



OFFICE OF THE PROVOST AND
EXECUTIVE VICE PRESIDENT FOR ACADEMIC AFFAIRS

OFFICE OF THE PRESIDENT
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

May 12, 2017

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

Dear Colleagues:

I am formally transmitting revised Section 015 of the Academic Personnel Manual (APM - 015), The Faculty Code of Conduct and revised Section 016 (APM - 016), University Policy on Faculty Conduct and the Administration of Discipline, effective July 1, 2017. The attached policies can be found online at: <http://ucop.edu/academic-personnel-programs/academic-personnel-policy/policy-issuances-and-guidelines/index.html>. The systemwide consultation process engaged to develop the policies consisted of Systemwide Review from September through December 2016. The revisions issued herein were approved by the Assembly of the Academic Senate on February 8, 2017 and by The Regents on March 15, 2017.

In addition to approving revisions to APM - 015 and APM - 016, the Regents approved amendments to Regents Policy 7401: The Faculty Code of Conduct and the Policy on Faculty Conduct and the Administration of Discipline. Regents Policy 7401 can be found online at: <http://regents.universityofcalifornia.edu/governance/policies/7401.html>.

The Assembly of the Academic Senate is expected to adopt conforming revisions to Senate Bylaw 336 (Privilege and Tenure: Divisional Committees – Disciplinary Cases) at their meeting on June 14, 2017.

Background

The University of California has been vigorously engaged in improving its prevention of and response to sexual violence and sexual harassment. As part of that effort, President Napolitano appointed the Joint Committee of the Administration and Academic Senate on Faculty Discipline to examine how the University of California manages proceedings for faculty respondents in cases alleging sexual violence or sexual harassment. The Joint Committee, co-chaired by then Academic Council Chair Hare and then Senior Vice President Vacca, included faculty with expertise in the Academic Senate bylaws and academic personnel policy, Title IX office staff deeply involved in the development of the Sexual Violence and Sexual Harassment Policy, undergraduate and graduate students

representing student concerns, and me. To fulfill the President's charge, the Joint Committee examined the systemwide policies and Senate bylaws governing faculty conduct and the discipline process, among them APM - 015, APM - 016, and Senate Bylaws 335 and 336. The Joint Committee concluded that the existing policies and bylaws provided adequate authority and responsibility to investigate and sanction violations but it also recommended certain changes to strengthen and clarify the University's policies, bylaws, and processes. The President approved all of the Joint Committee's recommendations, including the proposed changes to the Academic Personnel Manual.

Following President Napolitano's approval of the recommendations, a Senate-Administration work group implemented the recommendations in proposed revisions and circulated the draft policies for a full 90-day Systemwide Review that resulted in strong support for the recommended changes. The Academic Council and the Assembly of the Academic Senate approved the amended language. Because authority for discipline derives ultimately from the Regents, the revisions were submitted to and approved by the Regents, who also approved amendments to Regents Policy 7401: The Faculty Code of Conduct and the Policy on Faculty Conduct and the Administration of Discipline.

Amendment of Academic Personnel Manual Section 015: The Faculty Code of Conduct

Section II. A, C, and D, Types of Unacceptable Conduct

The Joint Committee recommended that explicit language be added to APM - 015 to state that incidents of sexual violence and sexual harassment, as defined by University policy, are violations of the Faculty Code of Conduct. It was already clear that violations of the Sexual Violence and Sexual Harassment Policy could be addressed as violations of the Faculty Code of Conduct under existing language that prohibits serious violations of policy, but the Joint Committee felt that it was important to expressly name such incidents of sexual violence and sexual harassment. Given the organization of APM - 015, this entailed the addition of such language in three different places (in Sections A, C, and D).

Additionally, Section C has been revised, as proposed in another parallel Systemwide Review (November 2016 to February 2017) of the Presidential Policy on Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment, to reflect recent amendments to the California Fair Employment and Housing Act (FEHA). Revisions to APM - 015 add the California FEHA-related protections to existing language regarding non-discrimination and anti-harassment under Title VII of the Civil Rights Act. The new language is not added to Sections A and D since the language concerns individuals seeking employment, volunteer, or training positions with the University (which is covered in Section B); Section A concerns teaching and students and Section D concerns colleagues.

Section III. A and B, Enforcement and Sanctions

The Joint Committee also recommended language to clarify a section of policy that sets forth the Chancellor's responsibilities in responding to an alleged violation of the Faculty Code of Conduct and initiating disciplinary action. Revised language clarifies four details:

1) when the Chancellor is deemed to have known about an allegation of misconduct, particularly an allegation of sexual violence or sexual harassment; 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. The proposed revision also includes a technical correction to update “informal disposition” to “early resolution,” language that is contained within Section III.B.

Amendment of Academic Personnel Manual Section 016: University Policy on Faculty Conduct and the Administration of Discipline

The Joint Committee also proposed language to revise APM - 016. Changes to the language regarding involuntary leave provide greater flexibility to use involuntary leave with pay when the Administration determines that the faculty member’s presence would cause immediate and serious harm to the University community. Current policy allows the Chancellor to place the faculty member on involuntary paid leave; however, within ten working days after imposition of involuntary leave, the Chancellor must explain to the faculty member in writing the reasons for the involuntary leave and initiate disciplinary procedures by bringing charges against the faculty member on leave. The ten-working-day timeline has proven to be untenable, as a credible investigation cannot be completed in such a short time in order to file disciplinary charges with the Committee on Privilege and Tenure.

Section II, Types of Disciplinary Actions

Proposed revisions to APM - 016 recommended by the Joint Committee institute a new timeline that is practical, that can be applied consistently, and that is fair to the respondent. This new timeline imposes a five-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 (if substantiated), a statement concerning when the leave will end, and the faculty member’s right to grieve the involuntary leave. This separates the notification required for involuntary leave from the filing of charges and the beginning of the formal disciplinary process.

Analysis of Systemwide Review

Academic Personnel and Programs received comments from nine of the ten campus Academic Affairs/Academic Personnel offices. Three of the nine campuses indicated that they had no further comments on the proposed revisions. Some reviewers submitted line edits that were, for the most part, incorporated in the drafts submitted to the Assembly of the Academic Senate and the Regents for approval. Some offered alternative conceptual approaches and others offered suggestions for revising the Faculty Code of Conduct with procedural language.

Academic Council indicated that ten Academic Senate divisions and five systemwide committees submitted comments. Although Senate reviewers found the proposed amendments helpful, some requested that additional amendments be made.

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Here is a summary of the amendments to APM - 016, Section II language recommended during Systemwide Review that were made as a result of the campus and Senate comments:

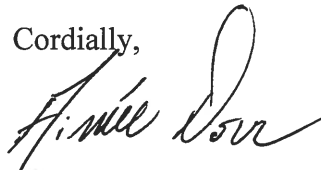
- (1) Former language stated that “A Chancellor is authorized to initiate involuntary leave with pay prior to the initiation of a disciplinary action...” Newly approved language is amended to state “A Chancellor is authorized to initiate involuntary leave with pay prior to, *or at any time following*, the initiation of a disciplinary action...”
- (2) Proposed language would have changed the authority of the Regents to the President, in rare and egregious cases, to suspend the pay of a faculty member placed on involuntary leave pending a disciplinary action. Campus and Senate reviewers were opposed to this change; thus, the approved language retains the authority of the Regents to act in such circumstances.

Recommendations to Revise APM - 015 or APM - 016 in Addition to Those Proposed During Systemwide Review

Senate reviewers took the opportunity to comment on other provisions within APM - 015 and APM - 016 in addition to those proposed during Systemwide Review of the policies and, therefore, outside of this policy initiative. The Regents, during their March 15, 2017 discussion, also requested a review of additional, related issues in the policies. A separate consultation process will be required to consider additional changes to these policies, beginning next academic year.

I wish to thank all members of the University community for their efforts to revise these important policies. Your contributions and commitment are deeply appreciated.

Cordially,



Kimée Dorr, Provost

Executive Vice President for Academic Affairs

cc: President Napolitano
President's Advisory Group
Executive Vice Chancellors/Provosts
Joint Committee of the Administration and the Academic Senate Members
Executive Vice President Nava
Interim Senior Vice President Lohse
Vice President Duckett
Vice President Ellis
Vice President Holmes-Sullivan
Vice Provost Gullatt
Chief of Staff Grossman
Systemwide Title IX Coordinator Salvaty

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Academic HR Manager Jordan
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