



Chair, Academic Council and Assembly of the Academic Senate
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Faculty Representative to the Board of Regents
University of California
1111 Franklin Street, 12th Floor
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July 17, 2006

**SHEILA O'ROURKE, ACTING ASSISTANT VICE PRESIDENT
ACADEMIC ADVANCEMENT**

Re: Formal Review of APMs 700, 710, 711 and 080: Paid Sick Leave, Reasonable Accommodation, Medical Separation and Constructive Resignation

Dear Sheila,

At its June 21, 2006 meeting, the Academic Council reviewed two proposed policy revisions to APM 700 (Leaves of Absence/General) and APM 710 (Leaves of Absence/Sick Leave), and two new proposed academic personnel policies contained in APM 711 (Reasonable Accommodation for Academic Appointees with Disabilities) and APM 080 (Medical Separation). Due to issues of sufficient seriousness as identified by the Academic Council in this premature round of formal review, and in last year's informal review, the Academic Council unanimously requests that APMs 700, 710, 711 and 080 be immediately withdrawn from formal review in favor of a new round of proposed APM policies, as informed by the issues and concerns detailed below, to be sent out for a second round of informal review in fall 2006.

Please also note the following request of the Academic Council in its August 3, 2005 letter to then Assistant Vice President Switkes (also enclosed), regarding the 2005 informal review of the proposed APM revisions: "In considering the number of substantive changes that will be required to make these acceptable APM policies, the Academic Council has concluded that it would be irresponsible not to commence a second informal review once these drafts are revised." This request was not honored, leading to the problematic situation at hand. The Academic Council takes seriously these important policy changes that will notably impact the welfare of faculty at the University, and believes a second round of informal review will best serve the interests of both UCOP and the Academic Senate.

Following is a summary of concerns and issues raised by the divisions and committees of the Academic Senate during the 2006 formal review. I have enclosed with this letter each of the Senate committee and divisional responses as well, so that you may gain a complete understanding of the numerous issues that require resolution before the University moves forward with these policies.

APM – 700: Leaves of Absence/General (APM 700-10: Constructive Resignation)

- The policy requires a justification or statement of need. Examples should be added to better clarify the context of this policy revision and to justify reversing the burden of proof on such a grave matter as a faculty position, i.e., evidence that there is a large or growing number of faculty who fail to report to duty thus necessitating the need for this policy.

- Concern for the speed with which academic appointees can be dismissed (based on as little as one day's absence), and ambiguities in the procedural safeguards such as who is responsible for providing advance written notice to the appointee of his or her presumed resignation (i.e., the Chancellor), and whether a former academic appointee who was a member of the Academic Senate prior to his or her separation may still appeal to Senate committees as part of the regular Senate grievance process. The University Committee on Faculty Welfare (UCFW) recommends specific amendments to APM 700-10, detailed in its enclosed letter.
 - Note Assistant Vice President Switkes' May 22, 2006 email agreeing to some of the minor modifications in the policy as UCFW and UCAP suggested: "we plan to add a stipulation that the Chancellor personally sign the notice of intend [*sic*] as well as the final written decision, without delegation of authority."
- The policy should be amended to include an appropriate role for divisional Senate review of the termination process that is initiated under the terms of this new policy.
- Concern for the motivation behind the APM 700 revision, and whether APM 700-10 was drafted in response to past or anticipated litigation rather than to a significant number of affected faculty members.
- As proposed, the policy applies only to academic-year (9 month) appointees; fiscal-year (11 month) appointees are not mentioned.
- Recommendation for APM 700-10 to be withdrawn: (1) no explicit provision for a hearing *prior* to a dismissal, thus violating specific provisions in the Standing Orders of the Regents; (2) violation of Senate Bylaw 337, which provides a faculty member a hearing before his or her divisional Privilege and Tenure committee prior to early termination; (3) vague language that could lead to egregious misapplication of the policy; and (4) the absence of a compelling explanation to create new policy when existing policy under APMs 015 (Faculty Code of Conduct) and 016 (University Policy on Faculty Conduct and the Administration of Discipline) has not been proven inadequate.

APM – 710: Leaves of Absence/Sick Leave (APM 710-11: Paid Sick Leave for Academic Appointees Who Do Not Accrue Sick Leave; APM 710-42: Sabbatical Leave Credit)

- APM 710-11 should be clarified to say that it is only unused sick leave credit that is not counted towards the University of California Retirement Program (UCRP) and that faculty do receive service credit while they are on paid sick leave.
- Current policy has a great deal of flexibility and it is unclear whether this more rigid proposal would be more advantageous overall. Will faculty who are members of the Health Sciences Compensation Plan end up being completely excluded from sick leave policy?
- This policy is supported as long as the codification of sick leave policy for faculty members is well advertised and faculty are actively encouraged to obtain supplemental disability insurance.
- Recommendation for APM 710-42 to be withdrawn: The proposed revision to APM 710-42 implies that brief leaves of seven days or so would be deducted from the accounting of sabbatical leave accrual, without justification, given that the current policy specifies that sabbatical leave credits will not be accrued during leaves "for one quarter or semester or more."
 - Note AVP Switkes' May 22, 2006 response to UCPT's concerns: "The proposed change to [APM] 710-42 is wrong ... It's probably best to make no changes to the current language. [APM] 710-42 should read: **Sabbatical Leave Credit** – Sabbatical leave credit is not accrued during a leave of absence with pay for one quarter or semester or more or for a leave of absence without pay (see APM 740.11.h(3) & (4))."

APM – 711: Reasonable Accommodation for Academic Appointees with Disabilities

- Concern that APM 711-80 (Procedures for Reasonable Accommodation) could be taken to imply that a faculty member is obligated to divulge a hidden disability, leading to an invasion of privacy.
- Concern that APM 711 and APM 080 leave open the vague possibility that reasonable accommodations may not be possible, as if “reasonableness” were at the discretion of the University. Additional explanation and clarity under the Americans with Disabilities Act is requested – perhaps a wording change to distinguish between *reasonable* (and therefore mandatory) accommodations and other accommodations which go beyond reasonable.

APM – 080: Medical Separation

- The policy requires a justification or statement of need. It is not clear why faculty with medical problems should not utilize their disability insurance and thus be in a position to reclaim their positions when their conditions resolve or abate.
- It should be clarified that separations would be determined on a case-by-case basis through procedures involving the campuses and Senate Privilege and Tenure committees as noted in Section 080-3.
- It should be clarified that the intent of APM 080-24 is to apply to “tenure-track faculty” as well as “tenured faculty.”
- APM 080-3 should be amended to include a specific role for the Academic Senate in the early-termination process in the case of medical separation, including the right to a hearing constituted by the Academic Senate as promulgated in Senate Bylaw 337.
- Further clarification is needed to specify who shall provide to the academic appointee advance written notice of the intention to separate (i.e., the Chancellor), and the policy should require coordinated approval by *both* the department chair and the dean before the recommended separation is forwarded to the Chancellor.

On behalf of the Academic Council, I look forward to working with you to ensure that the issues and concerns of the Academic Council are fully addressed. As I await your detailed response, please let me know in the meantime if you require any additional information or clarification.

Sincerely yours,



John Oakley, Chair
Academic Council

Copy: Wyatt R. Hume, Provost and Senior Vice President, Academic Affairs
Academic Council
María Bertero-Barceló, Executive Director, Academic Senate

Encl: (1) Comment letters from UCAP, UCPT, and UCFW; UCB, UCD, UCI, UCLA, UCR, UCSB, UCSC, and UCSD; with Assistant VP E. Switkes May 22, 2006 email.
(2) Chair G. Blumenthal to Assistant VP E. Switkes, August 3, 2005, re: [Informal Review of Proposed Revisions to APMs 700, 710, 711 and 080](#).



UNIVERSITY COMMITTEE ON ACADEMIC PERSONNEL (UCAP)
ANTHONY NORMAN, CHAIR
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May 17, 2006

JOHN OAKLEY, CHAIR
ACADEMIC COUNCIL

Re: Formal Review of Proposed Revisions to Systemwide Academic Personnel Policies related to paid sick leave, reasonable accommodation, medical separation and constructive resignation—APMs 700, 710, 711, and 080

Dear John,

The University Committee on Academic Personnel (UCAP) reviewed the package of proposed APM policy revisions related to paid sick leave, reasonable accommodation, medical separation and constructive resignation at our May 16 meeting. UCAP also benefited from the presence of Assistant Vice President Ellen Switkes, who clarified the intent of the policies, and we reviewed a letter from the University Committee on Privilege and Tenure (UCPT) forwarded to us by UCPT Chair Montgomery, which raised a number of concerns about the proposed policies.

We are comfortable with the policies as currently proposed and endorse the package as written, with one suggestion. It seems to us that APM 700, providing guidelines for the constructive resignation of faculty who may be making excessive or inappropriate use of leave, is reasonable and appropriately crafted; however, we do suggest that an example or examples of a constructive resignation be included in either the policy itself or an appendix to clarify the context.

We note that constructive resignation is a well established legal concept and in the very limited circumstances of negligent behavior alluded to – the personal choice of a faculty member to stop coming to work without explanation – the institution is justified in taking steps to remove that faculty member from gainful employment without a prolonged and costly P&T process. Constructive resignation is not a University dismissal necessitating a hearing; it's a decision by an individual to effectively make the choice to resign by not coming to work.

APM 080 outlines procedures for the termination of faculty who are unable for medical reasons to continue work long-term because of a mental illness, disability or other reason. UCPT expressed concern about the absence of any role for the Senate in such a situation. But it is our understanding that separations would be determined on a case-by-case basis through procedures involving the campuses and Senate P&T committees. This is noted in Section 080-3, which states that faculty members considered for medical separation must be notified of the right to a hearing by a Senate committee under Regents Standing Order 103.9.

Thus in summary, UCAP unanimously supports the proposed revisions to APMs 700, 710, 711, and 080.

Sincerely,

Anthony Norman
Chair, UCAP

cc: UCAP
Executive Director Bertero-Barceló



UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
Raymond Russell, Chair
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June 12, 2006

**JOHN OAKLEY, CHAIR
ACADEMIC COUNCIL**

RE: Proposed Revisions to APM 700, 710, 711 and 080

Dear John,

The University Committee on Faculty Welfare (UCFW) discussed the proposed changes and additions to APM 700, 710, 711, and 080 at its meetings of April 21 and May 19. I am writing to report the Committee's comments and recommendations.

APM 700-10

Regarding the standards for constructive resignation, UCFW shares some of the concerns of the University Committee on Privilege and Tenure (UCP&T). Specifically, the Committee is concerned about the speed with which academic appointees can be dismissed (as little as one day's absence), and the ambiguity of procedural safeguards.

Assistant Vice President Ellen Switkes was present during UCFW's discussion of these problems. Vice President Switkes suggested that the Office of the President is willing to consider alterations in the proposed wording of APM 700-10 that might address the Committee's concerns.

Our discussion identified three places in the proposed draft of APM 700-10 in which clarifications or amendments strike UCFW as being needed.

In the first sentence, UCFW recommends adding the stipulation that resignation has occurred only if an academic appointee is absent without an approved leave "for an extended period of time," or does not return to assigned duties "within a reasonable period" after an approved leave. Without the addition of some such language, resignation might be presumed to have occurred after as little as a single day's absence.

The second sentence requires that in cases of presumptive resignation, "advance written notice of the appointee's presumed resignation will be sent to the appointee's address on file." UCFW recommends that this advance written notice should be sent "by the Chancellor." In her e-mail

to you dated June 2, Vice President Switkes indicated that the Office of the President has already incorporated this recommendation into its plans.

The last sentence of the same paragraph says that “An academic appointee subject to presumptive resignation may grieve the action through the applicable grievance procedures, but not remain on pay status after the separation date.” Members of UCFW were unsure what the “applicable” grievance procedures might be. Former academic employees who appeal to Senate committees for help are often told that because they are no longer members of the Senate, Senate committees are powerless to help them. UCFW considers it important to specify here or elsewhere that the “applicable” grievance procedures are those that would have applied if the grievance were being filed prior to the separation. In the case of presumptively separated employees who were members of the Academic Senate prior to their separation, applicable grievance procedures include the right of a hearing under Regents Standing Order 103.9.

APM 080

APM 080 deals with medical separation. The first sentence states, “An academic appointee shall be given advance written notice of the intention to separate.” As in the case of APM 700-10, UCFW recommends that this sentence be amended to say that the academic appointee shall be given advance written notice of the intention to separate “by the Chancellor.”

UCFW members were also concerned about one other problem in APM 080. The proposed APM 080-1 says that medical separations may be initiated by either department chairs or Deans. If the Dean initiates the separation, he or she must consult with the chair before submitting the file to the Chancellor. But if the chair initiates the request for a separation, he or she is free to send the file directly to the Chancellor, without first consulting the Dean. UCFW feels that faculty need to be protected from ill-considered actions initiated by department chairs, at least as much as they need to be protected from actions initiated by Deans. Whether proposed medical separations are initiated by chairs or by Deans, UCFW recommends that they should be approved by both the chair and the Dean before being forwarded to the Chancellor.

Summary of Comments and Recommendations

In the case of both presumptive resignation and medical separation, requiring notification by the Chancellor will protect academic appointees against ill-considered and hasty actions initiated by department chairs. In the case of presumptive resignation, the unique character of this form of separation makes it a rare case in which grievance procedures including the opportunity for a hearing are applied after separation rather than before. For that reason, continued access of presumptively separated Senate members to Divisional Committees on Privilege and Tenure after their dates of separation needs to be assured in some way.

If these or equivalent safeguards and clarifications can be added to the proposed texts of APM 700 and 080, UCFW believes that the concerns expressed by UCP&T and by UCFW can be effectively addressed. With the understanding that some accommodation of these recommendations is going to be made in the texts of APM 700 and 080, UCFW endorses the proposed changes in APM 700, 710, 711, and 080.

Sincerely,

A handwritten signature in cursive script that reads "Raymond Russell". The letters are fluid and connected, with a prominent loop at the end of the word "Russell".

Raymond Russell, Chair
University Committee on Faculty Welfare

Copy: UCFW
Mariá Bertero-Barceló, Executive Director



UNIVERSITY COMMITTEE ON PRIVILEGE AND TENURE (UCP&T)
Kathleen Montgomery, Chair
kathleen.montgomery@ucr.edu

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May 10, 2006

**JOHN OAKLEY, CHAIR
ACADEMIC COUNCIL**

RE: UCP&T Comments on Proposed Revisions to APM 700, 710, 711, and 080

Dear Chair Oakley:

The University Committee on Privilege and Tenure (UCP&T) has carefully reviewed the proposed revisions to the Systemwide Academic Personnel Policies (APM) related to paid sick leave, reasonable accommodation, medical separation and constructive resignation – APMs 700, 710, 711, and 080.

APM 700-10: UCP&T has serious concerns and strong reservations about proposed APM 700-10, with respect to “presumed resignation.” We provide the basis of our concerns below:

1. The proposed policy does not explicitly provide for a hearing prior to dismissal and thus stands in violation of existing protections for faculty, granted under Regents Standing Orders, as follows
 - a. 100.4(c), which instructs the Chancellor to consult with a properly constituted advisory committee on the Academic Senate in matters relating to dismissal;
 - b. 103.2, which grants the right to any member of the Academic Senate to the privilege of a hearing;
 - c. 103.9 and 103.10, which grant the right to a hearing prior to any termination decision.
2. The proposed policy also stands in opposition to the fundamental principle of shared governance, as embodied in Academic Senate Bylaws regarding early termination cases, as follows
 - a. SBL 337: Privilege and Tenure: Divisional Committees – Early Termination Cases, which states that no Senate or non-Senate faculty member may be terminated prior to the expiration of an appointment without having an opportunity for a hearing before the Divisional Privilege and Tenure Committee.

3. Aside from the grave concerns regarding faculty rights and shared governance just noted in #1 and #2, the proposed policy also has the potential for egregious misapplication, because of vague language, as follows
 - a. APM 700 states that academic-year appointees are expected to “be present” from the beginning of the Fall term through the end of the Spring term. Faculty, chairs, and deans may have very different interpretations of what “be present” means, especially given the tremendously varying work patterns practiced by the faculty of the University’s various schools and departments.
 - b. APM 700-10 states that presumptive resignation will occur if an academic appointee is “absent without approved leave” or does not return to “assigned duties” after an approved leave. The vagueness of these terms, as well, is likely to lead to different interpretations of the policy.
4. Existing policy – namely, APM 015, the Faculty Code of Conduct, provides sufficient guidance regarding types of unacceptable conduct subject to disciplinary action; and APM 016, University Policy on Faculty Conduct and the Administration of Discipline – provides the framework within which disciplinary action, including dismissal, may occur, while protecting faculty rights. There has been no compelling explanation about the inadequacy of existing policy to justify the need for a new policy.

UCP&T strongly recommends that proposed APM 700-10 be withdrawn. If the University wishes to include explicit reference to absence without approved leave or failure to return to assigned duties, these behaviors would most appropriately be added to the list of types of unacceptable conduct codified in the Faculty Code of Conduct (APM 015), with sufficient specificity to avoid misinterpretation.

APM 080: UCP&T also expresses concern about the absence of any role for the Academic Senate in the early termination process in the case of medical separation. We refer again to Academic Senate Bylaw 337, which provides that no faculty member may be terminated prior to the expiration of an appointment without having the opportunity for a hearing before the Divisional Privilege and Tenure Committee. As now written, proposed APM 080-3 does not specify that the right to a hearing should be one constituted by the Academic Senate.

UCP&T recommends that reference to Senate participation in hearings, such as provided in SBL 337, be added to proposed APM 080-3.

APM 710-42: UCP&T also expresses concern about the proposed change with regard to accrual of sabbatical leave credit. The current policy clarifies that sabbatical leave credits will not be accrued during leaves “for one quarter or semester or more.” The proposed change would eliminate that modification, with the implication that brief leaves of 7 days or so must be deducted from the accounting of sabbatical leave accrual. No justification is provided to show that any savings to the University in terms of sabbatical

leave obligations would warrant the increased administrative burden of maintaining records of leaves constituting fractions of terms. UCP&T is concerned that inaccuracies in accounting based on partial-term leaves may lead to a larger number of grievances from faculty who believe they have been denied earned benefits.

UCP&T recommends that the proposed change to APM 710-42 be withdrawn.

Sincerely,

Kathleen Montgomery, Chair
UCP&T

cc: Michael T. Brown, Vice Chair
Maria Bertero-Barcelo, Executive Director
UCP&T



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

May 18, 2006

JOHN OAKLEY
Chair, Academic Senate

Subject: Proposed Revisions to Systemwide Academic Personnel Policies Related to Absences/Sick Leave, Medical Separation and Leaves of Absence/General—APM 700, 710, 711, and 080

At its meeting on May 15, 2006, the Divisional Council (DIVCO) of the Berkeley Division discussed the *Proposed Revisions to Systemwide Academic Personnel Policies Related to Absences/Sick Leave, Medical Separation and Leaves of Absence/General—APM 700, 710, 711, and 080*, and the comments of the Committee on Faculty Welfare (FWEL). DIVCO endorsed the proposed revisions. In doing so, it agreed with FWEL's assessment: "We found the proposed revisions bring a useful improvement in clarity to a difficult area. They represent a substantial improvement over the wording circulated last year for informal review, and include many of the changes suggested by the Systemwide and campus committees during that review process."

Sincerely,

A handwritten signature in purple ink that reads "Alice M. Agogino".

Alice M. Agogino
Chair, Berkeley Division of the Academic Senate

Cc: Dorothy Hale, Chair, Committee on Faculty Welfare
Lili Vicente, Senate staff, Committee on Faculty Welfare



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June 5, 2006

JOHN OAKLEY, CHAIR

Assembly of the Academic Senate
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Subject: Formal Review of Proposed Revisions to System-wide Academic Personnel Policies (APM) 700, 710, 711, and 080

Dear John,

The Davis Division has reviewed the proposed revisions to the Academic Personnel Policies referenced above. The item was forwarded to all of the standing committees of the Davis Division with comments specifically solicited from: Committee on Planning and Budget, Committee on Academic Personnel and the Committee on Faculty Welfare. The Committee on Planning and Budget provided the following:

“The proposed wording of APM 700-10 does not include an appropriate role for Divisional Senate review of a termination process that is initiated under the terms of this change to the APM. The Committee on Planning and Budget is of the opinion that the termination of a faculty member should include review by the Senate Privilege and Tenure Committee.”

On behalf of the Davis Division, I request an update of the proposed policies to include review by the Divisional Committee on Privilege and Tenure.

Sincerely,



Daniel L. Simmons
Professor of Law
Chair of the Davis Division
of the Academic Senate

c: John Dixon, UC Davis Academic Personnel Office



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June 8, 2006

John Oakley, Chair, Academic Council
1111 Franklin Street, 12th Floor
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**RE: Formal Review of Proposed Revision to Academic Personnel Manual
700, 710, 711, and 080 (related to sick leave, reasonable
accommodation, medical separation, and constructive resignation)**

The Irvine Councils on Academic Personnel and Faculty Welfare and the Academic Senate Cabinet reviewed and endorsed the final versions of these revisions. The Council on Faculty Welfare was pleased to note that two of its recommendations from the first round of review were incorporated into the proposed text: APM 080's definition of "essential assigned duties," and APM 700's addition of the sentence "The campus must make a good faith attempt to contact the appointee."

A handwritten signature in blue ink, appearing to read "K C Janda".

Kenneth C. Janda, Senate Chair

C: Geri Harre, Academic Personnel



ADRIENNE LAVINE, CHAIR
ACADEMIC SENATE EXECUTIVE OFFICE
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June 10, 2006

JOHN OAKLEY
CHAIR, UC ACADEMIC SENATE

In Re: Proposed Changes to APM 700, 710, 080, and 711

Dear John:

I am writing to transmit to you the UCLA Division's response to the proposed amendments to APM 700, 710, 080, and 711. The proposals were sent to all of the committees of the Academic Senate as well as to all the various Faculty Executive Committee Chairs with the specific request that the Executive Board, Privilege and Tenure Committee, Faculty Welfare Committee, and Emeriti and Pre-Retirement Planning Committee opine. The Committee of Faculty Chairs and the Executive Board discussed the proposals in their meetings, and Privilege and Tenure and the Committee on Diversity and Equal Opportunity discussed them and responded in writing (attached). I understand that Faculty Welfare will respond through UCFW. Generally speaking, faculty expressed support for the notion of holding faculty members accountable should they refuse to fulfill their duties. Some faculty members were appreciative of the attempt to operationalize what they saw as business practices systemwide. With the exception of the Committee of Faculty Chairs, which was somewhat receptive to the proposals, the general response was overwhelmingly negative to APM 700 and lukewarm on 080, 711, and 710 for the following reasons:

For all proposals:

- More background information is required before faculty support can be lent to these proposals. I.e., is there a large or growing number of faculty who fail to report to duty which creates the need for a policy on "presumptive resignation?" As one faculty member put it, these proposals offer various "treatments" without providing a "diagnosis" of the disorder. Moreover, do the current provisions of the Faculty Code of Conduct and Academic Personnel Manual fail to address these issues? If so, where do they fail? Before the UCLA Academic Senate will support these proposals, it needs to be advised as to what, specifically, motivates and necessitates them.

For APM 700:

- The Executive Board and the Committee on Privilege and Tenure delineated more specific resistance with respect to APM 700: At present a faculty member who fails to

perform properly assigned duties is guilty of a breach of the Faculty Code of Conduct and can be charged with that breach, and, when the charges are sustained, she or he can be dismissed or otherwise sanctioned. The Executive Board believes that is as it should be: faculty members have duties and must discharge them, and a process involving peer judgments should impose discipline when colleagues fail to live up to their obligations.

- Again with respect to APM 700, both the Executive Board and P&T are greatly alarmed that the Academic Senate's proceedings are triggered only *after* a faculty member is terminated due to presumptive resignation (and is no longer being paid). The onus to prove that a presumptive resignation exists should be satisfied *before* one is deemed terminated; proving that a presumptive resignation exists must take place within the established mechanisms and procedures of the Academic Senate.
- There was great concern among those who responded that terms were not sufficiently defined, specifically with regard to APM 700. As the Committee on Privilege and Tenure opined, "This vagueness, in combination with the enormous diversity of working patterns practiced by the faculty of the University's various schools and departments, will inevitably lead to ambiguity in implementation and result in unfairness. If adopted in their present form the revisions have the potential to place the Administration in a position to create ad hoc justifications for terminating faculty at will." For example, if a faculty member teaches on Mondays, Wednesdays, and Fridays, but worked from a home office on Tuesdays and Thursdays, it appears as if this faculty member could be declared "presumptively resigned." This does not appear to be the intent of the policy, but absent more definition the policy can be read and applied this way. Specific language that precludes such an abuse must be developed.
- Were the UCLA Senate to be convinced that large numbers of faculty were failing to perform their duties – such large numbers that the existing grievance system had collapsed – or that there were other exigent circumstances that made this change in procedure necessary, we would be prepared to consider APM 700 or other less drastic alternatives. Nothing in the proposal or its supporting materials suggests such a situation. In the absence of such justification, we believe that reversing the burden of proof on such a grave matter as a faculty position is a very bad idea. It reverses the existing assumptions about peer judgments and shared governance, and it changes fundamental aspects of faculty appointments. We urge rejection of APM 700.

For APM 080 and 711:

- The Committee on Privilege and Tenure was somewhat more receptive to the proposals for APM 080 and 711. However, it was not clear to the Committee why faculty with medical problems should not utilize their disability insurance and thus be in a position to reclaim their positions when their conditions resolve or abate. As with the proposal for APM 700, these proposals lacked any justification or statement of need. The Committee is concerned that no mechanisms were described for the fair enforcement of the policies.
- The Committee on Diversity and Equal Opportunity (CODEO), whose membership includes faculty with experience relating to disability law, had grave concerns about APM 080 and 711. For example, CODEO noted that APM 711-80 "could be taken to imply that an employee is obligated to divulge a hidden disability. That could be an

invasion of privacy.” The committee also questioned the notion of reasonable accommodations not being possible, as implied in APM 080-1 and 711-5. The Americans with Disability Act mandates reasonable accommodations; they are not at the discretion of the employer. I suggest that perhaps what is needed here is a wording change to distinguish between *reasonable* (and therefore mandatory) accommodations and other accommodations which go beyond reasonable, but having no experience with the ADA I cannot say if this would be appropriate. The letter from CODEO contains additional specific points of concern that should be addressed.

For APM 710:

- In the discussions of proposed APM 710, faculty commented that the proposal provided a specified benefit to the faculty that had heretofore not been articulated, while at the same time capping that benefit. Existing practice has a great deal of flexibility, and it is unclear whether a more rigid policy would be more advantageous overall.

I look forward to discussing these policies in Academic Council.

Sincerely,



Adrienne Lavine
UCLA Divisional Senate Chair

Cc: María Bertero-Barceló, Academic Senate Executive Director
Jaime Balboa, CAO UCLA Academic Senate

Encs.: CODEO Memo
P&T Memo

To: Executive Board, UCLA Academic Senate
From: Jody Kreiman, PhD; Chair, UCLA Committee on Diversity and Equal Opportunity
Re: Response to proposed revisions to APM – 711

The Committee on Diversity and Equal Opportunity reviewed the proposed revisions to APM – 711 at our meeting on June 2, 2006. The Committee unanimously expressed serious concern about this proposal, due in part to our uncertainty about the intent and motivation of the proposed changes. How do these change existing policy, and why are they needed? What situations have arisen that are not adequately addressed by existing policies? What specifically are these regulations designed to accomplish? Beyond these uncertainties of intent, the proposal itself is unacceptably vague. It does not define the extent to which the university is willing to provide “reasonable accommodation;” and the steps that comprise the “interactive process” are not adequately specified. The proposed policy also includes additional points of vagueness and concern:

711 – 80 – a “it is the responsibility of the academic appointee to inform the chair or unit head...” This could be taken to imply that an employee is obligated to divulge a hidden disability. That could be an invasion of privacy. It should be explicit that an employee informs a superior of accommodation needs only at their own choice and at the moment of perceived need.

711 – 80 – b “the campus Vocational Rehabilitation Counselor...” No such person is listed on the UCLA web site, and the telephone number given for the office in fact links to a fax machine.

711 – 80 – c – 9 “an available alternate position...” (1) If no such position happens to be available, can the university just proceed to medical separation? (2) Who will determine the alternate position and qualification? By what procedure?

711 – 80 – d “If it is not possible to provide a reasonable accommodation...” This appears to contradict the terms of section 711 – 0 – a: “The University provides reasonable accommodation...”

CODEO is additionally concerned that the person under review for termination cannot introduce external representation or appeal until the initial process is complete, and the intent to separate has been determined. At the least, the person under review should be alerted at the beginning of the process, and able to introduce the University Ombuds Office at any point.

Some terms of the proposal also appears to contradict or duplicate the ADA or existing case law in several respects:

080-1 “why reasonable accommodations were not possible...”
ADA mandates reasonable accommodation. It does not appear appropriate for the university to decide when or how accommodation goes beyond “possible.”

711 – 5 “...to determine what, if any, reasonable accommodation will be made.”

This again directly contradicts 711-0-a: “The University provides reasonable accommodation...” It also appears to contradict the terms of the ADA. Again, the law mandates such accommodation. Why and how should the university determine “if” accommodation will be provided?

In conclusion, the proposed policy is seriously flawed in a number of ways. Its intent is unclear; its formulation is vague and seemingly in conflict with Federal law; and it lacks formal justification.

May 2, 2006

To: Executive Board, UCLA Academic Senate
Prof. Kathleen Montgomery, Chair, UC Systemwide Committee on Privilege and Tenure

From: Michael S. Goldstein, Ph.D. Chair, UCLA Committee on Privilege and Tenure

Re: Proposed revisions to APM 700 and 710

The Committee on Privilege and Tenure reviewed the proposed revisions to APM 700 and 710 and discussed them at our meeting of April 28th, 2006. The Committee was unanimous in expressing great trepidation about the impact of these proposals should they be adopted. While the Committee agrees that all faculty must be held accountable if they refuse to perform their duties, there is little doubt that, as written, the proposed revisions offer a fundamental change in the procedures that are used to remove faculty (both tenured and untenured) from their positions, and are a threat to the principles of shared governance at UC. Our concerns focus on four areas:

1. The lack of justification for the proposed revisions. One would expect that either a conceptual or empirical (data-based) rationale would be presented to justify the need for such fundamental changes. Yet, to our knowledge, no such justifications have been provided. Has there been an increase in faculty being absent from their duties over the past few years? If so, is there any understanding of why such an increase has occurred? Without such information it is difficult to comprehend the reasoning behind these proposals. The absence of any rationale whatsoever makes the proposed revisions suspect on their face.
2. Is there any reason to believe that the existing procedures for dealing with unjustified absences by faculty cannot be dealt with using the existing regulations of the APM? Our Committee knows of no such reasons. If the Administration believes the existing system is faulty, it should specify why and propose precise remedies. Discarding fundamental premises of shared governance and a basic sense of fairness is not an acceptable substitute.
3. The “standards” set out (700-10, p.3) for the most central components of the proposed regulations (exs. “absent without an approved leave” and “assigned duties”) are left completely undefined. This vagueness, in combination with the enormous diversity of working patterns practiced by the faculty of the University’s various schools and departments, will inevitably lead to ambiguity in implementation and result in unfairness. If adopted in their present form the revisions have the potential to place the Administration in a position to create ad hoc justifications for terminating faculty at will. Indeed, the rule is clearly not intended to operate automatically as it provides for the Chancellor to determine whether “separation is appropriate.” But, this open-ended discretion is unencumbered by any standard for its implementation. Furthermore, the

basic premise of these revisions, that a faculty member may only grieve his/her termination after the fact is totally unacceptable to the Committee. If enacted, such a provision will essentially nullify the most basic elements of UC's tradition of shared governance.

4. The lack of clarity regarding the central concepts in the revisions described above create not only the potential, but the inevitability, for selective enforcement by the Administration. Given the realities of University life, these proposals almost insure unequal enforcement, increased conflict within departments, and divisiveness on the Campus.

In sum, these provisions have the potential (perhaps unintended) to destroy the most central tenets of academic freedom and faculty well being. As presented, they are so poorly crafted as to bring chaos to the principles of shared governance, and insure that the University could be successfully sued almost every time they were put into practice. There is something fundamentally askew when the University proposes that the faculty accept as a basic standard that employment be at the whim of an administrator and that one may grieve only after termination and cessation of salary and benefits.

Re: Proposed new APM 080 and 711:

The Committee was somewhat more receptive to these additions to the APM. However, it is not clear why faculty with medical problems should not utilize their disability insurance and thus be in a position to reclaim their positions when their conditions resolve or abate. Again, the proposals suffer from a lack of clear justification or statement of need. Given the broad and inclusive nature of terms such as "illness" and "disability" the total removal of the Academic Senate from the termination process is a cause for alarm. Why is this needed now? And how will it be enforced fairly? What is presented here does not lead one to have confidence in either the procedures or mechanisms of enforcement, nor the motives that lie behind their introduction.



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June 12, 2006

John Oakley
Professor of Law
Chair, UC Systemwide Academic Senate
1111 Franklin St., 12th Floor
Oakland, CA 94607

Dear John:

Formal Review of Proposed Revisions to System-wide Academic Personnel Policies (APM) related to paid sick leave, reasonable accommodation, medical separation and constructive resignation--APMs 700, 710, 711, and 080 (<http://www.universityofcalifornia.edu/senate/underreview/AS.formal.rv.apm.700.710.711.080.pdf>)

I am writing on behalf of the UCR Division to comment on the above APM policies related to sick leave, reasonable accommodation, medical separation and constructive resignation. Committee on Academic Personnel (CAP) were concerned over the loss of the older, more flexible practices, which allowed productive faculty members to return to full participation after debilitating diseases and accidents. Although they understand that the University is attempting to institute business practices that shift more of the burden of insuring welfare to the individual faculty member rather than the institution itself, and we recognize that previous policy favored faculty members over other employees, the older policy helped the university maximize the research and teaching careers of valuable individuals. One member asked whether the new policy was the result of the incidence of chronic diseases such as AIDS, and if so, whether it was a policy that targeted a specific class of faculty. CAP was also concerned with the language and the procedures for triggering a constructive resignation and concluded that such an unusual set of procedures and hypothetical circumstances must relate to very specific cases, and that the revisions to the APM are in response to past or anticipated litigation rather than to a significant number of faculty members who find themselves in such an aberrant relation to their university duties. The Committee on Faculty Welfare suggests that the wording in 710-11 (d) be changed to clearly say that it is only unused sick leave that is not counted towards UCRP and that faculty does receive service credit while they are on paid sick leave.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Manuela Martins-Green". The signature is written in a cursive, flowing style.

Manuela Martins-Green
Chair, Riverside Division



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Walter Yuen, Chair
Claudia Chapman, Executive Director

June 13, 2006

John Oakley, Chair
Academic Council

RE: Proposed Changes to APM 700, 710, 711, and 080

The Santa Barbara Senate has completed its review of the proposed changes to APM 700, 710, 711 and 080, and has no substantive comments. The proposed changes were sent to our CAP, P&T, Council on Faculty Issues and Awards, and all five campus Faculty Executive Committees for comment. The only comments received back by the deadline were grammatical suggestions as follows:

- 1) On page 3, Section 080-3-a, the last sentence is a run-on sentence and should be modified to read: "The faculty member must respond within thirty (30) calendar days to request a hearing. **Otherwise** the Chancellor..." [OR: hearing; **otherwise**...]
- 2) On pages 3-4, Section 080-3-b, the third sentence should be modified to read: "The appointee must respond within thirty (30) days to request a hearing. **Otherwise** the Chancellor..." [OR: hearing; **otherwise**]

Sincerely,

A handwritten signature in black ink, appearing to read "Walter Yuen".

Walter Yuen
Divisional Chair



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June 7, 2006

John Oakley, Chair
Academic Council

RE: UCSC Response to Formal Review of Proposed Revisions to System-wide Academic Personnel Policies – APMS 700, 710, 711, and 080.

Thank you for providing us with the opportunity to comment on APMS 700, 710, 711 and 080. We asked our Committee on Academic Personnel (CAP) and our Committee on Privilege and Tenure (CP&T) to comment. The present chair of CAP believes that CAP may not deal with policy issues, and his committee has declined to comment. CP&T has provided the attached comments, with which I concur entirely.

Sincerely,

A handwritten signature in black ink, appearing to read "Faye J. Crosby".

Faye J. Crosby, Chair
Academic Senate
Santa Cruz Division

Cc: Al Zahler, Chair CP&T

Attachments: Letter from CP&T

May 22, 2006

Chair Faye Crosby
Academic Senate

RE: P&T review of changes to APM 700, 710 and 080

Dear Faye;

UCSC P&T was asked to comment on proposed changes to the APM, specifically APM sections 700, 710 and 080.

APM 700 deals with leaves of absence. The new proposed material for this section allows for termination of a professor based on unauthorized absences. This new policy is entirely unnecessary because there currently exist rules in the APM, in the faculty code of conduct, and well-defined procedures for holding faculty accountable for performing their duties. This new rule does not define "unauthorized absences" so is wholly an interpretation of the Chancellor. There is also a significant change in the line of authority for termination from a Regental action to Chancellor's authority. Of greatest concern to us is that this new termination authority avoids a hearing before P&T prior to a decision by the administration, which is a faculty right when facing termination. When you take away the P&T hearing component in this case, you take away our shared governance and the faculty member's rights to a well-working grievance and discipline procedure. Also there is no justification given for the need for this dramatic change in charges and discipline proceedings.

Recommendation: This policy is redundant with current policy and these changes to APM 700 should not be made.

APM 710 deals with paid sick leave for employees (faculty) who do not accrue sick leave. This new policy codifies current practices (6 months of paid sick leave for less than 10 years of service, one year for more than 10 years of service) and in some ways brings fairness and clarity to an issue that before left a temporarily disabled employee at the whim of the Chancellor. An important aspect of this is that faculty must be made aware of the importance of getting supplemental (employee paid) disability insurance for when sick leave ends, and we would like to see the administration agree to actively advertise this when this policy is put in place.

Recommendation: It is good to codify sick leave policy for faculty members as long as this is well-advertised and faculty are actively encouraged to obtain supplemental disability insurance.

APM 080 deals with a policy of medical separation for when, even with reasonable accommodation, a disabled faculty member is no longer able to perform his/her faculty duties. We have a concern about this policy change because, as with any termination, we believe the faculty member first has a right to a P&T hearing before termination.

Recommendation: No medical separation should occur without a hearing before P&T, or at least a mechanism must be in place for P&T to review the case.

Please contact me with any questions.

Sincerely,

Al Zahler, Chair
Committee on Privilege and Tenure



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June 19, 2006

Professor John Oakley
Chair, Academic Senate
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

Re: Formal Review of Systemwide Academic Personnel Policies: APM 700, Leaves of Absence/General; APM 710, Leaves of Absence/Sick Leave; APM 711, Reasonable Accommodation for Academic Appointees with Disabilities; APM 080, Medical Separation

Dear John:

In response to your request of April 4, the San Diego Divisional Senate Council received comment from its cognizant committees and considered the proposed revisions to APM 700, 710, 711, and 080 on June 12, 2006.

The first, general reaction was one of dismay that the Division's comments last year on the introduction of the presumed resignation concept had not been addressed in these proposed changes. All reviewers were struck by the lack of defined timelines. While some saw needed flexibility in the looseness of the language, most were concerned that without a clear definition of when the "clock" starts, and who starts it, faculty are without a safeguard: presumed resignation could be precipitated even when such was not the intent of the faculty member. A defined grace period would eliminate this possibility. Other comments included:

- o APM 080-3: More detailed guidance with respect to timing is necessary to define when notice is adequately provided. Academic Senate Bylaw 337 provides that no Senate member may be terminated prior to the expiration of an appointment without having an opportunity for hearing before the Divisional Committee on Privilege and Tenure. Although this right is implied in the last sentence of APM 080-3(a), the language is not clearly in agreement with Bylaw 337.
- o APM 080-24: This section discusses "tenured faculty" and "other academic appointees". It would seem that the intent is to also capture "tenure-track faculty" in this section, but this is not clear.
- o APM 700: As proposed, the policy applies only to academic year (9 month) appointees; fiscal year (11 month) appointees are not mentioned.
- o APM 710-11: Concern was voiced that since faculty who are members of the Health Sciences Compensation Plan are specifically excluded and since accommodations for sick leave are the responsibility of these individuals and their respective departments, the possibility exists that some faculty could end up being covered by no policy at all.

Sincerely,

A handwritten signature in cursive script that reads "Bernard".

Jean-Bernard Minster, Chair
Academic Senate, San Diego Division

E.Switkes 05-22-06 correspondence to J.Oakley re: APM 700, 710, 711, 080

Date: Fri, 02 Jun 2006 07:17:41 -0700

To: UCACOUN-L@listserv.ucop.edu

From: Maria Bertero-Barcelo <maria.bertero-barcelo@ucop.edu>

Subject: (Academic Council) APM 700, 710, 711 and 080

Cc: UCSUPS-L@listserv.ucop.edu, todd.giedt@ucop.edu, brenda.foust@ucop.edu, kimberly.peterson@ucop.edu, michael.Labriola@ucop.edu, michelle.ruskofsky@ucop.edu, midge.fox@ucop.edu, Kenneth.Feer@ucop.edu

Dear Members of the Academic Council:

Following up on the May 26 meeting of Council, Chair Oakley asked that I circulate to you a copy of AVP Ellen Switkes comments on UCP&T's concerns with respect to the proposed revisions to APM 700, 710, 711 and 080.

Please find below Ellen's comments. For your convenience I have also attached, UCP&T's comments on these proposed revisions.

Please note that Divisional comments (and those Committees who have yet not responded) on the proposed APM revisions are due by June 9.

Cordially,

Maria

Date: Mon, 22 May 2006 17:15:39 -0700

To: jboakley@ucdavis.edu, Maria.Bertero-Barcelo@ucop.edu

From: Ellen Switkes <ellen.switkes@ucop.edu>

Subject: UP&T Comments

Cc: jill.slocum@ucop.edu, rory.hume@ucop.edu, linda.fabbri@ucop.edu

John,

I reviewed the memo from UCP&T on the proposed revisions to APM 700, 710, 711 and 080 and have a few comments.

My major concern deals with the issue UCP&T raised about the provision proposed in APM 700-10 about constructive resignation. UCP&T is correct that this proposed policy does not explicitly provide for a hearing prior to the constructive resignation. That's exactly the point. The University already has policies and procedures, including right to a hearing prior to termination. This proposed policy is not an "early termination." Termination is an involuntary action by the employer. Rather failure to show up for work is a voluntary act on the part of the professor, consequently it is not a termination for cause. It's the professor who decides whether to return from a leave or not to work. As we've discussed in the past, the situation whereby a professor is on leave without pay and requests a second year of year is usually complicated by the start date of the pay period. Under such circumstances, a professor on leave without pay who requests a second year of leave which is denied, is returned to payroll effective July 1 in anticipation of a return to campus for normal teaching and research in the fall. When the professor chooses not to return, two or three months pay has already been received.

If the Senate feels that RSO 103.9 must be interpreted to provide for a hearing before the University can remove a professor who refuses to return from a leave and remains on the payroll during the dismissal hearing, I suggest we ask the Regents for an interpretation of that RSO. I don't believe that RSO 103.9 applies in this case. It is not a termination, rather it is an election by

the Professor to resign by not coming to work. The UCFW discussed the possibility of not paying a professor during the period he has refused to return to work and before a hearing is completed. However, not paying someone is validating that they are on leave without pay, just what was requested and refused in the first place. If the Academic Council accepts the UCP&T opinion, I will recommend that we take this policy to the Regents for interpretation or as a revision to RSO 103.9 for further clarification.

Both UCAP and UCFW made excellent suggestions for minor modifications in the policy language to make the intent more clear, but both committees endorsed the concept. Based on their feedback, we plan to add a stipulation that the Chancellor personally sign the notice of intent as well as the final written decision, without delegation of authority. This suggestion appeared to relieve some of the committee member's concerns that this action could be taken under inappropriate circumstances by a department chair.

UCP&T also commented that APM 080-3 - the policy on medical separation does not specify that the right to a hearing should be one constituted by the Academic Senate. However, APM 080-3 explicitly provides for "the right to a hearing under Regents Standing Order 103.9." This RSO 103.9 provides for the opportunity for a hearing by "as properly constituted advisory committee of the Academic Senate." Perhaps the UCP&T is suggesting that we quote the RSO itself in APM 080-3.

Finally, UCP&T made a comment about sabbatical accrual during leaves of absence. The proposed change to the 710-42 is wrong - several reviewers have caught this (thank you reviewers!). It's probably best to make no change to current language.

710-42 should read: **Sabbatical Leave Credit** - Sabbatical leave credit is not accrued during a leave of absence with pay for one quarter or semester or more or for a leave of absence without pay (see APM - 740-11-h(3) and (4)).

I'm happy to discuss any of these issues with you in more detail.

Ellen

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[UCPT.APM700.0510061.doc](#)



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Oakland, California 94607-5200

August 3, 2005

**ELLEN SWITKES, ASSISTANT VICE PRESIDENT
ACADEMIC ADVANCEMENT**

**Re: Informal Review of Proposed Revisions to Systemwide Academic Personnel Policies
Related to Absences/Sick Leave, Medical Separation and Leaves of Absence/General
APMs 710, 080, and 700**

Dear Ellen:

The Academic Council considered the proposed APM revisions governing sick leave, medical separation and general leaves of absence in the context of an informal review during its July 27, 2005 meeting, and concurred with the comments and recommendations that were submitted by the Senate reviewers. The highlights of those are listed below and the reviewers' response letters are enclosed to give you the full benefit of their deliberations. In addition, I wish to point out that during my own review of these policies, I noted that the proposed revision of APM 700-16, suggesting that the chancellor may make a final decision on a separation, contradicts the Standing Orders of the Regents and Senate Bylaws governing early termination, which require that the Divisional Privilege and Tenure Committee be notified prior to the intended action, and that the affected faculty member be given the opportunity for a hearing before the Privilege and Tenure Committee. This represents a major oversight in the draft policy that will need to be rectified.

Other Comments on APM 700-16: Presumptive Resignation

- There should be a specific minimum cutoff point designated for an absence without leave, beyond which continued absence would prompt separation proceedings.
- The thirty-day response limit is too short for an action as serious as termination.
- The policy should include a statement that the administration has made a good faith effort to notify the affected faculty member.

APM 710: Sick Leave

- The maximum amount of paid sick leave for academic appointees with more than 10 years of service would be one year of paid sick leave in a 10-year period. This seems unfair since faculty who have worked 22 years would be granted less sick leave than staff that have accrued sick leave for the same period of time.

APM 080: Medical Separation

- What is meant by “essential duties” and who makes the determination that a faculty member is unable to perform them?
- In 080-1, a statement should be included that faculty be represented in the separation process.

Long-Term Disability Leaves

- For untenured ladder faculty, there should be a statement clarifying that the tenure clock will stop while they are on a long-term disability leave.

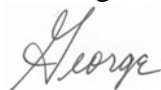
In addition to the above comments, UCFW reported that you and your staff have agreed to the following modifications, which Council will expect to see included in the revised drafts:

- These policies will be faculty entitlements rather than recommendations to chancellors.
- The right to sick leave and the amount that is provided *shall* be granted, as opposed to *may* be granted.
- Protections will be included to safeguard against medical separations being initiated too early.
- A statement will be included in the sick leave policy to the effect that paid sick leave for the care of a family member or domestic partner is not prohibited. The faculty member will then be referred to the policy on leave of absence with pay.

As you know, the usual process that the Senate follows for considering APM policy changes was not followed in this review, which leaves us with the question of whether a second informal review should be undertaken in the fall. In considering the number of substantive changes that will be required to make these acceptable APM policies, the Academic Council has concluded that it would be irresponsible not to commence a second informal review once these drafts are revised. Moreover, these are important policy changes with significant implications for the welfare of UC faculty, and since there is no urgency associated with their implementation it is Council’s view that both the faculty and administration would be best served by giving these policies the careful and close consideration they deserve.

Please let me know your timeline for when the Academic Council will have the opportunity to review and comment on the revised draft policies in a second round of informal review.

Best regards,



George Blumenthal, Chair
Academic Council

Encl.: Comment Letters from UCFW, UCEP, UCI, UCSD, UCB, UCD, and UCR

Copy: Academic Council
María Bertero-Barceló, Executive Director



UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
John Oakley, Chair
jboakley@ucdavis.edu

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July 15, 2005

**GEORGE BLUMENTHAL, CHAIR
ACADEMIC COUNCIL**

**Re: Update on UCFW Subcommittee's Review of the Proposed Revisions to APM 700,
710 and Proposed New APM 080**

Dear George:

On behalf of the UCFW subcommittee charged with working with the administration on revising the draft APM policies on medical leaves/sick leaves, I have nothing new to report since my June 10 update. Although the subcommittee reports that it has made significant progress in a number of areas, it has not seen a new draft that reflects the changes that were negotiated with Academic Advancement Assistant Vice President Ellen Switkes and her staff. The chief among those were:

- These policies will be faculty entitlements rather than recommendations to chancellors.
- The right to sick leave and the amount that is provided *shall* be granted, as opposed to *may* be granted.
- Protections were included to safeguard against medical separations being initiated too early.
- A statement will be included in the sick leave policy to the effect that paid sick leave for the care of a family member or domestic partner is not prohibited. The faculty member will then be referred to the policy on leave of absence with pay.

At UCFW's June 20 meeting, AVP Switkes reported that her staff had consulted closely with the UCFW subcommittee and was also continuing to receive comments from other reviewers, and that in another month she would assess whether a second informal review was warranted or if Academic Advancement could proceed with a formal review of the proposed policies in the fall, as planned. It was the preference of UCFW members that there be a second round of informal review, but the committee agreed to leave the question open for now.

Cordially,

/s/

John Oakley, Chair

University Committee on Faculty Welfare

Copy: UCFW



UNIVERSITY COMMITTEE ON EDUCATIONAL POLICY (UCEP)
JOSEPH KISKIS, CHAIR
kiskis@physics.ucdavis.edu

The Academic Council
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April 25, 2005

GEORGE BLUMENTHAL, CHAIR
ACADEMIC COUNCIL

Re: Proposed Revisions to APM 710 and 700 and Proposed New APM 080

Dear George,

At its April 11, 2005 teleconference meeting, UCEP reviewed proposed revisions to APM 710 and 700, concerning Leaves of Absences and Sick Leave, and the proposed new APM 080, related to Medical Separation.

While many provisions of these proposals are not closely related to our charge and we are not commenting on them, we agreed that the APMs should include explicit language outlining appropriate Senate involvement in the separation procedures for faculty falling under these provisions.

Specifically, we are concerned with the proposed revision on page 2 of APM-700, Benefits and Privileges, Leaves of Absence/General, entitled "700-16, Restrictions". This amendment is also summarized in the third bullet point of the cover letter as a revision that "...adds the concept of constructive resignation for faculty who are absent without approval or who do not return to assigned duties after an approved leave of absence".

In the current version of the revision, it is unclear who constitutes "The University" in the provision for University review of a faculty member's response to a forced resignation decision. The decision to separate and the review of faculty appeals seems to be entirely at the discretion of the administration. Instead, the APM language should explicitly state that the right to grieve such an action should *automatically* trigger Senate review through Senate Privilege and Tenure committees.

In addition, we believe it would be useful for the APM language to designate a specific, minimum cutoff point for an absence without leave, beyond which continued absence would prompt separation proceedings. This would help prevent proceedings from being triggered if an individual forgot to deliver official notification about a conference trip. Members made suggestions of both 30 days and 3 months for a cutoff period.

In sum, we agree that faculty should not be making excessive or inappropriate use of Leave, but we fear that without proper safeguards, including appropriate Senate review, the proposed disciplinary provisions could be perceived as unfair.

The committee looks forward to reviewing the comments of the University Committee on Faculty Welfare and other Senate committees who we expect will evaluate this and other aspects of the proposed policy in greater detail.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joe Kiskis".

Joe Kiskis
Chair, UCEP

JK/ml

cc: UCEP members
Executive Director Bertero-Barceló



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June 3, 2005

George Blumenthal, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

RE: Informal Review of Proposed Revision to System-wide Academic Personnel Policies Related to Absences/Sick Leave, Medical Separation and Leaves of Absence/General (APM 710, 080, and 700)

The Irvine Division concludes that these three proposed APM revisions do not appear to subordinate faculty rights. Irvine agreed with the general principle that faculty members can be terminated and, if needed, the Committee on Privilege and Tenure would be available to address faculty complaints related to leaves and separations.

It is unclear, however, why a new policy and revisions to two existing policies are needed. It would have been helpful to our deliberations to know the rationale behind the proposed new and revised policies. These are some questions that arose in our discussions.

- In what ways are the current policies not working?
- How do other universities handle medical and general separation of faculty?
- What happens to a faculty member who has a chronic health or mental health problem when he or she is in remission?
- Is the related policy on salary continuance for faculty being reviewed at this time?

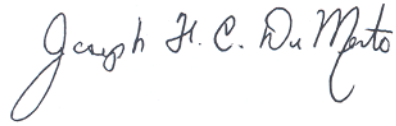
We have no comments on APM 710.

Regarding APM 080, the notable benefit to this policy is that it will provide departments with a clear policy for dealing with faculty members who are unavailable for long periods of time due to medical separations. APM 080-0 uses the wording "essential duties" and "essential assigned functions." It would also be helpful to have a clear and consistent standard laid out when a faculty member is hired to define the person's duties so that a medical separation can be assessed and documented relative to the expected standards. In APM 080-1, Basis for Medical Separation Review, we recommend that the faculty should have representation or advocacy in the separation process and a statement to that effect should be added.

In APM 700, because termination is a serious action, a thirty day response limit seems an unreasonably short deadline. We recommend the addition of a statement that all good faith efforts possible need to be made by the administration to notify the affected faculty member. These could include the use of temporary addresses, emergency addresses, and next of kin

addresses. Also, when a faculty member is on leave, the faculty member should provide the department with multiple persons or places for contact.

We appreciate the opportunity to comment on this important matter.

A handwritten signature in black ink that reads "Joseph F.C. DiMento". The signature is written in a cursive style with a large, looping initial 'J'.

Joseph F.C. DiMento, Senate Chair



OFFICE OF THE ACADEMIC SENATE

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May 9, 2005

PROFESSOR GEORGE BLUMENTHAL, Chair
Academic Senate
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

SUBJECT: Informal Review of Systemwide Academic Personnel Policies Related to Absences/Sick Leave, Medical Separation, Leaves of Absence/General:
APM 700, Leaves of Absence/General
APM 080, Medical Separation
APM 710, Leaves of Absence/Sick Leave/Reasonable Accommodation for Academic Appointees with Disabilities

Dear George:

The Senate Council of the San Diego Division received comment from the cognizant committees and considered the Academic Personnel Policy proposals at its May 2, 2005 meeting. The Council endorsed the proposals and made the following comments:

- 700-16, Restrictions. The concept of presumed resignation represents a major policy change. The Committee wondered if this portion of the policy was the most appropriate place to introduce this concept. Also, there is no indication of how long an academic appointee could be absent before the presumption would be made that he or she had resigned. Concern was expressed that without such a safeguard, a presumed resignation could be precipitated even when there was no intent by the faculty member to do so.
- 080-3.a, Notice. Separating the last sentence in the paragraph into two sentences would make this portion more understandable.
- 710-0, Policy. Why was the word “personal” inserted? Is the intent to exclude sick leave for a faculty member when another member of their family is ill?
- 710-22, Paid Sick Leave for Academic Appointees Who Do Not Accrue Sick Leave. Why are faculty covered by the Health Sciences Compensation Plan excluded?
- 710-22(d). The phrase “is not carried over if unused” seems redundant and unnecessary.

Sincerely,

Donald F. Tuzin, Chair
Academic Senate, San Diego Divisioncc: J.B. Minster
ChronFile



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

May 23, 2005

GEORGE BLUMENTHAL
Chair, Academic Senate

Subject: Proposed Revisions to Systemwide Academic Personnel Policies Related to Absences/Sick Leave, Medical Separation and Leaves of Absence/General—APM 710, 080, and 700

At its meeting on May 9, 2005, the Divisional Council (DIVCO) of the Berkeley Division discussed the *Proposed Revisions to Systemwide Academic Personnel Policies Related to Absences/Sick Leave, Medical Separation and Leaves of Absence/General—APM 710, 080, and 700*, and the comments of the Committee on University Welfare (UWEL).

There was broad agreement that the proposed revisions provide needed clarification of existing policies. However, both DIVCO and UWEL raised a number of issues and concerns that require additional clarification.

Current policies for managing faculty absences due to illness afford considerable departmental discretion. DIVCO acknowledged that some latitude would still be possible under the proposed policies, and felt that this is appropriate. DIVCO recommends that the policies make clear the point at which these informal, discretionary arrangements transition into the more formal approaches.

In addition, it is not clear how “essential duties” are defined, and who makes the determination that a faculty member is unable to perform them. DIVCO recommends that the process for medical separation parallel APM 075, regarding Termination for Incompetent Performance, in which the Committee on Privilege and Tenure presides over the appeal process. Council members also felt strongly that the committee should be involved early in the process, and should play a role in determining the essential duties of academic positions.

In its comments, UWEL noted that the language in the proposed policies is vague. The policies should define terms such as “updated medical information” and “appropriate medical documentation.” In addition, the policies would be strengthened by a clear and explicit statement about the relationship between the various categories of leaves.

Finally, UWEL noted that there should be a statement relating to long-term disability leaves for untenured ladder faculty making it clear that being granted such a leave stops the tenure clock.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert C. Knapp". The signature is written in a cursive style with a large initial "R".

Robert C. Knapp
Chair, Berkeley Division of the Academic Senate

Cc: Yale Braunstein, Committee on Faculty Welfare
Dmitry Gudkov, Senate staff, Committee on Faculty Welfare



OFFICE OF THE ACADEMIC SENATE
ONE SHIELDS AVENUE
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May 6, 2005

George Blumenthal, Chair
Academic Senate
University of California
1111 Franklin St., 12th Floor
Oakland, CA 94607-5200

Dear George,

In response to the March 18, 2005, request for review, the only substantive response received from committee review is a question of who is going to pay for implementation of this policy. I quote the question of a highly respected female faculty member: "Who pays for this? I am assuming that individual departments and units are NOT responsible for the costs but that it is a university-wide responsibility. Other wise I could anticipate some discrimination in hiring women of reproductive age."

Sincerely,



Daniel L. Simmons
Professor of Law and
Chair of the Davis Division
of the Academic Senate



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June 9, 2005

George R. Blumenthal
Professor of Astronomy & Astrophysics
Chair, UC System wide Academic Senate
1111 Franklin St., 12th Floor
Oakland, CA 94607

RE: Informal Review of Proposed Revisions to System wide Academic Personnel Policies Related to Absences/Sick Leave, Medical Separation and Leaves of Absence/General--- APMs 710, 080, and 700
<http://www.universityofcalifornia.edu/senate/underreview/apm.700.080.710.pdf>

Dear George:

The above policy was reviewed by the appropriate committee of our Division and below is a summary of their discussion:

- With regard to the proposed changes to APM 700, we found the institution of a constructive resignation policy for faculty generally reasonable. However, it was concerned that such a policy not create an inflexible situation in which faculty who are on extended leaves of absence for reasons beneficial to their home departments and/or campus would be forced to forego them.
- With regard to the proposed APM 080 and the proposed revisions to 710, we found these changes also to be in general reasonable. However, with respect to 710 and the limit of twelve months of sick leave proposed in it for faculty who have worked more than 10 years, we were concerned about this upper limit. This limit would create a situation where faculty who have worked more than 22 years would be granted less sick leave than staff that have accrued sick leave for the same period of time. This seems unfair to faculty.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Manuela".

Manuela Martins-Green
Chair, Riverside Division