and Final Decision Letter

Dr. Kil and a CFA representative met with Sclafani via Zoom on June 20, 2025. Sclafani issued her *Skelly* Review Report on June 25, 2025, recommending that the sanction of dismissal be sustained. (CSU-5.) On June 30, 2025, Durr sent Dr. Kil a letter notifying her that it was Durr’s final decision to impose the sanction of dismissal effective July 14, 2025. (CSU-6.)

D. The FHC Appeal Hearing

On July 9, 2025, by letter from CFA to President Teniente-Matson, Dr. Kil gave notice of her appeal of the June 30, 2025 final decision letter and her selection of the option to have the matter heard by the FHC. (CSU-7.)

The FHC is composed of three full-time faculty members chosen by lot. The FHC holds a one-day hearing of an appeal and is tasked with making a recommendation to the President as to “whether the proposed disciplinary action should be sustained, modified, or voided.” (CSU-1 [CBA, Art. 19.10(d)].) After holding a hearing on Dr. Kil’s appeal, the FHC submitted its recommendation to President Teniente-Matson on November 6, 2025 (the “FHC Recommendation”). (CSU-8.) The FHC found that Dr. Kil violated (i) the TPM Policy during the February 19, 2024 protest but *not* Policy S99-8 or EO 1068, (ii) Policy S99-8 and EO 1068 during the May 8, 2024 protest, and (iii) the TPM Policy during the May 13-26, 2024 encampment.

The FHC further found that Dr. Kil’s actions were not the primary factor in disrupting Dr. Blutinger’s lecture on February 19, 2024 and that several other factors

contributed to the disruption, including: (1) the last-minute move from a public forum to an undisclosed private location with a police presence; (2) the presence of University administrators in the hallway who allowed the protest to take place inside a University building in violation of the TPM Policy; and (3) the altercation between Dr. Roth and a protester. Placing Dr. Kil's conduct in the context of those factors, the FHC concluded:

“It appears . . . that the University is assigning a disproportionate share of the blame for the events of Feb. 19 on Dr. Kil. However, given the way factors were managed by other parties, the only fair assessment is that of shared contributory negligence.”

(CSU-8 at 1956.)

Based on those findings, the FHC concluded that Dr. Kil should not receive any disciplinary action under Education Code §89535. The FHC found that the NOPD made a “meager case” for dismissal, failing even to address why lesser sanctions were insufficient, and that Durr's decision-making process in selecting the sanction of dismissal was “totally insufficient.” (CSU-8 at 1956.) The FHC did not find compelling the assertion in the NOPD that Dr. Kil's most concerning conduct was exposing students to potential student conduct violations and legal consequences allegedly to advance her own personal interests. (*Id.* at 1957.)

The FHC was further persuaded by evidence that the sanction imposed on Dr. Kil was not comparable to sanctions imposed on other CSU faculty in three contemporaneous pro-Palestinian protest cases. (*Id.* at 1957.) After briefly describing the cases, the FHC concluded it would be unreasonable for Dr. Kil to receive a sanction greater than the sanctions imposed in any of the three cases, namely, no disciplinary action in two of the cases (with a reprimand in one) and a one-month suspension in the third case. (*Id.*; *see*

Section VIII.D below.) Ultimately, the FHC concluded that Dr. Kil had suffered “significant negative consequences” by having to prepare her defense for the FHC hearing and not being able to perform her duties as a professor and declined to impose one of the disciplinary sanctions available under Education Code §89535.

E. Presidential Response to the FHC Recommendation

On November 21, 2025, President Teniente-Matson issued her Presidential Response to FHC Recommendation to Dr. Kil. (CSU-9.) In her Response, President Teniente-Matson agreed with the FHC’s findings as to the University policies violated by Dr. Kil during the three protests, but disagreed with their findings that Dr. Kil did not violate Policy S99-8 or EO 1068 during the February 19, 2024 protest and that no disciplinary sanction is warranted.

With respect to the February 19, 2024 Protest, President Teniente-Matson noted that the FHC did not provide reasoning for rejecting the two alleged policy violations. The President opined that it was not credible for Dr. Kil to believe that University policies or standards of professional conduct would permit disruption of a lecture in a classroom building. (CSU-9 at 1961.)

With respect to the sanction issue, the President first observed that “[i]t is unprecedented to have most charges sustained yet have no sanction imposed at all,” noting that time on temporary suspension with pay is not a disciplinary sanction as stated in Article 19.2 of the CBA. (*Id.* at 1962.) The President reiterated the finding in the NOPD, which the FHC did not find compelling, that Dr. Kil’s most concerning conduct was exposing students to potential student conduct violations and legal consequences allegedly to advance her own personal interests. (*Id.*) Ultimately, President Teniente-

Matson concluded: “It is on the issue of your [Dr. Kil’s] repeated and wanton violation of policy that I am most concerned, as there is no evidence that you would follow policy in the future.” (*Id.*) For that reason, the President imposed the sanction of dismissal effective November 26, 2025. (CSU-9 at 1963.)

F. Dr. Kil’s Appeal to Arbitration

Pursuant to Article 19.10(e)(6) of the CBA, Dr. Kil appealed President Teniente-Matson’s Response to arbitration. (CSU-10.)

V. STATEMENT OF ISSUES

The procedural posture of this appeal is reportedly rare in that the appeal follows a campus president’s partial acceptance/partial rejection of the recommendations of the FHC. The scope of appeal, in such cases, is addressed in Article 19.10(e)(5) of the CBA, which provides in relevant part:

Where the President agrees in part, and disagrees in part, with a decision of the Faculty Hearing Committee, then only the issues(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.

Therefore, for purposes of this appeal, the following findings of the FHC, with which President Teniente-Matson agreed, are not subject to arbitration and are, in effect, deemed established:

- During the February 19, 2024 protest, Dr. Kil violated the TPM Policy;
- During the May 8, 2024 protest, Dr. Kil violated Policy S99-8 and EO 1068; and

- During the May 13-26, 2024 encampment, Dr. Kil violated the TPM Policy.

The following findings of the FHC, with which the President disagreed, are subject to review on this appeal:

- Dr. Kil did not violate Policy S99-8 or EO 1068 during the February 19, 2024 protest; and
- Dr. Kil should not receive any of the three sanctions under Education Code §89535.

Under Article 19.16 of the CBA, an appeal to arbitration requires the arbitrator (i) “to determine whether cause for disciplinary action existed,” and (ii) “to affirm, modify, or deny the sanction or pending sanction.” In doing so, the arbitrator does not have the power “to alter, add to, detract from, or amend any CSU Policy or the [CBA].” (CBA, Art. 19.22.)

Thus, considering together the limited scope of review set forth in Article 19.10(e)(5) of the CBA and the arbitrator’s task set forth in Article 19.16, the issues to be decided in this case are:

1. Whether Dr. Kil’s conduct during the three protest events (in violation of University policies as determined by the FHC and the arbitrator) constituted “unprofessional conduct” and/or “failure to perform the normal and reasonable duties of [her] position” and thus “cause” for discipline under Education Code §89535 and the CBA; and
2. Whether the sanction of dismissal imposed on Dr. Kil should be affirmed, modified, or denied.

Acknowledging the standing disagreement between CSU and CFA as to whether the appropriate standard for disciplinary action is “cause” or “just cause,” the

undersigned reaffirms his adoption of a “cause” standard based on the plain language of CBA Article 19.16 and Education Code §89535. (*See* Arbitration Award, *In the Matter of the Arbitration Between Dr. John Lee and Board of Trustees of the California State University*, CFA Case No. 2024-034 at 11-12 [*“Lee Arbitration”*].) Specifically, the undersigned agrees with CSU that any one of the nine causes stated in Education Code §89535 may, by itself, be a proper ground for disciplinary action. (*See* CSU Closing Brief at 7-8.) That conclusion, however, is not inconsistent with consideration of “just cause” principles in determining the appropriateness of the sanction imposed, which is precisely what CSU does in its Closing Brief. (*See* CSU Closing Brief at 53-58.)

VI. SUMMARY OF PARTIES’ POSITIONS

CSU argues that Dr. Kil’s speech and conduct during three pro-Palestinian protests on the SJSU campus violated University policies related to time, place, and manner restrictions on freedom of speech, academic freedom, and student advisor responsibilities, which constituted “unprofessional conduct” and/or “failure or refusal to perform the normal and reasonable duties of her position” and thus “cause” for discipline under Education Code §89535(b) and (f). CSU further argues that the conduct was so “egregious” as to warrant dismissal of Dr. Kil from her position as a tenured full professor. In its Closing Brief, CSU asks the arbitrator to affirm Dr. Kil’s dismissal as the only appropriate disciplinary sanction. In its Reply Brief, however, CSU requests, in the alternative, that if the arbitrator were to conclude suspension were a more appropriate sanction, the suspension be for at least two full academic years.

Dr. Kil argues that her conduct during the three protests did not violate University policies or constitute just cause for imposing discipline under Education Code §89535(b) or (f). Dr. Kil contends that SJSU is using the policy-violation charges against her as a basis for terminating her because of her pro-Palestine advocacy. She further argues that imposition of the sanction of dismissal on a tenured, full professor with no record of discipline in more than 17 years employed by the University is “extreme, excessive and inappropriate” for the policy violations involved. Dr. Kil asks the arbitrator to find that CSU lacked “just cause” to discipline Dr. Kil, to rescind the termination and make Dr. Kil whole, to direct CSU to purge Dr. Kil’s personnel file of any reference to the discipline or investigation, and to retain jurisdiction for sixty (60) days from the date of this Award to address any disputes regarding its implementation.

VII. PROCEDURAL MATTERS RAISED BY CFA

In its Post-hearing Brief and Reply Brief, Dr. Kil raised three procedural matters that are briefly addressed in this Section before turning to the merits of the dispute.

A. Request to Redact the Names of Two Witnesses from the Hearing Transcript

Dr. Kil requests that the names of two former SJSU students who she called to testify on her behalf be redacted from the arbitration hearing transcript. The request is denied. (CFA Post-Hearing Brief at 14-16.)

Both witnesses, who participated in the May 2024 encampment and other protests on campus while students, expressed concern that if the hearing transcript containing their names and testimony were publicly disclosed, they might be “doxed” on a “Zionist” website or otherwise subject to a “mass-surveillance profiling campaign.” (TR, Day 3,

49:4-10, 79:12-14.) Such speculative concerns about possible reactions to testimony related to protests on public property do not qualify for an exemption from disclosure under the California Public Records Act (“CPRA”), Gov. Code §7920.000 *et seq.* As CSU correctly observes, Dr. Kil’s reliance on the Family Educational Rights and Privacy Act (FERPA) is misplaced because FERPA protects student *educational records*, which are not involved here. (CSU Reply at 4.) Nor does Government Code §7922.000 provide the broad exemption Dr. Kil reads into it. Rather, §7922.000 provides that a public agency may justify withholding a record if it can show either (i) that one of the statutory exemptions applies, or (ii) that “on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” Dr. Kil has not shown that any statutory exemption applies. Although she raises concerns about “confidentiality” and “privacy,” the statutory exemption related to those concerns only applies to “[p]ersonnel, medical, or similar files,” which are not involved here. (*See* Gov. Code §7927.700.) Nor does the “catch-all” provision of §7922.000 apply as it weighs competing *public interests* in the disclosure or non-disclosure of records, not private interests.

B. CSU’s Late-Filed Post-Hearing Brief and Appendix

Dr. Kil requests that the undersigned find in her favor and reinstate her based on CSU’s late-filed Closing Brief and Appendix. (CFA Reply Brief at 4-6.) The request is denied.

The deadline for submitting Post-hearing Briefs was May 8, 2026 without a set time. CFA served its brief before 5:00 p.m. on May 8, 2026. When CSU had not served its brief by 5:00 p.m., CSU’s counsel stated, in response to an inquiry from CFA’s

counsel, that CSU considers 11:59 p.m. to be end of day as adopted by courts and would submit their brief by then. The brief was not submitted until 12:10 a.m. the next day reportedly because of “technical difficulties” due to computer crashes on May 8. CSU’s counsel represented that they had not opened CFA’s brief and, absent a set time, the brief was only 10 minutes late. CFA has not, nor could it reasonably, made a showing of prejudice based on those 10 minutes. Similarly, CSU’s Appendix/Compendium of Authorities was prepared as a courtesy and was not required. Therefore, there was no prejudice from the four-day delay in submitting it.

C. CSU’s References to CFA’s Expert’s Published Books

Dr. Kil requests that the arbitrator disregard CSU’s effort to use its Closing Brief to further cross-exam Dr. Kil’s expert Dr. Henry Reichman. (CFA Reply at 6-8.) The request is granted.

CSU had a full and fair opportunity to cross-examine Dr. Reichman at the hearing, including regarding his scholarly publications, and did so. (*See* RT Day 4 at 30:10-42:4.) In its Closing Brief, CSU cites at length to passages from two of Dr. Reichman’s books, both of which were referenced during his testimony, for the expressed purpose of arguing that his testimony is at odds with statements in those publications. (*See* CSU Closing Brief at 33-36.) First, while CSU asserts that Dr. Reichman claimed to be basing his opinions on the two books, the undersigned could find no such statement by Dr. Reichman in the record. Regardless, without giving Dr. Reichman the opportunity to address CSU’s excerpts from his publications either on cross-examination or redirect, CSU’s argument in its Closing Brief based on those excerpts is not helpful to the adjudicatory process and will be disregarded.

VIII. DISCUSSION

A. **Dr. Kil's Conduct During the February 19, 2024 Protest Did Not Violate Policy S99-8 or EO 1068**

The FHC determined that Dr. Kil violated the TPM Policy but did not violate Policy S99-8 or EO 1068 during the February 19, 2024 protest. As discussed below, the undersigned concurs with the FHC's determination (although the FHC did not provide any supporting reasoning). Neither policy states nor reasonably implies that a disciplinary sanction, let alone discharge, would be a consequence of failing to satisfy the ideals and responsibilities expressed in each policy. In other words: neither policy is prohibitory such that its provisions are capable of being "violated." Although Dr. Kil's conduct during the February 19, 2024 protest fell short of the aspirations and duties expressed in the policies, those failures could have been addressed in a more proportionate and constructive fashion.

1. **Policy S99-8**

Policy S99-8 provides "standards" that are "ideals to which all faculty members should aspire." (CSU-4.6 at 1913.) Under the facts of this case, the same conduct that violated prohibitions in the 2024 TPM Policy—making excessive noise in a hallway outside of a class in session with the expressed purpose of "disrupting" or "shutting down" a guest lecturer whose views you disagree with—also failed to achieve the ideals expressed in Policy 99-8—robust discussion of issues, respect for the opinion of others, and due consideration for diverse opinions. Whereas the conduct is appropriate for discipline as a violation of prohibitions in the TPM Policy, the failure to live up to the aspirational ideals expressed in S99-8 is not.

2. EO 1068

EO 1068 establishes systemwide policies, procedures, and guidelines for student organizations and activities, and includes a section on the “Role of the Advisors.” (CSU-4.7 at 1926-1927.)

The undisputed evidence is that students in SJP intended to conduct a silent protest with possible banner drop at Dr. Blutinger’s scheduled public talk at the MLK Library. The spontaneous protest that ensued in Sweeney Hall was not an event sponsored by SJP nor was Dr. Kil there in her capacity as SJP’s Faculty Advisor. However, when an SJP student came up to Dr. Kil and asked whether the TPM Policy permitted them to make noise outside the classroom, Dr. Kil was being asked for guidance in “understand[ing] the university’s policies and guidelines,” which is one of the duties of a faculty advisor stated in EO 1068. It is immaterial whether the guidance was sought at an SJP-sponsored event or during an SJP meeting.

Dr. Kil’s response—that she had asked for the policy and was not given it, and that she “assumed we still have constitutional rights”—did not help the student in understanding the relevant provisions of the TPM Policy. (*See* RT Day 4 at 93:12-94:1.) While it is true that Dr. Kil did not have the text of the policy at the time, Jon Tucker directed her, on the morning of February 19, 2024, to detailed information about the policy on the SJSU website, including its prohibitions on excessive noise and unreasonable interference with classes in session. (*See* CSU-4.8 at 1933.) At a minimum, Dr. Kil could have directed her students to review the TPM Policy information on the SJFU website (which they could have immediately accessed on their cell phones) and let her students make their own decision about the propriety of making noise in a

hallway outside of a class in session. By responding as she did, Dr. Kil failed in performing one of her duties as a faculty advisor as described in EO 1068, but did not violate a prohibition that would justify imposition of a disciplinary sanction, let alone dismissal.

B. CSU Had “Cause” To Take Disciplinary Action Against Dr. Kil Under Education Code §89535.

1. “Cause” Under Education Code §89535

A permanent or probationary CSU employee may be dismissed, demoted, or suspended for one or more of the following nine causes set forth in Education Code §89535:

- (a) Immoral conduct.
- (b) Unprofessional conduct.
- (c) Dishonesty.
- (d) Incompetency.
- (e) Addiction to the use of controlled substances.
- (f) Failure or refusal to perform the normal and reasonable duties of the position.
- (g) Conviction of a felony or conviction of any misdemeanor involving moral turpitude.
- (h) Fraud in security appointment.
- (i) Drunkenness on duty.

Any of the three disciplinary actions set forth in §89535 may be taken against any employee who works for [CSU], “whether tenured or not.” (*Moosa v. State Personnel Board* (2002) 103 Cal.App.4th 1379, 1385.)

Here, CSU imposed the sanction of dismissal on Dr. Kil based on two of the causes for discipline set forth in §89535: (i) subsection (b), “unprofessional conduct,” and subsection (f), “failure or refusal to perform the normal and reasonable duties of [her] position” as a CSU professor. (CSU 9 at 1963.) CSU bears the burden of proving, by a

preponderance of the evidence, that Dr. Kil committed misconduct within the meaning of one or both of those subsections. (CSU-1 at 0104 [CBA, Art. 19.29].) As discussed below, CSU met its burden of proving that Dr. Kil engaged in unprofessional conduct but did not meet its burden of proving a failure or refusal to perform her job duties as a professor.

2. Unprofessional Conduct

The phrase “unprofessional conduct” as used in Education Code §89535 is undefined. In *Board of Education of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, overruled on other grounds in *Bekiaris v. Board of Ed.* (1972) 6 Cal.3d 575—a case involving dismissal of a secondary school teacher for “unprofessional conduct” as used in a different section of the Education Code—the California Supreme Court observed that there is no technical meaning to the word “unprofessional” and that the phrase “unprofessional conduct” should therefore be construed “according to its common and approved usage, having regard for the context in which the Legislature used it.”⁸ (41 Cal.2d at 553.) The Court then adopted the following as a definition of “unprofessional conduct”: “that which violates the rules or ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing.” (*Id.*)

Here, the phrase “unprofessional conduct” was used by the Legislature in Education Code §89535 as one of nine “causes” for discipline of CSU university employees, including professors. Therefore, the issue presented in this case is not whether Dr. Kil violated one or more University policies during the protests, but whether

⁸ A succinct definition of “unprofessional” is found in *The American Heritage Dictionary of the English Language* (5th ed. 2022) (a source commonly referenced by California appellate courts): “not conforming to the standards of a profession.”

her *conduct* during the protests was “unprofessional,” that is, involved a failure to conform with rules and ethics applicable to a university professor or was unbecoming a university professor in good standing.⁹ As discussed below, the undersigned concludes that Dr. Kil’s conduct during the protests, primarily her disregard or disobedience of the TPM Policy, was unprofessional and cause for discipline.

a. Shouting Down a Lecturer Whose Views You Disagree With

The most serious conduct for which Dr. Kil was disciplined was her participation in the chanting outside of Dr. Landau’s classroom for the express purpose of disrupting a class in session because she and others did not like the ideas they believed the lecturer would be expressing. Obviously, if every member of a university faculty were permitted to shout down another faculty member with whom they disagree, the result would be academic anarchy (which to some extent was captured in the video evidence). Such misconduct was in clear violation of the TPM Policy, as the FHC found, and the unprofessionalism of such conduct cannot reasonably be disputed. Not surprisingly, Dr. Kil’s expert, Dr. Reichman, agreed that shouting down a guest lecturer/faculty member would violate his freedom of speech and academic freedom. (*See* RT Day 4 at 30:18-24, 31:7-25.)

Dr. Kil’s assertion that she was not aware of the TPM Policy or prohibitions on excessive noise and disruption of classes is not credible. Had the 2024 TPM Policy introduced new time, place and manner prohibitions that SJSU was attempting to enforce against Dr. Kil before the full text of the policy was delivered to the SJSU community,

⁹ The further question of whether Dr. Kil’s unprofessional conduct justified the sanction of dismissal is discussed in Section VIII.D below.

Dr. Kil's argument might have some weight. But the relevant provisions of the 2024 TPM Policy prohibiting free-speech activities that disrupt university operations, including classes, were in effect throughout Dr. Kil's employment at CSU and were either known to her or would have been known to her had she exercised reasonable diligence. (*See* CSU Closing Brief at 23-27 [quoting from the 2001, 2009, 2011, 2022 and 2024 iterations of SJSU's TPM policy].)¹⁰

Specifically, in December 2021, the 2022 TPM Policy was emailed to the campus community, including Dr. Kil (CSU-22), and the policy was posted on the SJSU website. Consistent with earlier policies, the 2022 TPM Policy prohibited freedom of expression activities that create excessive noise and unreasonably interfere with classes in session. (CSU-4.4 at 1877.) That exact same prohibition is carried into the 2024 TPM Policy verbatim. (*See* CSU-4.5 at 1897, 1899.) On the evening of February 18, Jon Tucker reminded Dr. Kil and others of the TPM Policy, with a link to information about the policy on SJSU's website. On the morning of February 19, in response to a further inquiry by Dr. Kil, Tucker specifically pointed out the policy's requirement that protest locations be outside and not disturb academic activities. (CSU-4.3 [Exh. 54].)

Regardless of the circumstances that brought the lecture and protesters to Sweeney Hall on February 19, a professor's intent to shut down the lecture of another professor because she disagrees with his views is manifestly unprofessional conduct. Dr. Landau was Dr. Kil's colleague at SJSU and Dr. Blutinger was also her colleague within the CSU system. Dr. Blutinger was lecturing within his areas of academic

¹⁰ The 2009 policy states that the University "will protect the right of any member of the [SJSU] community, or any invited speaker or artist, to speak or perform, and also will protect the rights of those members of the [SJSU] community who wish to hear and communicate with an invited speaker or artist. (CSU-24 at 2394.)

research and expertise and was entitled to give his lecture, just as the students in Dr. Landau’s class were entitled to hear his lecture. Dr. Kil’s right to free speech, as articulated in the 2024 TPM Policy, permitted her to counter speech with which she disagreed “through discourse, criticism, and the expression of [her] contrary points of view”—not join in a group effort to shout it down.¹¹ (*See* CSU-4.5 at 1895.)

b. Lack of Candor in Communicating with Students About the TPM Policy

As discussed above, Dr. Kil’s evasiveness and lack of candor in communicating what she knew about the TPM Policy to a SJP student during the Sweeney Hall protest did not satisfy her duties as a professor in the role of faculty advisor under EO 1068 and, by its nature, was unprofessional conduct.

Similarly, at the May 8, 2024 protest, Dr. Kil’s statement that it was not too late to do an encampment involved unprofessional conduct. By May 8, Dr. Kil had a full copy of the 2024 TPM Policy, which her expert, Dr. Reichman, testified should have been read before engaging in protest activity. (RT Day 4 at 41:20-42:4.) The 2024 TPM Policy carries forward verbatim the same explicit prohibition on camping that is in the 2022 TPM Policy. (*See* CSU-4.4 at 1879 and CSU-4.5 at 1899.) Therefore, Dr. Kil acted unprofessionally on May 8 by speaking on campus to a group of mostly students, some of whom were her SJP advisees, and stating there was still time to set up an encampment, knowing that camping was prohibited by the 2024 TPM Policy and subjected violators to

¹¹ CSU’s argument that Dr. Kil was a “key player” in the February 19 protest is not persuasive. (*See* CSU Closing Brief at 31.) Dr. Kil did not organize the originally planned protest at the MLK Library nor was it sponsored by SJP. While it is possible that Dr. Kil’s evasive response to a student’s request for guidance on the TPM Policy may have opened the door to the group chanting that followed, the evidence did not establish that causation. Otherwise, when the protest ensued outside the classroom, Dr. Kil is seen standing silently behind a “Free Palestine” banner across from the entry to the classroom somewhat apart from the main protest area, or using her cell phone camera to document the protest. Only after the Dr. Roth incident is she seen joining in the group chant, “Shut it down.” (CSU-V7.)

discipline. This conclusion is supported by the FHC’s finding, which the undersigned is required to accept as established, that Dr. Kil violated S99-8 and EO 1068 during the May 8, 2024 protest. (*See* CSU-1 [CBA, Art. 19.10(e)(5)].)

**c. Participating in the Encampment Knowingly
In Violation of the 2024 TPM Policy**

Dr. Kil’s appointment letter required her to comply with the rules of the University and the rules and regulations of the Trustees of the CSU. (CSU-4. 10 at 1946-1947.) Her participation in the May 13-26, 2024 encampment, knowing that camping on University property is prohibited, was an intentional violation of University rules—the 2024 TPM Policy, as the FHC found—and, as such, conduct unbecoming a professor.

**C. CSU Did Not Have “Cause” To Take Disciplinary Action
Against Dr. Kil for Failure or Refusal to Perform the Duties of
Her Job as a Professor.**

In its Closing Brief, CSU effectively abandoned its second ground for termination of Dr. Kil—failure or refusal to perform the normal and reasonable duties of [her] position. CSU’s discussion of this ground for discipline is relegated to a short paragraph on page 36 of its Closing Brief, which simply notes that there is no definition for the phrase in Education Codes §89535(f); that “failure” and “refusal” are used in the disjunctive in the statute; and that failure to perform could be either negligent or intentional. Nowhere does CSU discuss, let alone meet its burden of proving, how Dr. Kil’s conduct during the subject protests somehow constituted a failure to perform her position as a professor. Simply stated: CSU’s reliance on section 89535(f) as a ground for dismissal in this case is entirely without merit.

D. The Sanction of Dismissal Imposed on Dr. Kil Is an Excessive Penalty for Her Unprofessional Conduct.

In the context of public employee discipline, “the overriding consideration . . . is the extent to which the employee’s conduct resulted in, or if repeated is likely to result in, ‘[h]arm to the public service.’” (*Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 217-218.) “Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence.” (*Id.* at 218.) The sanction of dismissal is improper if it is “clearly excessive and disproportionate to the misconduct on which it is based.” (*Id.* at 219.) As discussed below, the sanction of dismissal imposed on Dr. Kil was excessive and disproportionate to the unprofessional conduct she committed.

Dr. Kil’s unprofessional conduct all related to the exercise of her constitutional right of free speech. During the Sweeney Hall protest, her sincere conviction that the lecture inside the classroom was spreading harmful ideas lead her to participate in chanting intended to shut down the lecture. In her zeal, Dr. Kil (and the others in the hallway) went a step (or two) too far. Her criticism of TPM limitations on free speech as restraints on pro-Palestinian advocacy related to the humanitarian crisis in Gaza prevented her from appreciating the legitimate intent and purpose of the TPM Policy and communicating professionally to her advisees on the subject.

To determine a proportionate sanction for such misconduct, the surrounding circumstances, the harm that resulted, and the likelihood of recurrence must be considered.

First, it bears emphasizing that the protest that ensued in Sweeney Hall was unplanned and spontaneous. This was not a case where protesters set out to disrupt a classroom lecture. Rather, as detailed in Section II.B.1 above, the last-minute change in

venue from public to private, the lack of communication with the protesters who had gathered at the MLK Library, the law enforcement decision to permit protesters to gather in the hallway in violation of the TPM Policy, the exclusion of the protesters from the classroom, the incident involving Dr. Roth, and the law enforcement decision to evacuate the classroom rather than disperse the protesters, all contributed to the circumstances under which the chanting occurred. For that, except for the Dr. Roth incident, the University bears some responsibility for the lecture being disrupted. At the same time, without the protesters' excessive noise and stomping, the lecture would not have been disrupted. For that, the protesters, including Dr. Kil, bear responsibility.

Second, the propriety of imposing the ultimate sanction of employment termination for free-speech activity, even if its exercise clashed with institutional restrictions, is questionable. As the U.S. Supreme Court observed in *Pickering v. Board of Education* (1968) 391 U.S. 563, 674: “[T]he threat of dismissal from public employment is . . . a potent means of inhibiting speech.” (See CFA Post-Hearing Brief at 30.)

Dr. Kil testified that she did not know she could be fired for participating in a free-speech activity. CSU argues that the TPM Policy provides notice that “employee disciplinary sanctions could result.” (See CSU Opening Brief at 26, *citing* CSU-4.5 at 1934.) The “Violations” section of the TPM Policy provides that disciplinary action for violation of the policy “shall be in conformity with . . . applicable collective bargaining agreements” and “may result in removal of the offending party or parties from the campus, as well as possible loss of further use of campus facilities and grounds as well as disciplinary action, as applicable.” (*Id.*) The undersigned finds that such language does

not give fair notice to a faculty member, let alone a tenured, full professor with 17 years of service to the University, that violation of the TPM Policy could result in dismissal. Similarly, Policy S99-8 provides no warning whatsoever that failure to satisfy its aspirational standards could result in discipline; and violation of EO 1068 could easily be addressed by removing the faculty member from an advisory position or providing counseling related to the violation.

Third, mitigating factors favoring a less severe sanction are substantial. Dr. Kil has been employed by SJSU for more than 17 years, progressing to full Professor and achieving tenure.¹² She is a published author of an award-winning book and has been honored by the University with awards for her global citizenship and lifetime faculty service. In her 17 years of employment, no disciplinary action was taken against Dr. Kil and no evidence was submitted of her having violated any University policies.¹³

Fourth, the sanction of dismissal is disproportionate to the sanctions imposed in other recent disciplinary actions discussed by both parties in their briefs. For example, a reprimand was issued, but no disciplinary action taken, against Dr. Rouhollah Aghasaleh, an Assistant Professor at Cal Poly Humboldt, who was arrested while participating in an April 2024 pro-Palestinian student take-over of a university building that resulted in

¹² CSU correctly observes that in California, tenure “is an employment classification that converts an at-will or probationary employee into one who may be terminated only for cause and with specified procedural safeguards.” (CSU Closing Brief at 19.) CSU also cited an apt observation of Dr. Kil’s expert, Dr. Reichman, who wrote: “Tenure is a means to freedom of teaching, research and extramural activities and a sufficient degree of economic security to make the profession attractive.” (*Id.*, citing Reichman, *Understanding Academic Freedom* at pages 147-148.)

¹³ In her dismissal letter, President Teniente-Matson stated that “there is no evidence that you [Dr.Kil] would follow policy in the future.” (CSU-9 at 1962-9263.) In fact, 17 years of apparent compliance with University policies *is* such evidence. Weighing that evidence against the only evidence of non-compliance—which occurred during a discrete time period and involved, at worst, overzealousness in bring attention to the humanitarian crisis in Gaza—the undersigned cannot conclude that it is likely Dr. Kil would violate University policies in the future.

damage and destruction of property and disruption of classes. Similarly, Dr. Shanae Martinez, an Assistant Professor at Cal Poly San Luis Obispo, received a one-month suspension after she was found to have pushed barricades into law enforcement officers and failed to comply with their orders during on-campus, pro-Palestinian protests in January and May 2024. A faculty hearing committee found the two-quarter suspension initially imposed by CSU to be excessive, and recommended a one-month suspension, which the campus president accepted. And finally, Dr. Roth, who clashed with Sweeney Hall protesters and grabbed and bent the arm of a protestor who was trying to block him from taking cellphone videos of the protest, received no discipline and was apparently placed on the Fall 2024 teaching schedule but retired over the summer.¹⁴ In contrast to the conduct in these contemporaneous disciplinary actions, Dr. Kil did not commit a violent act, did not encourage anyone to do so, and did not seriously disrupt University operations.

Fifth, under basic principles of progressive discipline, the fact that Dr. Kil's TPM Policy violation was a first offense should have resulted in a verbal or written reprimand and/or training on the TPM Policy, or other appropriate corrective action. CSU argues that the conduct involved was so severe and the harm caused so great that progressive discipline principles should not apply. (CSU OB at 56-68). That argument is unpersuasive. Again, the primary sanctionable conduct was participating in spontaneous, arguably overzealous exercises of free speech in the midst of international protests of the killing and destruction in Gaza, and the harm caused was disruption of a class in session.

¹⁴ CSU asserts in its Reply Brief that Dr. Roth "was cleared of any allegations of assault," but no such evidence was offered at the hearing; therefore, the assertion will be disregarded. (*See* CSU Reply at 10.)

Finally, CSU argues that Dr. Kil's refusal to accept responsibility and her lack of remorse demonstrate that she lacks "rehabilitative potential." (CSU Closing Brief at 56-57.) Although accepting responsibility and remorse are typically mitigating factors, they are not required. The undersigned does not view Dr. Kil's unwillingness to shoulder the magnitude of responsibility for the Sweeney Hall protest and later encampment that CSU would impose on her, or to make the show of contrition that CSU would like to see, as an aggravating factor in deciding on an appropriate sanction for her misconduct.

E. The Sanction of Dismissal Shall be Modified to a One (1) Month Suspension.

As discussed above, the sanctionable conduct committed by Dr. Kil was participating in a loud protest outside a class in session (regardless of how that came about) and participating in the encampment knowing it violated the TPM Policy. As Dr. Kil's expert, Dr. Reichman, succinctly stated: "These charges [against Dr. Kil] do not rise to the level of dismissal of a tenured faculty member." (RT Day 4 at 45:1-2.) That is what the FHC concluded, and that is what the undersigned concludes.

Dr. Kil's less than candid communication with advisees about the TPM Policy presumably could have been addressed by removing her as an advisor or imposing a similar sanction proportionate to that misconduct, as Dr. Reichman noted. (RT Day 4 at 41:11-18.) Her spontaneous speech at a protest criticizing the TPM Policy and saying it was not too late to start an encampment (even if she did not mention that the TPM Policy prohibits camping) is a free speech activity that is not sanctioned under the TPM Policy.

Weighing all of the factors discussed above, the undersigned agrees with the FHC that the sanction imposed on Dr. Kil should not be greater than the most severe sanction imposed in the recent cases cited by the parties, which was a one (1) month suspension.

While that case involved physical violence (pushing a barrier into a peace officer) and this case involves interference with the freedom of others to teach and learn, both cases involved conduct by university professors during protests related to a humanitarian crisis that exceeded the bounds of acceptable behavior without causing serious harm.

IX. CONCLUSION AND AWARD

For the foregoing reasons, the undersigned concludes and awards as follows:

1. Cause existed for CSU to take disciplinary action against Dr. Kil for “unprofessional conduct” under Education Code §89535(b);
2. Cause did not exist for CSU to take disciplinary action against Dr. Kil for “failure to perform the normal and reasonable duties of [her] position” under Education Code §89535(f);
3. Dismissal as the sanction for Dr. Kil’s unprofessional conduct is clearly excessive and disproportionate to the misconduct on which it is based and is therefore denied;
4. Suspension for a period of one (1) month is an appropriate and proportionate sanction for the unprofessional conduct Dr. Kil committed and is hereby imposed;
5. CSU shall immediately reinstate Dr. Kil to her former position as a tenured Professor on the Faculty of San Jose State University;
6. Dr. Kil shall be entitled to any and all back pay that may be due her, calculated according to Article 19.23 of the Collective Bargaining Agreement; and

7. At the request of Dr. Kil, without objection from CSU, the undersigned shall retain jurisdiction over this matter for a period of sixty (60) days from the date of this Award for the limited purpose of resolving any disputes between the parties with respect to the implementation of this Award.

Any legal or factual issues and arguments raised in the parties' briefs or at the arbitration hearing but not mentioned herein have been considered by the Arbitrator and are hereby rejected.

This Award is in full settlement of all claims submitted to this arbitration.

Dated: June 19, 2026

DocuSigned by:
Howard L. Pearlman
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Howard L. Pearlman, Arbitrator