UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

Bill Jacob

Telephone: (510) 987-9303 *Fax:* (510) 763-0309

Email: William.jacob@ucop.edu

Chair of the Assembly of the Academic Senate Faculty Representative to the Regents University of California 1111 Franklin Street, 12th Floor Oakland, California 94607-5200

June 4, 2014

SUSAN CARLSON, VICE PROVOST ACADEMIC PERSONNEL UNIVERSITY OF CALIFORNIA

Re: Proposed revisions to Whistleblower Protection Policy and APM 190 – Appendix A-2

Dear Susan:

Eight academic Senate divisions (UCB, UCD, UCI, UCM, UCR, UCSF, UCSB, and UCSD) and three systemwide committees (CCGA, UCAP, and UCFW) submitted comments on the proposed revisions to the <u>UC Whistleblower Protection Policy and APM 190 – Appendix A-2</u> released for systemwide review by your office in early March.

Although most Senate reviewers support the majority of the revisions, reviewers also expressed several substantive concerns about specific elements of the policy. As a result, the Academic Council is unable to endorse the revisions at this time and asks that the document be revised to address the specified concerns and circulated for a second round of review. In particular, we urge you to take note of the Davis division's close reading of the policy and its detailed questions and suggestions.

Substantive Issues:

Several reviewers noted that a timeframes for various aspects of the Whistleblower retaliation investigatory process are either absent or vague. These include the length of time for retaliation to occur (UCFW), the timeframe for notifying the accused employee (UCD), and how the cure period for a deficient complaint interacts with the 12-month rule for filing a complaint (UCD). UCI notes that the policy refers to a deadline to address complaints within 18 months, but it is not clear when the 18 months starts and expires and what happens after that deadline expires. The policy should discuss the decision process for complaints not dismissed or withdrawn during the 18-month period. UCAP suggests that the Time Frame for Investigation section note that Complainants will be notified about and provided with an explanation for any extension of an investigation deadline.

Several reviewers (UCB, UCFW, and UCSB) expressed concern that the policy eliminates the requirement that the investigator provide the employee accused of retaliation with a copy of the complaint and all documents on which s/he intends to rely in reaching findings. This is an important safeguard for an employee accused of retaliation that should be retained. UCFW also expresses a

related concern about a lack of appeals options for dismissals attributed to untimeliness or a lack of documentation.

Multiple reviewers suggest defining and clarifying the phrases "burden of proof" and "affirmative defense" in Section III.E.1, Evidentiary Standards. (UCSD, UCD). These legal terms of art may not be understood by many members of the general University community. UCD notes that the policy should expressly advise the complainant to ensure the complaint references any evidence that s/he wants the investigator to consider.

UCI asks that the policy clarify the categories of campus personnel who would be appropriate Locally Designated Officials appointed as Whistleblower Officers, the relationship between the Whistleblower officer and the administration, and the extent to which the Officer is expected to be independent of the administration.

Other Suggested Clarifications:

- Clarify the language in the first sentence of Policy Text Section I- Appeals, to state that "the Complainant has no right to appeal a decision *if the case is found to have no merit.*" (UCSB)
- In Section C.1.b.iii, add the word "alleged" before each instance of "Illegal Order."
- Address a gap in how the policy works at the systemwide level, if the complainant is not satisfied with the action of the UCOP Locally Designated Official. (CCGA)

All Senate comments are enclosed for your reference. Thank you for the opportunity to review and comment. Please do not hesitate to contact me if you have further questions.

Sincerely,

Bill Jacob

Encl. (1)

Cc: Academic Council

Executive Director Winnacker Policy Manager Lockwood

Senate Analysts



May 27, 2014

WILLIAM JACOB Chair, Academic Council

Subject: Proposed Revisions to the Whistleblower Protection Policy (APM 190, Appendix A-2)

Dear Bill,

On April 28, 2014, the Divisional Council (DIVCO) of the Berkeley Division discussed the proposed revisions to the Whistleblower Protection Policy (APM 190, Appendix A-2), informed by commentary from our divisional committees on Budget and Interdepartmental Relations, Faculty Welfare (FWEL), and Privilege and Tenure.

Although generally supportive of the proposed revisions, we noted the following concern, which is well described by FWEL:

The proposal eliminates an important procedural safeguard for an employee accused of retaliation. The current policy requires "Before findings are reached, [the investigator] shall provide a copy of the complaint and any documents on which [the investigator] intends to rely in reaching findings to the person accused of interference or retaliation." The proposed revisions eliminate this requirement. The rationale for the proposed revised draft gives no explanation for this change. We think this is an important procedural safeguard for an accused employee. It is our understanding that any disciplinary action taken against an accused employee who is found to have violated the policy will have to comply with normally applicable personnel procedures. But a finding an employee violated the policy can have a significant adverse impact on the employee without disciplinary action being taken.

DIVCO believes that this issue should be addressed before the proposal moves forward.

Sincerely,

Elizabeth Deakin

Elizabeth Deaken

Chair, Berkeley Division of the Academic Senate

Professor of City and Regional Planning

Eric Talley, Chair, Committee on Budget and Interdepartmental Relations Cc:

Calvin Moore, Chair, Committee on Faculty Welfare

Robert Powell, Chair, Committee on Privilege and Tenure

Aimee Larsen, Manager, Committee on Budget and Interdepartmental

Relations

Andrea Green Rush, Executive Director, staffing the Committee on

Privilege and Tenure

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



OFFICE OF THE ACADEMIC SENATE ONE SHIELDS AVENUE DAVIS, CALIFORNIA 95616-8502 TELEPHONE: (530) 752-2231

May 28, 2014

WILLIAM JACOB, CHAIR

UC Academic Council 1111 Franklin Street, 12th Floor Oakland, California 94607-5200

RE: Systemwide Review of Proposed Revised University of California Policy on the Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints, (Whistleblower Protection Policy) and Academic Personnel Manual (APM) Section 190, (APM – 190), Appendix A-2

The proposed revised policy was forwarded to all Davis Division of the Academic Senate standing committees and Faculty Executive Committees from the Schools and Colleges. Responses were received from the Committees on Elections, Rules and Jurisdiction and Faculty Welfare, Graduate Council, and from the Faculty Executive Committee from the College of Letters and Science.

The Whistleblower Protection Policy provides that if someone makes a timely claim of retaliation, the complaint will be investigated and the results of the investigation forwarded to the Chancellor for action. Overall, the feedback received indicates that the proposal is supported by the Davis Division. However, the Committee on Elections, Rules & Jurisdiction (CERJ) provided extensive commentary and suggestions to the proposed revised policy. CERJ identified a number of issues and divided them into substantive concerns, questions, and drafting issues, as follows:

1. Substantive Concerns

- a. III.D1-2. Timeframes. A complaint must be brought within 12 months of the alleged retaliation. But the complainant has a reasonable time to cure a complaint that is deficient because it lacks a sworn statement or does not contain the required allegations. It is not clear how this cure period interacts with the 12-month rule: Does the filing of a deficient complaint on Day 364 count if the complaint is deficient but the deficiencies are cured in a reasonable time that is after Day 365? Relatedly, it seems that the time frame for notification of the accused employee (III.D.2) should be specified, even if it is just within a "reasonable time." That does not appear to be specified.
- b. III.D.4: Accused Employee's Right to Review Documents. Although the accused employee has the right to respond in writing to the complaint, the accused employee is apparently only allowed to see the complaint and not the documents on which the investigator proposes to rely in making factual findings. In civil litigation, a defendant is entitled to see and respond to the plaintiff's evidence. Although internal investigations may employ more streamlined processes and although part of the point of this revision is to streamline the process, it still seems strange that the accused does not see the evidence against him/her. There may be valid reasons (confidentiality) not to allow the accused to see certain evidence, but those can be handled separately.
- c. III.E. Burdens of Proof. There are two concerns here. The first is that the discussion is unclear. The provision states that if certain conditions are met, the complainant shall have "a complete affirmative defense to the Adverse Personnel Action that was the subject of the complaint." It is not clear that the term "affirmative defense" applies to all, or even most, adverse personnel actions. If you're accused of murder, and you prove an affirmative defense such as self-defense, you're found not guilty. We are not

aware that most adverse personnel actions arise from litigated proceedings where your accuser has to prove a case against you. You can simply not be hired because someone else is better qualified. There is no proceeding where a tribunal hears a case against you and decides not to hire you only if that case is made. There is no need to prove a case against you to deny you tenure, so the concept of an "affirmative defense" doesn't seem to make sense. Moreover, with exceptions for newly discovered evidence and the like, affirmative defenses are typically raised before the conclusion of the proceeding, and certainly before the completion of the sanction. If you have already served your sentence, finding out that you have an affirmative defense does not do you any good unless it is coupled with some other right to relief. In situations covered by the personnel policy, the adverse personnel action has already happened, so something beyond an "affirmative defense" is needed to correct the problem.

Second, the complainant bears the initial burden of proof, but the evidence is assembled in an investigation that the complainant does not control. In civil litigation, the plaintiff bears the burden of proof and has the right to investigate his/her claim through the discovery process. In criminal litigation, the state bears the burden of proof and conducts the investigation. It seems that at a minimum, the policy should expressly advise the complainant to make sure the complaint references any evidence that s/he wants the investigator to consider.

2. Questions

- a. Just what are the boundaries of "this policy"? Part I states that "complaints alleging interference with an employee's right to make a Protected Disclosure" will be dealt under the Whistleblower Policy rather than this policy. But Part III.A ("Purpose of Policy") states that a university employee may not interfere with an employee's right to make a protected disclosure. As a result, it is not entirely clear what the references to "this policy" throughout the document cover, as in III.F, providing that the Chancellor may provide relief for violations of "this policy" as appropriate. Relatedly, it's plausible that retaliation could also be interference. In that case, it would not be clear whether the WPP or the WP would apply.
- b. How are issues that may span multiple campuses or multiple Chancellors handled? (III.B.5)
- c. Section II. Definitions. Should failure to promote be an example of an Adverse Personnel Action?
- d. III.D.4. "The investigator" is supposed to conduct the investigation. How does this interact with the concept of the "Investigations Workgroup"?
- e. III.J. Reporting Requirements. Annual reporting is eliminated. The reporting requirement is now very open-ended. It is not clear why this change is justified, beyond providing flexibility.
- f. In the same section, should there be a deadline for adoption of local procedures?

3. Drafting Issues

- a. I. Policy Summary. This process is available to employees (or applicants) who "allege" or "believe" that they have been subjected to retaliation. However, the document currently reads as though the process is available to employees who "have" been subjected to retaliation.
- b. Certain capitalized terms are not included in the "Definitions" section. These include "LDO," "RCO," "Investigations Workgroup" (III.B.6), "Evidentiary Standards" (III.E).
- c. III.D.4.c: Duty to cooperate. The policy states that witnesses have a "duty to cooperate" with the investigation. It seems unlikely that the University can impose a duty on people who are not employees, or possibly contractors. Should the statement be clarified to reflect this? Also, no consequences are mentioned for a failure to cooperate.
- d. III.G: "in" the Academic Senate vs. "a member of" the Academic Senate.

In conclusion, while the Davis Division of the Academic Senate is in favor of treating whistleblowers efficiently and fairly, consideration must be given to the above concerns before the policy is adopted.

Sincerely,

Bruno Nachtergaele, Chair

Davis Division of the Academic Senate

Professor: Mathematics

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

Office of the Academic Senate 307 Aldrich Hall Irvine, CA 92697-1325 (949) 824-2215 FAX

May 23, 2014

William Jacob, Chair, Academic Council 1111 Franklin Street, 12th Floor Oakland, CA 94607-5200

RE: SYSTEMWIDE REVIEW OF PROPOSED REVISED UC POLICY ON PROTECTION OF WHISTLEBLOWERS FROM RETALIATION AND PROCEDURES FOR REVIEWING RETALIATION COMPLAINTS, AND APM SECTION 190, APPENDIX A

Dear Bill,

At its meeting of May 20, 2014, the Irvine Divisional Academic Senate reviewed the Proposed Revised UC Policy on Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints, and APM Section 190, Appendix A. The Council on Faculty Welfare, Diversity, and Academic Freedom comments as follows:

Council on Faculty Welfare, Diversity, and Academic Freedom (CFW)

CFW notes the revisions were created so that the Presidential Policy would be available in one place (on the Presidential Policy Website) and to avoid duplications within the APM. The draft language is meant to implement policy requirements mandated by an amendment to the California Whistleblower Protection Act that became effective January 1, 2011, with the intention to ensure that complaints filed under the Whistleblower Protection Policy are addressed within 18 months and to provide a Clearer explanation of the whistleblower retaliation complaint process. The Council agreed with the general purpose of the policy.

However, members raised concerns about the last sentence in the first paragraph of section I. Policy Summary, referring to an 18-month deadline. Members strongly felt that additional information should be included regarding the decision process for complaints not dismissed or withdrawn during this period.

Moreover, the Division would appreciate clarification in the Policy regarding who on campus is an appropriate appointment as Whistleblower Officer. The Irvine Division appreciates the opportunity to comment.

Peter Krapp, Senate Chair

Peter Mapp

C: Martha Kendall Winnacker, Executive Director, Academic Senate



27 May 2014

William Jacob, Chair, Academic Council 1111Franklin Street, 12th Floor Oakland, CA 94607-5200

RE: Systemwide Review of Proposed Revised University of California Policy on the Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy) and Academic Personnel Manual (APM) Section 190 (APM – 190), Appendix A-2

Dear Bill:

Thank you for the opportunity to review and opine on the Revised Policy on the Protection of Whistleblowers. Comments were solicited from each of the Faculty Executive Committees, the Faculty Welfare Committee, the Grievance Advisory Committee, the Committee on Charges, the Committee on Privilege and Tenure, and the Committee on Academic Personnel. Not all responded (those that did are available at

http://www.senate.ucla.edu/documents/CombinedResponse-APM190AppendixA-2.pdf), but those that did agreed the revisions designed to ensure whistleblowers' protection from retaliation were appropriate and, for several committees, to be desired.

The Executive Board shared this consensus.

Sincerely,

Jan Reiff

Jan Reiff

Chair, Academic Senate, 2013-2014

cc: Mary Gilly, Vice Chair, Academic Council Martha Winnacker, Executive Director, Academic Senate Michael LaBriola, Analyst, Academic Senate Linda Mohr, CAO, UCLA Academic Senate

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

OFFICE OF THE ACADEMIC SENATE IGNACIO LÓPEZ-CALVO, CHAIR senatechair@ucmerced.edu

UNIVERSITY OF CALIFORNIA, MERCED 5200 NORTH LAKE ROAD MERCED, CA 95343 (209) 228-7954; fax (209) 228-7955

May 15, 2014

William Jacob, Chair, Academic Council

RE: Sytemwide Request to Review Proposed Revisions to APM 190, Appendix A-2

Thank you for the opportunity to review the proposed revisions to the Protection of Whistleblowers from Retaliation and Procedures for Reviewing the Retaliation Complaints (Whistleblower Protection Policy) and Academic Personnel Manual (APM) Section 190, (APM-190), Appendix A-2. The Merced Division Council, Standing Senate Committees and School Executive Committees reviewed the policy and provided the following feedback.

The Committee on Academic Personnel (CAP) and the Faculty Welfare, Diversity, and Academic Freedom Committee (FWDAF) both stated their endorsement of the proposed revisions. All other committees had no objections or comments to the proposed changes.

We thank you for the opportunity to opine.

Sincerely,

Ignacio López-Calvo, Chair

Aprecio Copur Celo

Division Council

CC: Division Council Senate Office

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

ACADEMIC SENATE, MERCED DIVISION COMMITTEE ON ACADEMIC PLANNING AND RESOURCE ALLOCATION ANNE KELLEY, CHAIR amkelley@ucmerced.edu

UNIVERSITY OF CALIFORNIA, MERCED 5200 NORTH LAKE ROAD MERCED, CA 95344 (209) 228-4369; fax (209) 228-7955

April	29,	201	4
-------	-----	-----	---

To: Ignacio López-Calvo, Chair, Division Council

From: Anne Kelley, Chair, Committee on Academic Planning and Resource Allocation Anne Kelley (CAPRA)

Re: Systemwide Request to Review Proposed Revisions to APM 190

CAPRA appreciates the opportunity to opine on the proposed revisions to APM 190 but has no comments.

cc: CAPRA Members
DivCo Members
Senate Office

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

ACADEMIC SENATE, MERCED DIVISION COMMITTEE ON ACADEMIC PERSONNEL (CAP) RAYMOND GIBBS, CHAIR gibbs@ucsc.edu UNIVERSITY OF CALIFORNIA, MERCED 5200 NORTH LAKE ROAD MERCED, CA 95344 (209) 228-4369; fax (209) 228-7955

April 18, 2014

To: Ignacio López-Calvo, Chair, Division Council

From: Raymond Gibbs, Chair, Committee on Academic Personnel (CAP) Raymond Gibbs

Re: Systemwide Request to Review Proposed Revisions to APM 190

Per Division Council's request, CAP reviewed the proposed revisions to APM 190 pertaining to the UC Policy for Protection of Whistleblowers from Retaliation and the Guidelines for Reviewing Retaliation Complaints (Whistleblower Protection Policy).

CAP agrees with the proposed revisions and has no further comments.

cc: CAP Members
DivCo Members
Senate Office

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

ACADEMIC SENATE, MERCED DIVISION COMMITTEE ON FACULTY WELFARE, DIVERSITY & ACADEMIC FREEDOM RUDY ORTIZ, CHAIR rortiz@ucmerced.edu UNIVERSITY OF CALIFORNIA, MERCED 5200 NORTH LAKE ROAD MERCED, CA 95344 (209) 228-4369; fax (209) 228-7955

May 7, 2014

To: Ignacio López-Calvo, Chair, Division Council

From: Rudy Ortiz, Chair, Committee on Faculty Welfare, Diversity, and Academic Freedom (FWDAF)

Re: Systemwide Request to Review Proposed Revisions to APM 190

Per Division Council's request, FWDAF reviewed the proposed changes to APM 190 pertaining to the Whistleblower Complaint Policy. FWDAF endorses the revisions.

cc: FWDAF members
DivCo members
Senate office

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

ACADEMIC SENATE, MERCED DIVISION GRADUATE COUNCIL (GC) VALERIE LEPPERT, CHAIR UNIVERSITY OF CALIFORNIA, MERCED 5200 NORTH LAKE ROAD MERCED, CA 95343 (209) 228-6312

May 7, 2014

To: Ignacio López-Calvo, Senate Chair

From: Valerie Leppert, Chair, Graduate Council (GC)

Re: GC response to the proposed revisions to APM 190 and Appendix A-2

In response to DivCo's request, the Graduate Council reviewed the documents related to the proposed revisions to APM 190- UC Policy on the Protection of Whistleblowers from Retaliation and Appendix A-2 Procedures for Reviewing Retaliation Complaints. Members had no objections or comments.

We appreciate the opportunity to opine.

Cc: Graduate Council

Division Council

Academic Senate Office

Erik Menke From:

Wednesday, May 07, 2014 5:57 PM Dejeune Shelton Sent:

To:

Request for Comments: Systemwide Review Proposed Revisions to APM- 190, Appendix A-2 Subject:

Hi Dejeune,

The NS Executive Committee has no comments on the proposed revisions to APM 190. Thanks!

Erik Menke **Assistant Professor of Chemistry UC Merced** Sent from my iPhone

UNIVERSITY OF CALIFORNIA, RIVERSIDE

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCI



SANTA BARBARA • SANTA CRUZ

CHAIR, ACADEMIC SENATE RIVERSIDE DIVISION UNIVERSITY OFFICE BUILDING, RM 225 JOSE WUDKA PROFESSOR OF PHYSICS AND ASTRONOMY RIVERSIDE, CA 92521-0217 TEL: (951) 827-5538 E-MAIL: JOSE. WUDKA@UCR.EDU

May 13, 2014

William Jacob, Chair, Academic Council 1111 Franklin Street, 12th Floor Oakland, CA 94607-5200

RE: Review of Proposed Changes to APM 190 Appendix A-2

Dear Bill:

During its May 12 meeting the UCR Executive Council discussed the proposed changes to Appendix A of section 190 of the Academic Personnel Manual. There was unanimous support for the changes.

We appreciate the opportunity to comment.

Sincerely yours,

Jose Wudka Professor of Physics & Astronomy and Chair of the Riverside Division

CC: Martha Kendall Winnacker, Executive Director of the Academic Senate Cynthia Palmer, Director of UCR Academic Senate office



April 4, 2014

To: Jose Wudka, Chair

Riverside Division of the Academic Senate

From: Zhenbiao Yang, Chair

Committee on Diversity & Equal Opportunity

Re: Systemwide Review of Proposed Changes to APM 190 Appendix 2

At its meeting on March 31, 2014, the Committee on Diversity and Equal Opportunity discussed the proposed changes to APM 190 Appendix 2 and supports the changes with no further recommendations.



May 5, 2014

To: Jose Wudka

Chair, Riverside Division Academic Senate

From: Georgia Warnke

Chair, Committee on Faculty Welfare

Re: Systemwide Review of Proposed Changes to APM 190 Appendix A-2

At its meeting on April 15, 2014, the Committee on Faculty Welfare discussed the revisions to APM 190 Appendix A-2 and noted the changes seem to be in compliance with federal law. However, the policy is quite narrow and may not cover foreseen issues.



Office of the Dean Riverside, CA 92521 Tel 951.827.5190 Fax 951.827.3188 www.engr.ucr.edu

May 2, 2014

TO: Jose Wudka, Chair

Riverside Division

FR: Akula Venkatram, Chair

Executive Committee, Bourns College of Engineering

RE: Proposed Changes to APM 190 Appendix 2

The BCOE Executive Committee supports the proposed changes to APM 190, Appendix 2. Under the current WPP policy, a person who files a complaint of retaliation has to first request relief internally at the University, and then seek legal recourse only after the internal review has been completed. The person filing the complaint can use only one of several channels available for redress to avoid duplication of effort. Until one process is complete, the complainant cannot file the complaint under a different grievance procedure. With no mandated time limit, resolution of the complaint using this linear approach can take an indefinitely long time. The amendment allows simultaneous filing of the complaint using different university grievance procedures including that specific to WPP policy. It also ensures that the University resolves the complaint with 18 months of filing the complaint. It is not clear from our reading of the amendment how the Office of the General Counsel arrived at the 18 month time length.

UNIVERSITY OF CALIFORNIA, RIVERSIDE

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



EXECUTIVE COMMITTEE: COLLEGE OF HUMANITIES, ARTS, AND SOCIAL SCIENCES

RIVERSIDE, CALIFORNIA 92521-0132

April 9, 2014

TO: José Wudka, Chair

Academic Senate

FROM: Erica Edwards, Chair

CHASS Executive Committee

RE: Systemwide Review of Proposed Changes to APM 190 Appendix 2

The CHASS Executive Committee discussed the proposed changes to APM 190 Appendix 2 at the regular meeting on April 9, 2014. There were no objections and our committee approves the proposal.

Erica Edwards, Chair

CHASS Executive Committee



TO: Jose Wudka, Chair,

Riverside Division

FROM: Gillian Wilson, Chair, Executive Committee

College of Natural and Agricultural Sciences

DATE: April 20th 2014

•

RE: Systemwide Review of Proposed Changes to APM 190 Appendix 2

The CNAS Executive Committee discussed the proposal revisions to the University of California Policy on the Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints, Whistleblower Protection Policy (WPP) at its meeting on April 8th 2014. The CNAS Executive Committee endorses the proposed revisions.



April 9, 2014

To: Jose Wudka

Chair, Riverside Division

From: John S. Levin

Chair, Executive Committee, Graduate School of Education

Re: System-wide Review of Proposed Changes to APM 190 Appendix 2: Proposed Revised University of California Policy on the Protection of Whistleblowers

The Graduate School of Education Executive Committee has reviewed "System-wide Review of Proposed Changes to APM 190 Appendix 2: Proposed Revised University of California Policy on the Protection of Whistleblowers." The changes were acceptable to the Committee.



Division of Biomedical

April 18, 2014

Re:

Sciences

To: Jose Wudka, Chair Riverside Division

School of Medicine

From: Ameae Walker, Chair SOM executive committee Proposed changes to APM190 Appendix 2

Riverside, CA 92521

Tel (951) 827-5942

The SOM executive committee discussed the proposed changes at its meeting, April 8th, 2014.

The committee had no concerns.

SOM Executive Committee Ameae Walker, Chair Paul Lyons, Vice Chair Monica Carson Iryna Ethell David Lo Christian Lytle Ilhem Messaoudi Neal Schiller Emma Wilson Mahendr Kochar (clinical) Emma Simmons (clinical) Richard Olds (ex officio)

Phyllis Guze (ex officio)

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

OFFICE OF THE ACADEMIC SENATE

9500 GILMAN DRIVE LA JOLLA, CALIFORNIA 92093-0002 TELEPHONE: (858) 534-3640 FAX: (858) 534-4528

May 19, 2014

Professor William Jacob Chair, Academic Council University of California 1111 Franklin Street, 12th Floor Oakland, California 94607-5200

Subject: Proposed Revisions to Academic Personnel Manual (APM) 190, Appendix A-1 & A-2

Dear Professor Jacob,

The proposed revisions to APM 190, the Whistleblower Protection Policy, were sent to the appropriate Divisional committees for review and comment and were discussed at the May 5, 2014, Senate Council meeting. In general, the San Diego Division raised no objections to the proposed revisions to the policy. Some reviewers have the following comments related to the proposed revisions.

- Some reviewers felt that the phrase "burden of proof" stated in Section III.E.1: Evidentiary Standards should be defined to provide clarity.
- Some reviewers felt that the policy should provide protection for the supervisor so that the rights of all involved parties are addressed.

Thank you for the opportunity to provide comments.

Sincerely,

Ket Populario

Kit Pogliano, Chair Academic Senate, San Diego Division

cc: Divisional Vice Chair Boss
Executive Director Winnacker

UNIVERSITY OF CALIFORNIA, SANTA BARBARA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

ACADEMIC SENATE Santa Barbara Division 1233 Girvetz Hall Santa Barbara, CA 93106-3050

(805) 893-2885 http://www.senate.ucsb.edu

Kum-Kum Bhavnani, Chair Deborah Karoff, Executive Director

May 21, 2014

Bill Jacob, Chair Academic Senate

RE: APM 190, Appendix A-2, Proposed Revision

Dear Bill,

The following groups were asked to comment on the proposed revision to APM 190, Appendix A-2: Council on Faculty Issues and Awards (CFIA), Council on Planning and Budget (CPB), Council on Research and Instructional Resources (CRIR), Graduate Council (GC), Undergraduate Council (UgC), Diversity and Equity (D&E), and the Faculty Executive Committees from Letters and Science, Engineering and Creative Studies. The following groups decided not to comment: UgC, D&E, and the FEC's from Engineering and Creative Studies. The Graduate Council and the L&S FEC endorsed the proposed revisions and CPB had no objections.

CFIA and CRIR had significant concerns.

The Council on Faculty Issues & Awards has a significant concern regarding the section on Appeals (Section VIII under the existing policy, or Section A-I under the revised policy), in particular the wording of the first two sentences: "The Complainant has no right to appeal a decision on the merits of a complaint. However, the Complainant may appeal a local decision dismissing a complaint in whole or in part because it was untimely or lacked required allegations." CFIA asks that if a complaint has merit, then why could it not be appealed? CFIA does understand that this means that an appeal may be based on a technical ruling (i.e. not on a substantive basis). The Council wonders, therefore, if the first sentence is intended to read, "The Complainant has no right to appeal a <u>decision if the case is found to have no merit</u>." The Council suggests re-wording this section to improve clarity. In addition, CFIA suggests that some explanation might be needed to justify the denial of appeals not based on technicalities. Beyond these important concerns regarding the Appeals section, CFIA has no further objections to the proposal.

CRIR reviewed the above-referenced policy and has a recommendation for a revision to the wording. In Section C.b.iii. <u>Filing a Retaliation Complaint</u>, the word "alleged" should be inserted before "illegal". Specifically, it should read: C.b.iii. <u>The basis for Complainant's belief that refusing to obey the alleged Illegal Order was a contributing factor in the Adverse Personnel Action(s).</u>

CRIR also addressed a significant concern abuout the February 19, 2014 cover letter from Stephanie Leider to Susan Carlson that is included with the APM revision packet, and wonders why it has not

been taken into account. On page 4 of the Leider letter, item number 3, paragraph ii, it states: "As in current policy (Section VI.3.C.), the accused employee will have an opportunity to submit a written response to the Retaliation Complaint to be included in the record submitted to the Chancellor. However, the requirement that the investigator provide the accused employee with a copy of all documents on which s/he intends to rely in reaching findings has been eliminated." CRIR writes, "It is not clear as to what will no longer be provided to the accused. This sentence seems to go against all other procedures that we have seen, and we ask for the reason why this has been eliminated and what the impact of this revision will be. We are concerned that a person being accused could argue that there was not full disclosure of the issues or claims made against the accused."

Members of CRIR also expressed an overall concern that there may be unintended effects of uncoupling the various grievance processes from the whistleblower complaint process and they suggest that this be "followed and studied."

Overall, the UCSB Division offers qualified support for the policy revision. Issues regarding the appeal of a decision, and including "alleged" in the appropriate location are significant changes requested by us. We also urge that the accused employee be provided with as much information as possible, and that the uncoupling of the Whistleblower Protection Policy from the University grievance procedures be monitored over two years to see if, indeed, this uncoupling has the intended effects.

Thank you for the opportunity to comment.

Sincerely,

Kum-Kum Bhavnani, Chair

Kun Kun Bhawaii.

UCSB Division

UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

COORDINATING COMMITTEE ON GRADUATE AFFAIRS (CCGA) Donald Mastronarde, Chair djmastronarde@berkeley.edu

ACADEMIC SENATE University of California 1111 Franklin Street, 12th Floor Oakland, California 94607-5200

April 15, 2014

ACADEMIC COUNCIL CHAIR WILLIAM JACOB

Dear Chair Jacob:

At its meeting of April 9, 2014, CCGA considered the updated UC Whistleblower Policy. CCGA appreciates the opportunity to comment. We did not find anything particularly relevant to our charge, but members observed that there seemed to be a gap in the policy pertaining to how the policy works at UCOP (if the complainant is not satisfied with the action of the LDO at UCOP, what recourse is there?).

Sincerely,

Donald Mastronarde, Ph.D.

Wordd & Martinande

Chair, CCGA

c: Martha Winnacker, Academic Senate Executive Director Mary Gilly, Academic Council Vice Chair

UNIVERSITY OF CALIFORNIA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

UNIVERSITY COMMITTEE ON ACADEMIC PERSONNEL (UCAP) Harry Green, Chair harry.green@ucr.edu

Assembly of the Academic Senate 1111 Franklin Street, 12th Floor Oakland, CA 94607-5200 Phone: (510) 987-9466 Fax: (510) 763-0309

March 19, 2014

BILL JACOB, CHAIR ACADEMIC COUNCIL

RE: Proposed Revisions to APM 190, Appendix A-2

as 51 8 - 8

Dear Bob,

UCAP reviewed the proposed revisions to APM 190, Appendix A-2 during its March 12th meeting. If the goal of the policy is to protect faculty or staff, the committee is concerned that the outcome will not be made public even to the complainant who has been found to be right. UCAP recommends adding a statement to the Time Frame for Investigation section that indicates that the complainant will be notified about and provided with an explanation for the extensions.

Sincerely,

Harry Green, Chair

UCAP

UNIVERSITY OF CALIFORNIA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW) J. Daniel Hare, Chair daniel.hare@ucr.edu

Assembly of the Academic Senate 1111 Franklin Street, 12th Floor Oakland, CA 94607-5200 Phone: (510) 987-9466 Fax: (510) 763-0309

May 14, 2014

WILLIAM JACOB, CHAIR ACADEMIC COUNCIL

RE: Proposed Revised Whistleblower Protection Policy and APM 190, Appx A-2

Dear Bill,

The University Committee on Faculty Welfare (UCFW) reviewed the proposed revised Whistleblower Protection Policy and APM 190, Appendix A-2, but cannot endorse them at this time. The committee found the revised regulations to be unacceptably vague on several points, including the length of time for retaliation to occur, the rights of the accused to access documents during the investigation, and the lack of appeals options for dismissals attributed to untimeliness or a lack of documentation. Many felt that outcomes should be appealable, not just process failures.

Thank you for the opportunity to comment. Please let us know if you have questions.

Sincerely,

J. Daniel Hare, UCFW Chair

of Davil Have

Copy: UCFW

Mary Gilly, Vice Chair, Academic Council

Martha Winnacker, Executive Director, Academic Senate