



OFFICE OF THE VICE PROVOST --  
ACADEMIC PERSONNEL AND PROGRAMS

OFFICE OF THE PRESIDENT  
1111 Franklin Street, 11<sup>th</sup> Floor  
Oakland, California 94607-5200

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).”<sup>1</sup> 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

<sup>1</sup> 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](mailto: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](mailto: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  
Deputy General Counsel Woodall

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Deputy/UCOP Compliance Officer Lane

Executive Director Baxter

Interim Executive Director Lee

Director Chester

Director Henderson

Director Lockwood

Manager Donnelly

Manager Smith

Academic HR Manager Jordan

Human Resources Policy Analyst Bello

This policy is The Faculty Code of Conduct as approved by the Assembly of the Academic Senate on June 15, 1971, and amended by the Assembly on May 30, 1974, and with amendments approved by the Assembly on March 9, 1983, May 6, 1986, May 7, 1992, October 31, 2001, May 28, 2003, and June 12, 2013, and by The Regents on July 18, 1986, May 15, 1987, June 19, 1992, November 15, 2001, July 17, 2003 and July 18, 2013. In addition, technical changes were made September 1, 1988 and June 11, 2010.

Additional policies regarding the scope and application of The Faculty Code of Conduct and the University's policies on faculty conduct and the administration of discipline are set forth in APM - 016, the University Policy on Faculty Conduct and the Administration of Discipline.

**The Faculty Code of Conduct as Approved  
by the Assembly of the Academic Senate**

(Code of Professional Rights,  
Responsibilities, and Conduct of University  
Faculty,  
and University Disciplinary Procedures)

. . . . .

**Part II – Professional Responsibilities, Ethical Principles,  
and Unacceptable Faculty Conduct**

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**1. Teaching and Students**

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**Types of unacceptable conduct:**

1. Failure to meet the responsibilities of instruction, including:
  - (a) arbitrary denial of access to instruction;
  - (b) significant intrusion of material unrelated to the course;
  - (c) significant failure to adhere, without legitimate reason, to the rules of the faculty in the conduct of courses, to meet class, to keep office hours, or to hold examinations as scheduled;

- (d) evaluation of student work by criteria not directly reflective of course performance;
  - (e) undue and unexcused delay in evaluating student work.
- 2. Discrimination, including harassment, against a student on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), or service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons.
- 3. Sexual violence and sexual harassment, as defined by University policy, of a student.
- 4. Violation of the University policy, including the pertinent guidelines, applying to nondiscrimination against students on the basis of disability.

5. Use of the position or powers of a faculty member to coerce the judgment or conscience of a student or to cause harm to a student for arbitrary or personal reasons.
  
6. Participating in or deliberately abetting disruption, interference, or intimidation in the classroom.
  
7. Entering into a romantic or sexual relationship with any student for whom a faculty member has, or should reasonably expect to have in the future<sup>1</sup>, academic responsibility (instructional, evaluative, or supervisory).
  
8. Exercising academic responsibility (instructional, evaluative, or supervisory) for any student with whom a faculty member has a romantic or sexual relationship.

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**C. The University**

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**Types of unacceptable conduct:**

1. Intentional disruption of functions or activities sponsored or authorized by the University.
2. Incitement of others to disobey University rules when such incitement constitutes a clear and present danger that violence or abuse against persons or property will occur or that the University's central functions will be significantly impaired.
3. Unauthorized use of University resources or facilities on a significant scale for personal, commercial, political, or religious purposes.
4. Forcible detention, threats of physical harm to, or harassment of another member of the University community, that interferes with that person's performance of University activities.
5. Discrimination, including harassment, against University employees on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family

6. medical history), or service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons.
7. Sexual violence and sexual harassment, as defined by University policy, of another member of the University community.
8. Violation of the University policy, including the pertinent guidelines, applying to nondiscrimination against employees on the basis of disability.
9. Serious violation of University policies governing the professional conduct of faculty, including but not limited to policies applying to research, outside professional activities, conflicts of commitment, clinical practices, violence in the workplace, and whistleblower protections.

D. **Colleagues**

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**Types of unacceptable conduct:**

1. Making evaluations of the professional competence of faculty members by criteria not directly reflective of professional performance.
  
2. Discrimination, including harassment, against faculty on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), or service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons.

3. Sexual violence and sexual harassment, as defined by University policy, of another member of the University community.
4. Violation of the University policy, including the pertinent guidelines, applying to nondiscrimination against faculty on the basis of disability.
5. Breach of established rules governing confidentiality in personnel procedures.

### **Part III – Enforcement and Sanctions**

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- A. In the development of disciplinary procedures, each Division must adhere to the following principles:
  1. No disciplinary sanction for professional misconduct shall be imposed by the administration except in accordance with specified campus procedures adopted after appropriate consultation with agencies of the Academic Senate, as prescribed in the introduction to this part of the Code. Systemwide procedures for the conduct of disciplinary hearings are set forth in Academic Senate Bylaw 336.

2. No disciplinary sanction shall be imposed until after the faculty member has had an opportunity for a hearing before the Divisional Committee on Privilege and Tenure, subsequent to a filing of a charge by the appropriate administrative officer, as described in Academic Senate Bylaw 336.
  
3. The Chancellor is deemed to know about an alleged violation of the Faculty Code of Conduct when it is reported to any academic administrator at the level of department chair or above or additionally, for an allegation of sexual violence or sexual harassment, when the allegation is first reported to the campus Title IX Officer. The Chancellor must initiate related disciplinary action by delivering notice of proposed action to the respondent no later than three years after the Chancellor is deemed to have known about the alleged violation. There is no limit on the time within which a complainant may report an alleged violation.
  
4. The Chancellor may not initiate notice of proposed disciplinary action unless there has been a finding of *probable cause*. The *probable cause* standard means that the facts as alleged in the complaint, if true, justify the imposition of discipline for a violation of the Faculty Code of Conduct and that the Chancellor is satisfied that the University can produce credible evidence to support the claim. In cases where the Chancellor wants a disciplinary action to proceed, the Divisional hearing committee must hold a hearing and make findings on the

evidence presented unless the accused faculty member settles the matter with the Chancellor prior to the hearing or explicitly waives his or her right to a hearing.

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- B. In the development of disciplinary procedures, it is recommended that each Division adhere to the following principles:

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4. There should be provision for early disposition of allegations of faculty misconduct before formal disciplinary proceedings are instituted. Procedures should be developed for mediation of cases where mediation is viewed as acceptable by the Chancellor and the faculty member accused of misconduct. Mediators should be trained in mediation, be regarded as neutral third parties and have experience in the University environment. In cases where a settlement resolving disciplinary charges is entered into after a matter has been referred to an Academic Senate committee, the Chancellor is encouraged to consult with the Chair of the Divisional Committee on Privilege and Tenure prior to finalizing the settlement.

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- (d) evaluation of student work by criteria not directly reflective of course performance;
  - (e) undue and unexcused delay in evaluating student work.
2. Discrimination, including harassment, against a student on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), or service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons.

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intimidation in the classroom.

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faculty member has, or should reasonably expect to have in the future<sup>1</sup>,  
academic responsibility (instructional, evaluative, or supervisory).

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**C. The University**

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or sexual harassment, when the allegation is first reported to the campus Title IX Officer. The Chancellor must initiate related disciplinary action by delivering notice of proposed action to the respondent no later than three years after the Chancellor is deemed to~~No disciplinary action may commence if more than three years have passed between the time when the Chancellor knew or should have known about the alleged violation. of the Faculty Code of Conduct and the delivery of the notice of proposed disciplinary action.~~There is no limit on the time within which a complainant may report an alleged violation.

4. The Chancellor may not initiate notice of proposed disciplinary action unless there has been a finding of *probable cause*. The *probable cause* standard means that the facts as alleged in the complaint, if true, justify the imposition of discipline for a violation of the Faculty Code of Conduct and that the Chancellor is satisfied that the University can produce credible evidence to support the claim. In cases where the Chancellor wants a disciplinary action to proceed, the Divisional hearing committee must hold a hearing and make findings on the evidence presented unless the accused faculty member settles the matter with the Chancellor prior to the hearing or explicitly waives his or her right to a hearing.

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**University Policy on Faculty Conduct and  
The Administration of Discipline**

The University policy on faculty conduct and the administration of discipline is set forth in its entirety in this policy and in The Faculty Code of Conduct.

**Section I -- Introduction and General Policy**

This policy, as recommended by the President of the University and approved by The Regents on June 14, 1974, and November 15, 2001, supersedes the President's interim statement on the same subject, issued on January 15, 1971. The present policy is to be read in conjunction with The Faculty Code of Conduct.

The Faculty Code of Conduct is set forth in APM - 015. Part I of The Faculty Code of Conduct notes the responsibility of the administration to preserve conditions that protect and encourage the faculty in its central pursuits. Part II defines normative conditions for faculty conduct and sets forth types of unacceptable faculty conduct subject to University discipline.

Part III makes recommendations and proposes guidelines to assure the development of fair procedures for enforcing the Code.

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Authority for discipline derives from The Regents. The Regents have made the Chancellor of each campus responsible for discipline on the campus (Standing Order 100.6(a)), subject to certain procedures and safeguards involving the President and the Academic Senate (Standing Orders 100.4(c) and 103.9 and 103.10).

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**Section II -- Types of Disciplinary Sanctions**

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Prior to the imposition of any disciplinary sanction(s) as described above, the Chancellor may waive or limit any or all disciplinary sanction(s) on the condition that the accused faculty member performs some specified action(s) designed to address the harm and/or to prevent future harm. Such actions may include, but are not limited to, monetary restitution, repayment of misappropriated resources, compliance with a commitment not to repeat the

GENERAL UNIVERSITY POLICY  
REGARDING ACADEMIC APPOINTEES  
University Policy on Faculty Conduct and the Administration of Discipline

APM - 016  
DRAFT

misconduct, or other act to make whole injury caused by the faculty member's professional misconduct or to prevent future misconduct.

If the imposition of a disciplinary sanction is waived, the subsequent failure to perform the required act or otherwise comply with the conditions of the waiver will immediately subject the faculty member to the implementation of the underlying sanction without an additional hearing. The authority to determine whether the faculty member has complied with the conditions of the waiver rests with the Chancellor. The Chancellor may designate a fixed time period for compliance with the terms of the waiver, after which the authority to impose discipline will lapse. If a faculty member disputes the Chancellor's determination, the faculty member may grieve under applicable faculty grievance procedures.

A Chancellor is authorized to initiate involuntary leave with pay prior to the initiation of a disciplinary action if it is found that there is a strong risk that the accused faculty member's continued assignment to regular duties or presence on campus will cause immediate and serious harm to the University community or impede the investigation of his or her wrongdoing, or in situations where the faculty member's conduct represents a serious crime or felony that is the subject of investigation by a law enforcement agency. When such action is necessary, it must be possible to impose the involuntary leave swiftly, without resorting to normal disciplinary procedures. However, within five working days after the imposition of involuntary leave, the Chancellor must explain to the faculty member in writing the reasons for the involuntary leave including the allegations being investigated and the anticipated date

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when charges will be brought, if substantiated. Every such document must include the following two statements: (1) the leave will end either when the allegations are resolved by investigation or when disciplinary proceedings are concluded and a decision has been made whether to impose disciplinary sanctions; and (2) the faculty member has the right to contest the involuntary leave in a grievance proceeding that will be handled on an expedited basis. Thereafter, the faculty member may grieve the decision to place him or her on involuntary leave pursuant to applicable faculty grievance procedures. The Divisional Committee on Privilege and Tenure shall handle such grievances on an expedited basis and may recommend reinstatement of pay and back pay in cases where pay status was suspended.

In rare and egregious cases, a Chancellor may be authorized by special action of the President to suspend the pay of a faculty member on involuntary leave pending a disciplinary action. This is in addition to the Chancellor's power to suspend the pay of a faculty member who is absent without authorization and fails to perform his or her duties for an extended period of time, pending the resolution of the faculty member's employment status with the University.

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If the imposition of a disciplinary sanction is waived, the subsequent failure to perform the required act or otherwise comply with the conditions of the waiver will immediately subject the faculty member to the implementation of the underlying sanction without an additional hearing. The authority to determine whether the faculty member has complied with the conditions of the waiver rests with the Chancellor. The Chancellor may designate a fixed time period for compliance with the terms of the waiver, after which the authority to impose discipline will lapse. If a faculty member disputes the Chancellor's determination, the faculty member may grieve under applicable faculty grievance procedures.

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DRAFT

University Policy on Faculty Conduct and the Administration of Discipline

~~of a faculty member who is absent without authorization and fails to perform his or her duties for an extended period of time, pending the resolution of the faculty member's employment status with the University.~~ However, within five~~10~~ working days after the imposition of

involuntary leave, the Chancellor must explain to the faculty member in writing the reasons for

the involuntary leave including the allegations being investigated and the anticipated date

when charges will be brought, if substantiated. Every such document must include the

following two statements: (1) the leave will end either when the allegations are resolved by

investigation or when disciplinary proceedings are concluded and a decision has been made

whether to impose disciplinary sanctions; and (2) the faculty member has the right to contest

the involuntary leave in a grievance proceeding that will be handled on an expedited basis.

Thereafter, the faculty member may grieve the decision to place him or her on involuntary

leave pursuant to applicable faculty grievance procedures. The Divisional Committee on

Privilege and Tenure shall handle such grievances on an expedited basis and may recommend

reinstatement of pay and back pay in cases where pay status was suspended.

In rare and egregious cases, a Chancellor may be authorized by special action of the President to suspend the pay of a faculty member on involuntary leave pending a disciplinary action.

This is in addition to the Chancellor's power to suspend the pay of a faculty member who is

absent without authorization and fails to perform his or her duties for an extended period of

time, pending the resolution of the faculty member's employment status with the University.

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## MODEL COMMUNICATION

The University invites comments on Proposed Revised Academic Personnel Manual Sections:

- 015, The Faculty Code of Conduct,
- 016, University Policy on Faculty Conduct and the Administration of Discipline

Proposed revisions add sexual violence and sexual harassment, as defined by University policy, as a form of Unacceptable Conduct to The Faculty Code of Conduct (APM - 015). Proposed amended language clarifies when the Chancellor is deemed to know about an alleged violation of The Faculty Code of Conduct (APM - 015). Proposed new language institutes a new timeline and deadline after the imposition of involuntary leave for the Chancellor to inform an accused 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 (APM - 016).

The proposals are located on the UCOP Academic Personnel and Programs website, "Policies under review", under the "Systemwide Review" tab at <http://ucop.edu/academic-personnel-programs/academic-personnel-policy/policies-under-review/index.html>. It also may be viewed at (*e.g., the campus Academic Personnel Office*).

If you have any questions or if you wish to comment, please contact \_\_\_\_\_ at \_\_\_\_\_, no later than \_\_\_\_\_ 2016.