



OFFICE OF THE VICE PROVOST --
ACADEMIC PERSONNEL AND PROGRAMS

OFFICE OF THE PRESIDENT
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September 21, 2016

CHANCELLORS
LABORATORY DIRECTOR WITHERELL
ACADEMIC COUNCIL CHAIR CHALFANT
ANR VICE PRESIDENT HUMISTON

**Re: Systemwide Review of Proposed Revised Academic Personnel Manual (APM)
Section 015, The Faculty Code of Conduct and
Section 016, University Policy on Faculty Conduct and The Administration of Discipline**

Dear Colleagues:

Enclosed for Systemwide Review are proposed revisions to Academic Personnel Manual (APM) Sections 015, The Faculty Code of Conduct, and 016, University Policy on Faculty Conduct and The Administration of Discipline. The proposed changes represent revisions to policy recommended by the Joint Committee of the Administration and Academic Senate, a committee convened by President Napolitano in October 2015 “to examine how the University of California manages disciplinary proceedings for faculty respondents in cases alleging sexual violence, sexual assault or sexual harassment (SVSH).”¹ The Committee provided recommendations to President Napolitano both in its initial Report (April 4, 2016) and its Supplemental Report (July 31, 2016), and she accepted all of the Committee’s recommendations, including proposed changes to the APM. Thus, we are now undertaking the systemwide consultation process required before adopting any changes to APM policy. As described below, the Academic Senate is also undertaking review of related changes to Senate Bylaw 336. The substantive issues and proposed policy revisions draw from the Joint Committee Report and Supplemental Report.

Proposed changes to APM - 015, The Faculty Code of Conduct

To fulfill the President’s charge, the Joint Committee examined the systemwide Sexual Violence and Sexual Harassment Policy (SVSH) and the systemwide policies governing faculty conduct and the discipline process, among them, APM - 015, The Faculty Code of Conduct, APM - 016, University Policy on Faculty Conduct and the Administration of Discipline, and Senate Bylaw 336 (Privilege and Tenure: Divisional Committees – Disciplinary Cases). The Joint Committee found that, “...in general, the policies are reasonable and adequately describe the key steps involved in the investigation and discipline process... They allow discretion to deal with complexities of individual cases in which a faculty member is subject to possible discipline based on allegations involving any of the full spectrum of offenses that violate The Faculty Code of Conduct. The policies give the Administration the authority and responsibility to investigate any allegations of misconduct, including SVSH, and to impose discipline while providing that the accused faculty member has the right to a hearing prior to the imposition of a disciplinary sanction. The policies also specify the forms of sanction that may be imposed through the

¹ Report of the Joint Committee of the Administration and Academic Senate, April 2016, p. 1.

formal discipline process, leaving broad discretion to implement other administrative measures to remediate or mitigate a situation without implicating the faculty disciplinary process” (p. 14). Two sets of changes to APM - 015 were proposed to clarify types of unacceptable behavior and to clarify processes related to the alleged violation of policy.

Section II.A, C, and D, Types of Unacceptable Conduct. The Committee recommended that explicit language be added to APM - 015 to clarify that sexual violence and sexual harassment are violations of The Faculty Code of Conduct. Given the organization of APM - 015, this entails the addition of such language in three different places.

Section III.A and B, Enforcement and Sanctions. As stated in the April 4, 2016 Joint Committee Report, “...an often repeated critique of the Senate discipline process is that it includes a ‘statute of limitations’ that prevents discipline for any offense that occurred more than three years in the past” (p. 24) . The Committee went on to add that it found this critique “completely untrue” (p. 24). To address these misunderstandings, the Joint Committee has recommended draft language to clarify what the “three year rule” is and is not. As stated in the July 31, 2016 Joint Committee Supplemental Report, these recommendations “...Following consultation with the University Committee on Privilege and Tenure, Joint Committee Co-chair Hare and Joint Committee members Blumenthal, Dorr, Pantelia, and Simon crafted language to meet multiple goals so that the provision clarifies: 1) when the Chancellor is deemed to know about an SVSH allegation; 2) when the Chancellor must initiate any related disciplinary action; 3) how the related disciplinary action is communicated to the respondent; and 4) that there is no time limit for reporting an alleged violation” (p.20).

The proposed draft also includes a technical correction to update “informal resolution” to “early resolution,” language that is contained within Section III.B.

Proposed changes to APM - 016, University Policy on Faculty Conduct and The Administration of Discipline

The Joint Committee also proposed changes to APM - 016. In its April 4, 2016 Report, the Joint Committee reviews the timeline for involuntary paid leave: “APM - 016...gives campus Administrators explicit authority to place a Senate or non-Senate faculty member...on involuntary paid leave when the Administrator determines that the faculty member’s presence on campus may pose a risk to campus safety or interfere with an investigation or when the Administrator learns that the faculty member has been accused of a serious crime that is being investigated by law enforcement. In an attempt to balance the demands of campus safety, the integrity of investigatory processes, and the critical need of most faculty members to come onto their campus in order to pursue their work, APM - 016 [currently] requires that the Administration decide whether to bring formal charges and inform the respondent Senate faculty member of those charges, if any, within ten days” (p. 21). The Joint Committee found that “...this time limit has proven to be untenable, as a credible investigation cannot [usually] be completed in such a short time” (pp. 21-22).

Section II, Types of Disciplinary Actions. Proposed revisions to APM - 016 recommended by the Joint Committee would institute a new timeline that is practical, that can be applied consistently, and that is fair to the respondent. “ This new timeline would impose a 5-working day deadline after the imposition of involuntary leave for the Chancellor... to inform the faculty member of the reasons for the leave, the allegations being investigated, the anticipated date when charges will be brought, a statement concerning when the leave will end, and the faculty member’s right to grieve the involuntary leave to be handled by the Privilege and Tenure Committee on an expedited basis” (p. 22). An additional proposed revision places authority with the President instead of the Regents to suspend the pay of a faculty member on involuntary leave pending a disciplinary action. These changes are in Section II, types of Disciplinary Actions.

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Senate Bylaw 336 (Privilege and Tenure: Divisional Committees -- Disciplinary Cases)

While the Senate and systemwide academic administrators are reviewing proposed revisions to APM - 015 and APM - 016, the Academic Senate, under the leadership of Academic Council Chair Chalfant, will undertake a concurrent Senate review of proposed revisions to Senate Bylaw 336.

Systemwide Review

Systemwide Review is a public review distributed to the Chancellors, the Director, Lawrence Berkeley National Laboratory, the Chair of the Academic Council, and the Vice President of Agriculture and Natural Resources requesting that they inform the general University community, affected employees, and union membership about policy proposals. Systemwide Review also includes a mandatory, three-month full Senate review. Employees should be afforded the opportunity to review and comment on the draft policy, available online at <http://www.ucop.edu/academic-personnel-programs/academic-personnel-policy/policies-under-review/index.html>. Attached is a Model Communication which may be used to inform non-exclusively represented employees about these proposals. The Labor Relations Office at the Office of the President is responsible for informing the bargaining units representing union membership about policy proposals.

We would appreciate receiving your comments no later than **December 21, 2016**. Please submit your comments to ADV-VPCARLSON-SA@ucop.edu. If you would like to request complete copies of the April 4, 2016 Joint Committee Report or the July 31, 2016 Joint Committee Supplemental Report, or if you have other questions, please contact Janet Lockwood at Janet.Lockwood@ucop.edu or (510) 987-9499.

Sincerely,



Susan Carlson
Vice Provost
Academic Personnel and Programs

Enclosures: Proposed revised APM - 015 (redline and clean copy)
Proposed revised APM - 016 (redline and clean copy)
Model Communication

cc: President Napolitano
Provost and Executive Vice President for Academic Affairs Dorr
Executive Vice Chancellors and Provosts
Joint Committee of the Administration and the Academic Senate Members
Executive Vice President Nava
Senior Vice President Vacca
Vice President Duckett
Vice President Ellis
Vice Provost Gullatt
Chief of Staff Grossman
Vice Provosts/Vice Chancellor of Academic Personnel/Academic Affairs
Academic Personnel Directors
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