UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

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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

December 21, 2016

SUSAN CARLSON, VICE PROVOST
ACADEMIC PERSONNEL

Re: Systemwide Review of Proposed Amendments to APM 015 & 016

Dear Susan:

As you requested, I distributed for systemwide Senate review amendments proposed for APM 015 and APM 016 intended to implement policy revisions recommended by the Administration-Senate Joint Committee on investigation and adjudication processes for sexual violence and sexual harassment (SVSH) cases involving faculty. The Senate also considered a set of conforming amendments to Senate Bylaw 336 addressing procedures and timelines for Privilege and Tenure proceedings in discipline cases, which are intended to align Bylaw 336 with the proposed APM revisions.

Amendments proposed for APM 015 add new language explicitly prohibiting sexual violence and sexual harassment as well as language clarifying what has been known as the "three-year rule"—specifically to address a misperception that there is a statute of limitations for complainants to report alleged violations of the Faculty Code of Conduct. The new language states that no time limit exists on complainant reporting. However, a Chancellor must initiate related disciplinary action no later than three years after s/he is deemed to have known about an alleged violation. Amendments proposed for APM 016 relate to involuntary leave. They would reduce from ten to five the working day deadline within which a Chancellor must explain to a faculty member the reasons for being placed on such leave, the nature of allegations involved, the anticipated timeline to bring charges (if substantiated), and the faculty member's right to contest the leave decision with the Privilege and Tenure Committee. The revisions also shift from the Regents to the President the authority to suspend the pay of a faculty member placed on involuntary leave pending a disciplinary action.

Ten Academic Senate divisions and five systemwide committees (CCGA, UCAADE, UCFW, UCAP and UCPT) submitted comments. These comments were discussed at Academic Council's December 14, 2016, meeting. They are summarized below and attached for your reference. Although Senate reviewers found many aspects of the proposed amendments helpful, the Senate is unable to endorse them as written due to concerns about their clarity, intent, and effectiveness. We request that additional amendments be made in time for a second Senate review that may culminate

in approval at either the February 8, 2017, or the April 12, 2017, meeting of the Assembly of the Academic Senate.

Proposed Revisions to APM 015

One of the goals of the proposed amendments is to clarify that the "three-year rule" refers to the timeframe the Administration has to conduct an investigation and to initiate disciplinary action after it becomes aware of an allegation of sexual misconduct. Several reviewers commented on the "three-year rule." UCM recommends adding language to clarify whether it applies to allegations of sexual misconduct only or to any violation of the Faculty Code of Conduct. UCD requests clarification about whether it represents a firm statute of limitations or is merely a guideline.

With regard to a statute of limitations, there also is some confusion about state law and whether it is properly reflected in the APM provision. UCR believes that state law adheres to a statute of limitations for cases of sexual assault, while UCSC notes that the lack of one in UC policy is intended to align with a new law (California Senate Bill 813) set to take effect January 1, 2017. We request clarification from General Counsel on this matter. If there is a new law that prohibits a statute of limitations in SVSH cases, UCSC recommends the following amendment: "*Commensurate with California State law*, there is no limit on the time within which a complainant may report an alleged violation." In addition, the campus recommends moving this statement to its own subsection to give it further emphasis and to recognize it as a separate issue of timing.

UCAADE, UCSB, UCPT, and UCFW note that the absence of a statute of limitations for complaints against a faculty member is inconsistent with grievance procedures in Senate Bylaw 335. This bylaw requires a faculty member to file a grievance no later than three years after an incident. The Senate intends to address this inconsistency by proposing the statute of limitations for grievances be eliminated.

Several reviewers expressed confusion about whether a complainant must still be a member of the UC community at the time a report is made. UCSB recommends adding a statement to clarify; UCAADE recommends specific language indicating that complainants are not restricted to reporting prior to separation from the University. In cases where SVSH issues are an "open secret" but not formally reported, what, asks UCAADE, is the department chair's responsibility? Finally, that committee believes the paragraph on discrimination and other forms of prohibited conduct—it appears three times in APM 015—requires additional attention. Specific options for amendment are included in the UCAADE letter.

Proposed Revisions to APM 016

One significant change is the proposal to shift authority from the Regents to the President to suspend pay of a faculty member placed on involuntary leave. UCB, UCLA, and UCPT ask policy writers to provide a fuller explanation of the reason for the proposed shift. Several reviewers are concerned that the change will reduce the procedural protections for an action to suspend pay and could potentially lead to abuses of power. UCPT is concerned that transferring authority to the President may result in more common use of the action, particularly in response to external pressure stemming from highly publicized cases of alleged misconduct.

Also, UCSB and UCPT recommend clarifying ambiguous language stating that grievance proceedings associated with an involuntary leave process are to be handled on an "expedited basis."

We request clarification of these terms to the extent possible, while recognizing that the nature of many legal or regulatory concepts is to be broadly descriptive with an element of judgment to be exercised in their application.

Additional Issues for Consideration

The comments above focus directly on the specific changes proposed for APM 015 and 016. However, many reviewers took the opportunity to weigh in on existing provisions of these two sections. We invite you to consider this additional feedback as you refine the documents, but understand that they may require separate evaluation in the future.

- Reviewers at UCD and UCSB believe the Administration should be expected to complete an investigation much sooner than three years. UCD recommends giving Chancellors no more than a year to initiate action after learning about an alleged violation.

- UCI recommends adding language to specify the maximum time that can pass between completion of an investigation and communication of a proposed disciplinary action; UCSB recommends that the APM establish consequences for the administration's failure to report alleged violations within the three-year timeframe.

- Several reviewers, including UCI, UCLA, and UCR, are concerned that the absence of a statute of limitations for reporting an alleged violation could inhibit a fair, complete, and timely review and adjudication. They ask UC to adopt a statute of limitations to allow the accused to obtain resolution within a reasonable period, although UCI recommends including exceptions for graduate students and junior faculty.

- With regard to placement on involuntary leave, UCPT recommends establishing guidelines for determining when there is evidence of a "strong risk" that an accused faculty member's continued presence on campus would cause "immediate and serious harm to the University community." Other reviewers, including UCLA, are concerned that the APM does not require the Chancellor to provide an anticipated end date for an involuntary leave, making it possible that the accused could be placed on leave indefinitely.

- UCAP, UCSD and UCSC raise concerns that suspending a faculty member's pay prior to a disciplinary review may violate the due process rights of the accused and the principle of "innocent until proven guilty." UCB, UCAP, and UCPT note that the conditions under which pay may be suspended—"in rare and egregious cases"— is vague and suggest including a description of circumstances that might rise to that level.

- UCSB recommends that APM 015 Part II (A) Item 1(b) would benefit from a clearer definition of what constitutes "significant intrusion of material unrelated to the course" in relation to academic conduct and academic freedom.

- UCSB and UCFW recommend that APM 015 Part II (B).4 (and other relevant APM sections) acknowledge that the victim, not just the chancellor and the accused, should be consulted about mediation proceedings.

- UCAADE proposes several revisions to the descriptions of UC's anti-discrimination and harassment policies in APM 015.

- UCFW recommends clarifying APM 015 Part II.1.1.6 to ensure its consistency with free speech and academic freedom principles.
- UCAP suggests deleting from APM 016 the existing phrase "or in situations where the faculty member's conduct represents a serious crime or felony that is the subject of investigation by a law enforcement agency" because it assumes guilt. Their letter notes that the possibility that the faculty member poses a threat to others' safety is already mentioned as a justification for involuntary leave.

Thank you for the opportunity to opine. We look forward to reviewing a revised version of the policy in the future and working with you on corresponding amendments to Senate Bylaw 336.

Sincerely,

Jim Chalfant, Chair
Academic Council

Enclosures

Cc: Academic Council
Policy Manager Lockwood
Senate Director Baxter
Senate Executive Directors

ACADEMIC SENATE
BERKELEY
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UNIVERSITY OF CALIFORNIA

November 15, 2016

JAMES CHALFANT
Chair, Academic Council

Subject: Proposed revisions to APM 015 and 016 and amendments to Senate Bylaw 336

Dear Jim,

On November 7, 2016, the Divisional Council (DIVCO) of the Berkeley Division discussed the proposed revisions to APM 015 and 016, and amendments to Senate Bylaw (SB) 336, informed by the commentary of our divisional committees on Diversity, Equity, and Campus Climate (DECC); Faculty Welfare (FWEL); Privilege and Tenure (P&T); and Rules and Elections (R&E). The discussion highlighted the following concerns.

DIVCO echoed FWEL and R&E regarding a significant change to APM 016—specifically Section II, which outlines the procedure by which the pay is suspended of a faculty member placed on involuntary leave. Currently, the provision reads: "In rare and egregious cases, a Chancellor may be authorized by special action of The Regents to suspend the pay of a faculty member on involuntary leave pending a disciplinary action." The proposed change shifts the authority from the Regents to the President. We note that no explanation is offered for this change.

DIVCO agrees with FWEL about the potentially negative consequences of this proposal:

> This change could have significant objectionable consequences. The current rule provides a faculty member on involuntary leave a modicum of procedural protection from his or her pay being suspended without justification. The requirement of action by the Regents means the official seeking the suspension must make a formal request to the Regents, and provide reasons that will satisfy the Regents. The new rule allows the President to suspend pay without a formal request being made and without providing reasons. There is no procedural mechanism to prevent the President from abusing this power.

Our divisional P&T noted a number of points for clarification or possible improvement:

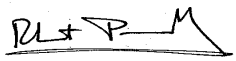
> Regarding the discussion in APM 016 of P&T handling grievances related to involuntary leave on an "expedited" basis, we recommend clarifying that P&T will do so using the same requirements for burden of proof (clear and convincing evidence) and onus of proof (being on the administration) as holds in general for disciplinary actions.
>
> P&T also believes it would be helpful for APM 016 to clarify the sort of circumstances that might rise to the level of "rare and egregious cases" allowing the Chancellor to suspend the pay of a faculty member placed on involuntary leave.
>
> In addition, there should be a clear notion of what evidence P&T considers in its review. Presumably this would be statements by both the administration and the accused, but there should be guidance regarding the amount of time given to the parties to formulate these, and to what degree each party can respond to the statements by the other. Possibly this amount of time should differ depending on whether the involuntary leave is with pay or without, with grievances concerning the latter having a higher degree of urgency to resolve.

Finally, R&E proposes strengthening SB336.C.1c to ensure that P&T is kept informed when a case is resolved:

> Proposed changes to Bylaw 336 seem reasonable, but we suggest stronger language in section C.1.c. to ensure that P&T is kept informed when a case is resolved. Recognizing that the "encouraging" language reflects the APM and cannot be changed, we suggest strengthening the latter part of that section. Instead of
>
> "…the Chancellor is encouraged to consult with the Chair of the Committee on Privilege and Tenure prior to finalizing the settlement and should inform the Privilege and Tenure Committee if the matter is resolved" we prefer
>
> "…the Chancellor is encouraged to consult with the Chair of the Committee on Privilege and Tenure prior to finalizing the settlement. The Chancellor must, at a minimum, inform the Committee on Privilege and Tenure when the matter is resolved."

In sum, the Berkeley Division is concerned about ensuring the due process rights of Senate members subject to disciplinary charges, and asks that the foregoing points be addressed in the final revisions of APM 015 and 016, and SB336.

Sincerely,



Robert Powell
Chair, Berkeley Division of the Academic Senate
Professor of Political Science

Cc: Donna Jones, Chair, Committee on Diversity, Equity, and Campus Climate
Terrence Hendershott and Caroline Kane, Co-chairs, Committee on Faculty Welfare
Vern Paxson, Chair, Committee on Privilege and Tenure
Daniel Melia, Chair, Committee on Rules and Elections
Hilary Baxter, Executive Director, Academic Senate
Andrea Green Rush, Berkeley Division Executive Director, staffing Committee on Privilege and Tenure
Sumei Quiggle, Berkeley Division Associate Director, staffing Committee on Rules and Elections
Linda Corley, Senate Analyst, Committee on Diversity, Equity, and Campus Climate
Anita Ross, Senate Analyst, Committee on Faculty Welfare

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November 17, 2016

Jim Chalfant
Chair, Academic Council

RE: APM 015/016 and Senate Bylaw 336

Dear Jim:

The proposed revisions to APM 015/016 and Senate Bylaw 336 were forwarded to all standing committees of the Davis Division. Responses were received from the Committees on Academic Personnel Oversight (CAP), Privilege and Tenure—Hearings Subcommittee, Privilege and Tenure—Investigative Subcommittee, Faculty Welfare, Faculty Privilege and Academic Personnel Advisers, and the Faculty Executive Committee of the College of Letters and Science.

Faculty Welfare and Faculty Privilege and Academic Personnel Advisers support the proposed changes. The remaining committees recommend revisions, as summarized below. Their full responses are enclosed.

APM 015/016

Divisional committees have concerns about APM-015, Section III.A.3, which states, "The Chancellor must initiate related disciplinary action by delivering notice of proposed action to the respondent no later than three years after the Chancellor is deemed to have known about the violation."

CAP is unclear if this three-year period is a firm statute of limitations for disciplinary action. If so, this section should be clarified accordingly. If this three-year period is more of a guideline, then policies should be included for cases when a chancellor wants to initiate disciplinary action after three years have passed.

The FEC of L&S and P&T Investigative are concerned that three years is excessively long. P&T Investigative recommends one year: "…the Chancellor should initiate disciplinary action no more than a year after the Chancellor is deemed to have known about the alleged violation. Waiting three years to initiate a disciplinary action can present a number of issues including but not limited to the loss of witnesses and evidence as well as having complainant and/or respondent worrying about a disciplinary action or potential hearing for longer than necessary."

P&T Investigative also recommends that sexual violence and harassment be added directly into APM-015 Section II.C.4 and II.C.5, as opposed to being its own separate point.

Senate Bylaw 336

P&T Investigative reiterated their above recommendation that a Chancellor should initiate disciplinary action no later than one year after learning of an alleged violation.

P&T Hearings recommends clarifying the proposed language for section 336.B.3, which currently states, "Ideally, a hearing should be scheduled within 90 days of the date on which the accused faculty member was notified of the intent to initiate a disciplinary proceeding." It is unclear if "be scheduled" is equivalent to "held"; in other words, is the language referring to the timeframe within which the parties must agree to a hearing date, or referring to the hearing date itself? P&T Hearings noted that most hearings get scheduled later than 90 days of notification due to many personnel schedules that must be accommodated.

P&T Hearings also recommends clarity on whether or not faculty members who have left or retired are subject to a charge, since the policy states there is no time limitation for charges to be filed.

The Davis Division appreciates the opportunity to comment.

Sincerely,

Rachael E. Goodhue
Chair, Davis Division of the Academic Senate
Professor and Chair, Agricultural and Resource Economics

Enclosed: Davis Division Committee Responses

c: Edwin M. Arevalo, Executive Director, Davis Division of the Academic Senate
Hilary Baxter, Executive Director, Systemwide Academic Senate
Michael LaBriola, Principal Policy Analyst, Systemwide Academic Senate

UC DAVIS: ACADEMIC SENATE
COMMITTEE ON FACULTY WELFARE

November 1, 2016

RFC: Systemwide proposed revision of APM 15/16 and Senate Bylaw 336

The committee on Faculty Welfare feels that the proposed changes to APM 015, APM 016, and Senate Bylaw 336 provide clearly stated and logical amendments. The committee supports the revisions.

Faculty Privilege and Academic Personnel Advisers

November 10, 2016 2:44 PM

The Faculy Privilege and Academic Personnel Advisers reviewed the proposed changes to APM 015/016 and Senate Bylaw 336, we have nothing to add other than the changes seem constructive and reasonable.

Committee on Privilege and Tenure – Hearings Subcommittee
Request for Consultation Response: Proposed Revisions to UCD 015 and 016 and Academic Senate Bylaw 336

The Privilege and Tenure (P&T) – Hearings Subcommittee (Subcommittee) has reviewed the proposed revisions of APM 015 and 016 and Academic Senate Bylaw 336 and would like to make the following comments:

Academic Senate Bylaw 336.B.3 currently states, "As a general guide, a prehearing conference (SBL 336.D.2) shall be scheduled within 30 calendar days and a hearing (SBL 336.D) shall be scheduled within 90 calendar days of the appointment of a hearing committee." Additional language has been proposed stating, "Ideally, a hearing should be scheduled within 90 days of the date on which the accused faculty member was notified of the intent to initiate a disciplinary proceeding."

It is unclear to the Subcommittee if "be scheduled" is equivalent to "held"? It is also unclear whether the language is referring to the timeframe within which the parties must agree to a hearing date (e.g., on March 10 we "scheduled" the hearing for May 10) or whether it is referring to the hearing itself. Moreover, this appears to be highly aspirational. Most hearings get scheduled much later than 90 days of notification to the faculty member due to the difficulty of balancing the schedules of the parties, the attorneys, and the panel members.

As the policy specifically states that there is not time limitation within which a charge can be filed, it is unclear to the Subcommittee if the policy applies to past faculty members who have either left or retired.

The Subcommittee appreciates the opportunity to review and provide feedback on these proposed revisions.

Committee on Privilege and Tenure – Investigative Subcommittee
Request for Consultation Response: Proposed Revisions to UCD 015 and 016 and Academic Senate Bylaw 336

The Privilege and Tenure (P&T) – Investigative Subcommittee has reviewed the proposed revisions of APM 015 and 016 and Academic Senate Bylaw 336 and would like to make the following comments:

APM 015-Part II.C.4 and Part II.C.5 currently specifies that unacceptable behavior includes forcible detention, threats of physical harm or harassment and discrimination, including harassment. Rather than adding a separate point that outlines sexual violence and sexual harassment as unacceptable behavior, the P&T Investigative Subcommittee recommends that sexual violence and sexual harassment be added into APM-015 Part II.C.4 and II.C.5.

APM-015 Part III.A.3 specifies that the Chancellor must initiate related disciplinary action by delivering notice of proposed action to the respondent no later than three years after the Chancellor is deemed to have known about the alleged violation. The P&T Investigative Subcommittee has significant concerns regarding the three year deadline and believes that the Chancellor should initiate disciplinary action no more than a year after the Chancellor is deemed to have known about the alleged violation. Waiting three years to initiate a disciplinary action can present a number of issues including but not limited to the loss of witnesses and evidence as well as having complainant and/or respondent worrying about a disciplinary action or potential hearing for longer than necessary.

In regards to Bylaw 336, the Subcommittee expresses the same concerns regarding the timeline by which a Chancellor can initiate disciplinary action and reiterates that the Chancellor should initiate disciplinary action no more than a year after the Chancellor is deemed to have known about the alleged violation.

The Subcommittee is also concerned that, in the current state of organization, mediation is not an option for the Privilege and Tenure committee during the hearings process. Mediation can often lead to a more favorable resolution for the Administration and the accused or grievant and can be a step towards early resolution. We suggest that the P&T administrative procedures should be modified so as to include the possibility of a mediation recommendation.

The Subcommittee appreciates the opportunity to review and provide feedback on these proposed revisions.

FEC: College of Letters and Science

November 8, 2016 12:38 PM

During our November 7th L & S FEC meeting, we discussed the proposed changes to the APM-015.

We thought that page 9 of the draft would benefit from some more clarification. It is stated that the Chancellor has three years to "initiate a disciplinary action." This seems like a really long time window. Could some wording be added that there should be a good faith effort to initiate an investigation in a timely matter?

Best,

Kristin

CAP Oversight Committee

October 17, 2016 5:22 PM

The Committee on Academic Personnel (CAP) has reviewed the proposed changes to APM 015-016, and considers them appropriate and reasonable in explicitly identifying sexual violence and sexual harassment as violations of the Faculty Code of Conduct. CAP does not anticipate any significant implications of these changes for the faculty merit and promotion process.

CAP has one comment concerning APM 015, Section IIIA, Article 3, which states that “The Chancellor must initiate related disciplinary action by delivering notice of proposed action to the respondent no later than three years after the Chancellor is deemed to have known about the violation.”

The imperative nature of this statement may create the impression that the opportunity for disciplinary action might expire if, for any reason, there was a failure to deliver notice within the stipulated three-year period. While the likelihood of such an occurrence may be considered small, CAP believes that not addressing this contingency may contribute to the perception of a “statute of limitations” in the handling of disciplinary actions.

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November 17, 2016

Jim Chalfant, Academic Council
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RE: Systemwide Senate Review of Proposed Revisions to APM 015, APM 016, and Senate Bylaw 336

Dear Jim,

At its meeting of November 15, 2016, the Irvine Division Senate Cabinet reviewed the proposed revisions to APM 015, APM 016, and Senate Bylaw 336. The Council on Academic Personnel, the Council on Faculty Welfare, and the Committee on Privilege and Tenure initially reviewed the proposed revisions and identified some concerns. The concerns identified in their review of the proposed revisions and supported by the cabinet include:

- The language about the three-year timeframe for initiating disciplinary action detailed in APM 015, III.A.3 and Bylaw 336, B.4 is poorly worded. It is unclear which elements of the disciplinary process the three-year timeframe refers to and the expectations associated with the completion and communication of the various components of the disciplinary process. Specifically, Cabinet members expressed concern that the language of the APM does not specify the maximum amount of time that can pass between completion of an investigation and communication of the resulting proposed disciplinary action.

- The lack of a statute of limitations for reporting an alleged violation is concerning. Not only does the lack of a statute of limitations seem overly punitive, the length of time between an alleged violation and its reporting is likely to have a number of negative implications for a fair, complete and timely review and adjudication process. The cabinet recommended that UC adopt a statute of limitations, and include exceptions to the statute of limitations for certain categories of people and/or circumstances such as graduate students and junior faculty.

In light of these concerns, the Irvine Division Senate Cabinet would encourage continued examination of the timeframes for action by both the administration and complainants.

The Irvine Division appreciates the opportunity to comment.

Sincerely,

William Parker

Bill Parker
Irvine Division Senate Chair

C: Maria Pantelia, Chair-Elect, Academic Senate, Irvine Division
Hilary Baxter, Executive Director, Academic Senate
Natalie Schonfeld, Executive Director, Academic Senate, Irvine Division

November 18, 2016

Jim Chalfant
Chair, Academic Council

RE: Systemwide Senate Review: Proposed Revisions to APM 015, APM 016, and Senate Bylaw 336

Dear Jim,

The Executive Board solicited comments on the proposed revisions to Academic Personnel Manual (APM) APM 015, APM 016, and Senate Bylaw 336, from the standing committees of the Senate, as well as the Faculty Executive Committees, to maximize faculty feedback; the individual responses from our various committees are available online. Several members of the Executive Board of the UCLA Academic Senate discussed the committee responses on November 17, 2016.

1) **Change in Time Limits**. One of the major concerns of the faculty is the elimination of the 3-year time limit for reporting an alleged violation. You will note in individual responses there are a number of ways in which this concern is expressed. The Committee on Charges adds that the "no time limit" rule "actually deprives the relevant campus Senate adjudicative committee of the power to inquire into "unreasonable delay" on the part of the complainant, and thus adds a new principle to the APM rather than simply restating the existing (but tacit) rule."" Further, many faculty suggested that the delay may lead to decreased evidence over time. It should be clear that the time limitation applies to alleged instances of sexual violence/sexual harassment. It should not apply to other violations of the FCC. It also appears that while eliminating the time limit on filing charges, there remains a time limit for grievances (P&T memo).

2) **Involuntary Leave Plans Not Well Structured**. Several committees have concerns with the involuntary leave changes. The revised policy drops the requirement that the Chancellor must come to a resolution within 10 days of imposing of involuntary leave and initiate disciplinary procedures – a reasonable change. However, many faculty agreed that it was not fair to the accused to be on involuntary leave with no time limit. The Committee on Charges is also concerned that the proposed revision "leaves open the possibility that the provisional remedy of involuntary leave can last for an extended period of time without the Chancellor's being required to make periodic findings concerning the necessity for such leave." Moreover, imposing leave without pay does not remedy safety concerns on campus and is thus simply a sanction prior to findings of fact. Faculty also expressed concern over transferring to the President the authority to impose a leave without pay, citing that this gives too much power to a single individual. P&T wrote, "Keeping the power to authorize a leave without pay in the hands of the Regents ensures that there is a collective deliberation before such a decision."

3) **Conflation of SV/SH with other FCC Violations**. At times, the revisions conflate sexual violence/sexual harassment (SVSH) with other Faculty Code of Conduct (FCC) issues. For

example, several committees, including the Committee on Privilege and Tenure (P&T) and the Committee on Faculty Welfare, strongly oppose removing P&T's option to refer a non-SVSH case to mediation. Faculty agree that it is not appropriate to refer a Title IX case to mediation, but mediation should remain an option for P&T in other cases. The Committee on Privilege and Tenure suggests the following wording instead:

> The committee may refer the case to mediation or appoint a hearing committee (SLB 336.C), except in cases involving a sexual harassment or sexual violence violation. In cases involving sexual harassment or sexual violence the committee may not refer the case to mediation and must move right away to appoint a hearing committee.

The Executive Board appreciates the opportunity to opine and has no additional suggestions.

Please feel free to contact me should have any questions.

Sincerely,

Chair, UCLA Academic Senate

cc: Hilary Baxter, Executive Director, Systemwide Academic Senate
Leo Estrada, Immediate Past Chair, UCLA Academic Senate
Sandra Graham, Vice Chair/Chair-Elect, UCLA Academic Senate
Michael LaBriola, Principal Policy Analyst, Systemwide Academic Senate
Linda Mohr, Chief Administrative Officer, UCLA Academic Senate
Shane White, Vice Chair, Academic Council

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November 15, 2016

JIM CHALFANT, CHAIR, ACADEMIC COUNCIL

Re: Proposed Revisions to APM 015, APM 016 and Senate Bylaw 336

The proposed revisions to APM 015, APM 016, and Senate Bylaw 336 were distributed to the standing committees of the Merced Division of the Academic Senate and the school executive committees. Comments were received from the Committee on Rules and Elections (CRE) and the Committee for Diversity and Equity (D & E); these are appended. The remaining committees appreciated the opportunity to opine but had no comment.

In brief, CRE recommends that policy language be further refined to address potential ambiguities about whether the time lines for reporting an alleged violation, and separately initiating disciplinary action, apply exclusively to allegations of sexual harassment and sexual violence or if they apply to allegations of any violation of the Faculty Code of Conduct.

D & E endorsed both sets of revisions, but suggested the language in APM 015 and 016 be made consistent throughout the document with regard to reasons for discrimination, sexual harassment, and sexual violence.

We thank you for the opportunity to opine.

Sincerely,

Susan Amussen, Chair
Division Council

CC: Divisional Council
Hilary Baxter, Executive Director, Systemwide Academic Senate
Laura Martin, Executive Director, Merced Senate Office

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ACADEMIC SENATE, MERCED DIVISION
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October 27, 2016

To: Susan Amussen, Chair, Divisional Council

From: Lin Tian, Chair, Committee on Rules and Elections (CRE)

Re: Proposed Revisions to APM 015, APM 016, and Senate Bylaw 336

The Committee on Rules and Elections (CRE) reviewed the proposed revisions to APM 015, APM 016, and Senate Bylaw 336, and have the following comments:

- In several places of these documents, it was mentioned that (a) the "three year clock" for initiating disciplinary action starts when the chancellor is officially informed of any violation, and (b) there is no time limit on submitting any allegation of a violation.

  There is ambiguity on whether these time lines should be used solely for allegations of sexual harassment and sexual violence or they are used for allegations of **any** violation of the Faculty Code of Conduct.

  The CRE recommends the inclusion of specific time limits assigned to different types of violations to avoid ambiguity. Other violations, for example, some teaching related matters, can be hard to justify after one year.

- The cover memo is clear and focused on the university policies regarding sexual harassment and sexual violence. The approaches outlined in the document are both clearer and more manageable.

Thank you,
Lin Tian
Lilian Davila
Peter Vanderschraaf

cc: Senate Office

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ACADEMIC SENATE, MERCED DIVISION
COMMITTEE FOR DIVERSITY AND EQUITY
TANYA GOLASH-BOZA, CHAIR
tgolash-boza@ucmerced.edu

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

October 21, 2016

To: Susan Amussen, Chair, Division Council

From: Tanya Golash-Boza, Chair, Committee for Diversity and Equity

Re: Proposed Revisions to APM 15 and 16 and Proposed Modifications to Senate Bylaw 336

The Committee for Diversity and Equity reviewed the proposed revisions to APM 15 and 16 and the proposed modifications to Senate Bylaw 336 at its October 18 meeting.

The committee endorses both sets of revisions, but suggests the language in APM 15 and 16 be made consistent throughout the document with regard to reasons for discrimination, sexual harassment, and sexual violence.

We appreciate the opportunity to opine.

cc: D&E members
Senate Office

UNIVERSITY OF CALIFORNIA, RIVERSIDE

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CHAIR, ACADEMIC SENATE
RIVERSIDE DIVISION
UNIVERSITY OFFICE BUILDING, RM 225

DYLAN RODRIGUEZ
PROFESSOR OF ETHNIC STUDIES
RIVERSIDE, CA 92521-0217
TEL: (951) 827-6193
EMAIL: DYLAN.RODRIGUEZ@UCR.EDU

November 17, 2016

Jim Chalfant, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

RE: Proposed Revisions to APM 015, APM 016, and Senate Bylaw 336

Dear Jim,

The Committee on Faculty Welfare, Committee on Charges, and Executive Committee of the College of Humanities, Arts, and Social Sciences all support the Proposed Revisions with no additional comments.

The Committee on Privilege and Tenure raised two sets of concerns. The first is in relation to the language of APM – 015, Part III. A.3, which states "There is no limit on the time within which a complainant may report an alleged violation." The Committee suggests that the policy should attempt to create a reasonably close correspondence between university policy and state laws, the latter of which adhere to a statute of limitations. The purpose of the suggestion is to provide the accused with timely notification of allegations, as well as to obtain resolution within a reasonable period. The Committee applies the same reasoning and recommendation for the proposed revision to Senate Bylaw 336. B.4.

The second concern of the Committee on Privilege and Tenure involves the additional language in APM – 016, Section II. The Committee suggests that a version of the statement regarding the faculty member's right to contest the involuntary leave in an expedited grievance proceeding should be included in the subsequent paragraph that references rare and egregious cases, which authorize the Chancellor to suspend the pay of a faculty member on involuntary leave pending disciplinary action. This suggestion intends to reaffirm the rights of accused faculty members during the disciplinary process.

The Committee on Diversity and Equal Opportunity supports the revisions to APM 015 and Senate Bylaw 336 with no additional comments. It supports most of the proposed revisions to APM 016, but adds a recommendation to clarify the new language found on page 4 of the redline document. The specific passage that should be clarified is the portion that references a faculty member who "fails to perform his or her duties for an extended period of time."

Sincerely yours,

Dylan Rodríguez
Professor of Ethnic Studies and Chair of the Riverside Division

CC: Hilary Baxter, Executive Director of the Academic Senate
Cherysa Cortez, Executive Director of UCR Academic Senate Office

UC RIVERSIDE | UNIVERSITY OF CALIFORNIA
College of Natural and Agricultural Sciences
Executive Committee

November 16, 2016

To: Dylan Rodriguez, Chair
Riverside Division

From: Ward Beyermann, Chair, Executive Committee
College of Natural and Agricultural Science

Re: Proposed Revision: APM 015, APM 016, Senate Bylaw 336

The CNAS Executive Committee at their November 16th meeting discussed the proposed Revisions to APM 015, APM 016, Senate Bylaw 336. The committee approves of the proposed revisions, as written

Yours sincerely,
Ward Beyermann, Chair
CNAS Executive Committee

UNIVERSITY OF CALIFORNIA UCRIVERSIDE | Academic Senate

COMMITTEE ON FACULTY WELFARE

October 18, 2016

To: Dylan Rodriguez
Riverside Division Academic Senate

From: Victor Lippit, Chair
Committee on Faculty Welfare

Re: Proposed Revisions to APM 015, APM 016, and Senate Bylaw 336

The Committee on Faculty Welfare met to consider the proposed revisions to APM 015 – The Faculty Code of Conduct, APM 016 – University Policy on Faculty Conduct and The Administration of Discipline, and Senate Bylaw 336 – Privilege and Tenure: Divisional Committees – Disciplinary Cases. The Committee endorsed the modified language and did not have any substantial comments to add.

UC RIVERSIDE | Academic Senate

Committee on Privilege & Tenure

October 31, 2016

To: Dylan Rodriguez
Chair, Riverside Division Academic Senate

Fr: Michael Adams
Chair, Committee on Privilege and Tenure

Re: Systemwide Review of the Proposed Revisions to APM 015, APM 016, and Senate Bylaw 336

The Committee on Privilege and Tenure has reviewed the proposed revisions to APM 015 (The Faculty Code of Conduct), APM 016 (University Policy on Faculty Conduct and The Administration of Discipline), and Senate Bylaw 336 addressing procedures and timelines for Privilege and Tenure proceedings in discipline cases. The Committee notes the following concerns:

The additional language in APM – 015, Part III. A.3 that states "There is no limit on the time within which a complainant may report an alleged violation". The Committee believes that there should be a reasonable correspondence between university policy and state laws which adhere to a statute of limitations. As with state law, the intention is to notify the accused in a timely manner of the allegations and obtain a resolution within a reasonable length of time. P&T finds the same reasoning and recommendation for the revision in Senate Bylaw 336.B.4.

The Committee was in support of the additional language in APM – 016, Section II that required one of two statements to be included in the notification of imposition of involuntary leave by the Chancellor. However, P&T believes a version of the second statement (the faculty member has the right to contest the involuntary leave in a grievance proceeding that will be handled on an expedited basis) should also be included in the subsequent paragraph pertaining to rare and egregious cases that authorizes the Chancellor to suspend the pay of a faculty member on involuntary leave pending disciplinary action. This was suggested to help reaffirm the rights of accused faculty members during the disciplinary process.

We appreciate the opportunity to review and opine on this systemwide matter.

UNIVERSITY OF CALIFORNIA
UC RIVERSIDE | School of Business
A. GARY ANDERSON GRADUATE SCHOOL OF MANAGEMENT

MEMORANDUM

DATE: November 9, 2016

TO: Dylan Rodriguez, Chair
Riverside Division of Academic Senate

FROM: Y. Peter Chung, Chair
School of Business Executive Committee

Re: Proposed Revisions to APM 015, APM 016, and Senate Bylaw 336

Please let this memo serve as an official notification that the School of Business Executive Committee doesn't see an issue with the proposed Revisions to APM 015, APM 016, and Senate Bylaw 336

Y. Peter Chung, Chair
School of Business Executive Committee

UC RIVERSIDE | Academic Senate

Committee on Charges

October 31, 2016

To: Dylan Rodriguez
Chair, Riverside Division Academic Senate

Fr: Andrea Smith
Chair, Committee on Charges

Re: Systemwide Review of the Proposed Revisions to APM 015, APM 016, and Senate Bylaw 336

On October 19, the Charges Committee met to discuss the proposed revisions to APM 015 (The Faculty Code of Conduct), APM 016 (University Policy on Faculty Conduct and The Administration of Discipline), and Senate Bylaw 336 addressing procedures and timelines for Privilege and Tenure proceedings in discipline cases. The Committee has no objection to the proposed revisions.

We appreciate the opportunity to review and opine on this systemwide matter.

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

RIVERSIDE, CALIFORNIA 92521-0132

November 16, 2016

TO: Dylan Rodriguez, Chair
Academic Senate

FROM: Jason Weems, Chair
CHASS Executive Committee

RE: Systemwide Review of the APM & Bylaw Revision: Proposed Revisions to APM 015, APM 016, and Senate Bylaw 336

The CHASS Executive Committee discussed the review the APM & Bylaw Revision: Proposed Revisions to APM 015, APM 016, and Senate Bylaw 336 at the regular meeting on November 16, 2016. There were no objections and our committee approved the revisions.

Jason Weems, Chair

UCR CHASS Executive Committee

UC RIVERSIDE | Academic Senate

COMMITTEE ON DIVERSITY & EQUAL OPPORTUNITY

November 2, 2016

To: Dylan Rodriguez, Chair
Riverside Division of the Academic Senate

From: Manuela Martins-Green, Chair
Committee on Diversity & Equal Opportunity

Re: Proposed Revisions to APM 015, APM 016, and Senate Bylaw 336

The Committee on Diversity and Equal Opportunity met to consider the proposed revisions to APM 015 – The Faculty Code of Conduct, APM 016 – University Policy on Faculty Conduct and The Administration of Discipline, and Senate Bylaw 336 – Privilege and Tenure: Divisional Committees – Disciplinary Cases. The Committee endorsed the modified language to APM 015 and Senate Bylaw 336 without any substantial comments to add. The Committee also agreed with most of the proposed changes to APM 016, but recommends the new language found on page 4 of the redline document regarding extended period of time be clarified.

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

UNIVERSITY OF CALIFORNIA, SAN DIEGO UCSD

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

November 22, 2016

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

SUBJECT: Review of APM 015, 016, and Bylaw 336

Dear Jim:

The proposed revisions were circulated to San Diego Divisional Senate standing committees for review and the San Diego Divisional Senate Council discussed the revisions at its meeting on November 21, 2016. Overall, the San Diego Divisional Senate Council endorsed the proposed changes but raised some concerns that are detailed below.

Reviewers expressed concern that the provisions do not explicitly allow for a complainant's interests to be represented in either the resolution process (Bylaw 336C) or the Hearing/Post-Hearing process (Bylaw 336D). It was suggested that provisions be made to require the "consideration of victim impact statements at *each* major stage of deliberation of disciplinary responses" in cases of alleged violence or other harassment. There is a concern that in the interest of negotiating a compromise, the impact of that compromise on the complainant may be unfairly minimized.

Reviewers also expressed concern that the language in the last paragraph of Bylaw 336 may allow the hearing panel too much leeway in considering the findings of other hearing bodies and investigative agencies. While it was agreed that external agencies should not dictate the University's response, it was suggested that perhaps there is better language that can be used to more strongly "encourage a hearing committee to accept and consider all credible sources of evidence."

Finally, reviewers felt that "the suspension of pay prior to a disciplinary review, for alleged egregious behavior, does not follow the principle of innocent until proven guilty."

Thank you for the opportunity to respond.

Sincerely,

Kaustuv Roy, Chair
Academic Senate, San Diego Division

cc: F. Ackerman
H. Baxter
R. Rodriguez

Academic Senate
Santa Barbara Division

November 14, 2016

To: Jim Chalfant, Chair
Academic Council

From: Henning Bohn, Chair
Santa Barbara Division

Re: Proposed Revisions to APM – 015, The Faculty Code of Conduct; APM – 016, University Policy on Faculty Conduct and the Administration of Discipline; and Bylaw 336, Privilege and Tenure: Divisional Committees – Disciplinary Cases

The Santa Barbara Division distributed the documents regarding the above-noted revisions to a broad range of Senate councils and committees. While the majority of these opted not to opine, comments were received from the following groups: Committee on Privilege and Tenure, Committee on Diversity and Equity, Council on Faculty Issues and Awards, Graduate Council, Council on Planning and Budget, Council on Research and Instructional Resources, and the Faculty Executive Committees of the College of Letters and Science and the College of Engineering. All of the responding groups were generally supportive of the proposed changes, although concerns were voiced about the need for greater clarity in some sections. Questions were also raised about the timing of related actions.

The Committee on Privilege and Tenure (CPT) pointed out two potential problems related to the proposed revision to APM -015 (p. 8-9), which is intended to clarify that there is no time limit within which a complainant may report an alleged violation of the faculty code of conduct, and that disciplinary proceedings must be initiated not later than three years after the Chancellor is deemed to have known about the alleged violation. Despite this revision, it remains the case that a faculty member is required to file a grievance not later than three years after the relevant underlying incident has occurred. This creates an asymmetry that may be undesirable. For example, one could imagine a situation in which faculty member A has a grievance against faculty member B that has resulted from B's having violated the faculty code of conduct. Person A could report B's violation after 4 years, but A would not be entitled to file a grievance, even if B is subject to subsequent disciplinary action.

CPT also commented that, if a violation of the faculty code of conduct is reported to e.g., a chair or a dean, and for whatever reason the chair or dean takes no action for three years, it appears that nothing further can be done. It was suggested that there should be an established

consequence for an academic administrator's failure to follow through on reports of alleged violations.

The revision of APM-016 (see p.4) seeks to clarify what has to happen if the Chancellor decides to place a faculty member on involuntary leave. This current text within that section states that grievance proceedings associated with this process are to be handled on an expedited basis. CPT finds this language to be vague and unclear, and questions not only what was meant by it, but why `expedited review' should apply only to situations involving involuntary leave. It was suggested that this language be clarified, or possibly eliminated.

The Committee on Diversity and Equity (CDE) agrees that there should be "no limit on the time within which a complainant may report an alleged violation," but suggests that there be an explicit statement regarding whether the complainant must still be a member of the UC community at the time a report is made. Both CDE and the Council on Faculty Issues and Awards (CFIA) questioned the rationale for allowing the Chancellor up to three years to initiate disciplinary action after an allegation is officially reported (Part III-A-3). While it is understood that thorough investigations may be lengthy, members questioned whether the three-year allowance to initiate disciplinary action is too prolonged.

Some CFIA members were concerned that evidence would be difficult to gather in situations where allegations are not raised within a reasonable timeframe, while others acknowledged that there are cases in which victims need a very long recovery period before reporting a violation. CFIA also suggested that it might be appropriate to modify the current Sexual Harassment Prevention Training to fully reflect the proposed revisions.

Suggestions were offered regarding the potential for two additional changes to APM 015. The College of Letters and Science Faculty Executive Committee recommended that APM 015 Part II(A) Item 1(b) could benefit from a clearer definition of what constitutes "significant intrusion of material unrelated to the course" as this issue impacts/relates to academic conduct as well as academic freedom.

The Council on Research and Instructional Resources noted that, if the purpose of the revisions is to avoid any appearance that the victim's interests is not fully taken into account in cases involving Sexual Violence and Sexual Harassment (and possibly other faculty misconduct involving victims), then other APM sections should be reviewed with this objective in mind. As example, the Council suggested that in cases where mediation is an option, this approach should be allowed when all three parties — the victim, the chancellor and the faculty member accused of misconduct — agree to it, and not just the latter two as currently implied by APM 015 Part II(B) Item 4.

Cc: Debra Blake, Executive Director, Academic Senate

UCSF Academic Senate

http://senate.ucsf.edu

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San Francisco, CA 94143-0764
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November 18, 2016

Jim Chalfant, PhD
Chair, Academic Council
Systemwide Academic Senate
University of California Office of the President
1111 Franklin St., 12th Floor
Oakland, CA 94607-5200

Re: Review of APMs 015, 016, & Systemwide Bylaw 336

Dear Jim,

Thank you for the opportunity to review APMs 015 and 016, as well as systemwide Bylaw 336. UCSF's P&T has discussed the proposed revisions to these APMs, and does not have any comments.

However, with respect to systemwide Bylaw 336, UCSF's P&T has concerns with the aspirational language in Subsection 3 of Section B, which states that "a hearing should be scheduled within 90 days of the date on which the accused faculty member was notified of the intent to initiate a disciplinary proceeding." The San Francisco Division feels that this aspirational language should be removed, as it is misleading to both faculty members and administrators. The UCSF P&T notes that per the timeline for prehearing procedures in Senate Bylaw 336(B)(3), the hearing could be scheduled within 132 days of the date when the accused faculty member was notified of the intent to initiate a disciplinary proceeding. This is well past the aspirational goal of 90 days. I invite you to read the UCSF P&T response, which goes into the details of the timeline.

Once again, thank you for the opportunity to review these important APMs and Bylaw 336. If you have any questions on UCSF's comments, please do not hesitate to let me know.

Sincerely,

Ruth Greenblatt, MD, 2015-17 Chair
UCSF Academic Senate

Encl. (2)
CC: Susan Wall, Chair, UCSF Committee on Privilege and Tenure

UCSF Academic Senate

http://senate.ucsf.edu

Committee on Privilege and Tenure
Susan D. Wall, MD, Chair

Ruth Greenblatt, MD, Chair
UCSF Academic Senate
500 Parnassus Avenue, Box 0764
San Francisco, CA 94143

November 16, 2016

Dear Chair Greenblatt:

The Committee on Privilege and Tenure (P&T) appreciates this opportunity to review and submit comments concerning proposed changes to APM 015, APM 016.

P&T has reviewed the proposed changes to APM 015 (The Faculty Code of Conduct). P&T has no comments to submit.

P&T has reviewed the proposed changes to APM 016 (University Policy on Faculty Conduct and the Administration of Discipline). P&T has no comments to submit.

Respectfully submitted,

Susan D. Wall, MD, Chair
Committee on Privilege and Tenure

UCSF Academic Senate

http://senate.ucsf.edu

Committee on Privilege and Tenure
Susan D. Wall, MD, Chair

Ruth Greenblatt, MD, Chair
UCSF Academic Senate
500 Parnassus Avenue, Box 0764
San Francisco, CA 94143

November 16, 2016

Dear Chair Greenblatt:

The Committee on Privilege and Tenure (P&T) appreciates this opportunity to review and submit comments concerning proposed changes to Senate Bylaw 336. P&T has reviewed the proposed changes to Senate Bylaw 336.

Senate Bylaw 336 prescribes procedures and timelines for P&T proceedings in discipline cases. Section B addresses prehearing procedures. Subsection 3 establishes the timeframe for prehearing procedures. Proposed amendments to Bylaw 336(B)(3) include aspirational language intended to eliminate unnecessary delays. The language states, "Ideally, a hearing should be scheduled within 90 days of the date on which the accused faculty member was notified of the intent to initiate a disciplinary proceeding." While the aim to eliminate unnecessary delays is worthy, the proposed language imposes an ideal that would be difficult to achieve within the timelines established within Senate Bylaw 336.

The timeline for prehearing procedures is established within Senate Bylaw 336(B)(3). After the Divisional Privilege and Tenure Committee receives notice of proposed disciplinary action and the Chair provides a copy to the accused faculty, the accused has 21 days to file an answer. Upon receipt of the answer the committee has 21 days to evaluate the case, establish a timeline (including a prehearing conference and a hearing), and appoint a hearing committee. The prehearing conference should be scheduled within 30 days of the appointment of the hearing committee and the hearing should be scheduled within 90 days of the appointment of the hearing committee. Based on the timeline established in Senate Bylaw 336(B)(3), and notwithstanding the possibility to grant a reasonable extension to the timeline, the hearing could be scheduled within 132 days of the date on which the accused faculty member was notified of the intent to initiate a disciplinary proceeding.

In order to promote clarity and consistency, Senate Bylaw 336 should not include aspirational language that conflicts with the established timeline for prehearing procedures.

Respectfully submitted,

Susan D Wall

Susan D. Wall, MD, Chair
Committee on Privilege and Tenure

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Office of the Academic Senate
SANTA CRUZ DIVISION
125 CLARK KERR HALL
(831) 459 - 2086

November 28, 2016

James Chalfant, Chair
Academic Council

Re: Systemwide Review of Proposed Revised Academic Personnel Manual (APM) Section 015, The Faculty Code of Conduct, Section 016, University Policy of Faculty Conduct and the Administration of Discipline, and proposed revisions to Systemwide Senate Bylaw 336, Governing Privilege and Tenure Hearings

Dear Jim,

The Santa Cruz Division has reviewed and discussed the proposed revisions to APM Sections 015, 016, and Senate Bylaw 336. Our Committees on Academic Personnel (CAP), Affirmative Action and Diversity (CAAD), Faculty Welfare (CFW), Privilege and Tenure (P&T), and Rules Jurisdiction, and Elections (RJ&E) have responded. Although we recognize and appreciate the efforts behind these proposed amendments to policy and improvements to timelines, such as the time required for the Chancellor to provide rationale for involuntary leaves in APM 016, the Division believes that further redrafting may be warranted in several sections to improve clarity and reinforce the intent and effectiveness of the revisions.

Although CFW raised no substantive comments or suggestions, the other responding committees raised several detailed concerns about process, and the need for increased clarity and consistency in language, not only in proposed revisions, but within other sections of the APM being highlighted by this review. These concerns and suggestions include:

APM 015

- A suggestion to redraft Section III.A.3 – Enforcement and Sanctions - to improve clarity
- A recommendation to include a statement regarding the Sexual Violence and Sexual Harassment (SVSH) record keeping
- A suggestion to note that the "no limit on time" to report is not an aberration but is commensurate with California Senate Bill 813, which will become law on January 1, 2017

APM 016

- Concerns about the authorization to initiate involuntary leave in Section II – Types of Disciplinary Sanctions, and its potential to violate due process
- A need for clarity regarding how or if faculty are notified when a claim or allegation is initially filed
- Concerns regarding specific and required wording in the Chancellor's letter to accused faculty

Bylaw 336

- Concerns regarding P&T processes and timelines being specified in policy, which may vary due to individual campus P&T processes
- A recommendation to match the language in SB 336 to the language in APM 015, Section III.A.3
- A recommendation to use "Chancellor or Chancellor's designee" consistently throughout Section C.1.a
- A recommendation to clarify and improve the wording of Section B.3 in terms of timelines versus guidelines
- A perceived unintentional error in Section B.3 that removed language noting the option for the committee to refer the case to mediation as in SBL 336.C
- Concerns about the lack of definition, context, or guidelines for the word "mediation"

Given the detail and purview of specific perspectives present in the committee responses, we are forwarding you the responses that raised the above concerns and suggestions. Please find the documents attached. The Santa Cruz Division recommends that these policies be redrafted to improve clarity and address these concerns.

Sincerely,

Ólöf Einarsdóttir, Chair
Academic Senate
Santa Cruz Division

Enclosures:
CAP_APM015016_Bylaw336_100616
CAAD_to_ASChair_Re_APM1516SB336_11_10_2016
P&T to ASChair_Re_ APM 15 16 SB336_11_10_2016
RJE_to_ASChair_Re_APM1516SB336_10_12_2016

cc: Carla Freccero, Chair, Committee on Academic Personnel
Miriam Greenberg, Chair, Committee on Affirmative Action and Diversity
Stefano Profumo, Chair, Committee on Faculty Welfare
Jorge Hankamer, Chair, Committee on Privilege and Tenure
Jason Nielsen, Chair, Committee on Rules, Jurisdiction, and Elections

October 6, 2016

Ólöf Einarsdóttir
Chair, Academic Senate

Re: Systemwide Review of Proposed Revised Academic Personnel Manual (APM) Sections 015, The Faculty Code of Conduct and Section 016, University Policy on Faculty Conduct and Section 016, University Policy on Faculty Conduct and The Administration of Discipline and Bylaw 336, Governing Privilege and Tenure Hearings

Dear Ólöf,

At its meeting of October 6, 2016, the Committee on Academic Personnel (CAP) discussed the proposed revisions to APM 015, 016, and Senate Bylaw 336. Members offered one suggestion to provide context and improve clarity, and raised one issue of concern with regards to due process.

In APM 015, Section 3, the proposed policy states:

"There is no limit on the time within which a complainant may report an alleged violation."

In order to clarify that the illumination of the statute of limitation in cases of sexual assault offences is not an aberration, but is commensurate with California SB 813, which will go into effect on January 1, 2017, CAP recommends the following prose:

"Commensurate with California State law, there is no limit on the time within which a complainant may report an alleged violation."

Further, CAP members raised concerns about the authorization to initiate involuntary leave in APM 016, Section II – Types of Disciplinary Sanctions. A quote from the Joint Committee April 4, 2016 Report in Vice Provost Carlson's letter to Chancellors[1] (page 2) stated that APM 016 "gives campus Administrators explicit authority to place a Senate or non-Senate faculty member on involuntary paid leave when…the Administrator learns that the faculty member has been accused of a serious crime that is being investigated by law enforcement." CAP members noted that this appears to be a summary and is not a direct quote from APM 016, which states,

"A Chancellor is authorized to initiate involuntary leave with pay…or in situations where the faculty member's conduct represents a serious crime or felony that is the subject of investigation by a law enforcement agency."

[1] Carlson to Chancellors, et al, 9/21/16, Re: Systemwide Review of Proposed Revised Academic Personnel Manual (APM) Section 015, The Faculty Code of Conduct and Section 016, University Policy on Faculty Conduct and the Administration of Discipline

In any event, the committee would be concerned if an administrator was provided with the ability to place someone on paid leave simply based on having learned that a faculty member has been accused and is being investigated. Such a provision clearly violates due process, which stipulates that the accused is innocent until proven guilty.

Thank you for the opportunity to comment on these proposed policy revisions.

Sincerely,

Carla Freccero, Chair
Committee on Academic Personnel

cc: Miriam Greenberg, Chair, Committee on Affirmative Action and Diversity
Stefano Profumo, Chair, Committee on Faculty Welfare
Jorge Hankamer, Chair, Committee on Privilege and Tenure
Jason Nielsen, Chair, Committee on Rules, Jurisdiction, and Elections
Senate Executive Committee

SANTA CRUZ: OFFICE OF THE ACADEMIC SENATE

November 10, 2016

Ólöf Einarsdóttir, Chair
Academic Senate

Re: Systemwide Review of Proposed Revised Academic Personnel Manual (APM) Section 015, the Faculty Code of Conduct; Section 016, University Policy on Faculty Conduct and the Administration of Discipline; and Senate Bylaw 336, Governing Privilege and Tenure Hearing

Dear Ólöf,

The Committee on Affirmative Action and Diversity (CAAD) reviewed the proposed revisions to Academic Personnel Manual (APM) Sections 15 and 16 and those proposed for Senate Bylaw 336 during its October 17, 2016 meeting. It is the committee's understanding that these recommendations stem from an August 2016 supplemental report drafted by the Joint Committee of the Academic Senate and Administration on Faculty Discipline (Joint Committee) that was a follow up to a Joint Committee report that received systemwide review in February 2016. In general CAAD recognizes and appreciates the thoughtful recommendations made by the Joint Committee as reflected in the proposed revisions. There are some lingering procedural questions that have yet to be resolved in the minds of the committee members.

Perhaps the most important clarification made in the proposed revisions are those that pertain to the so called "3 year rule." This was the source of some confusion during the systemwide review. With the clarification that the 3 year rule applies to the Chancellor's duty to "initiate disciplinary proceedings" and not to a Claimant's time to report, members' apprehensions related to potentially unfair treatment of Claimants/victims have been greatly assuaged.

CAAD is left with some question about the impact of "confidential resources" on the 3 year rule. It is the committee's understanding that on our campus there are three places that are designated as a confidential resource. These are places where the mandatory reporter requirement is waived. Here, a victim of SVSH can talk to anyone on staff without fear that an incident will be shared. This is particularly useful when there is an ongoing interaction between victim and perpetrator that is difficult to escape —such as when s/he lives or has classes with the perpetrator; when there is an uneven power relation between the victim and accused perpetrator—such as when the latter is a professor and former a student; and/or when the victim is still unsure of how they would like to proceed. What members are not clear on is how these meetings may be preserved for use as evidence if the victim should wish to pursue a claim at a later date. Is this to be decided on a campus by campus basis?

Further, since the 3 year rule requires the Chancellor to take action within three years of learning of the incident, and the confidential resource does not have to report an incident, the record keeping policies of these confidential resources becomes very important. It could be seven years before any action is taken (if the victim is a freshman and waits until they graduate to report it and it takes the

Chancellor three years to take action). How long do records have to be kept? Is there a systemwide minimum?

The committee would like to understand better this process and see some statement of policy on the maintaining of SVSH records. Members would not like to see an opportunity for addressing an injury lost due to a lack of process in record keeping.

Sincerely,
/s/
Miriam Greenberg, Chair
Committee on Affirmative Action and Diversity

Cc: CAP Chair Freccero
CFW Chair Profumo
P&T Chair Hankamer
RJ&E Chair Nielsen
SEC

November 10, 2016

Ólöf Einarsdóttir, Chair
Academic Senate

Re: Proposed Revisions to Academic Personnel Manual Sections 15 and 16 and to Senate Bylaw 336

Dear Ólöf,

The Committee on Privilege and Tenure (P&T) reviewed the proposed revisions to Academic Personnel Manual sections 015 and 016 and Senate Bylaw 336 at its November 9, 2016 meeting. We applaud the motive behind the revisions, but as is often the case when carefully crafted language is modified, we find that in places the resulting text is less clear than it needs to be.

While we are considering the proposed revisions, we also have some issues with some of the unrevised portions of the text, so we will take this opportunity to voice those too. Most of our comments will concern Bylaw 336.

APM 015

Like the Committee on Rules, Jurisdictions, and Elections (RJ&E), we find section III.A.3 to be unnecessarily confusing as proposed. We would support the revised wording suggested by RJ&E, with the additional suggestion that the word "additionally" should be removed from the sentence in which it appears. We also suggest that the final sentence in this section ("There is no limit on the time within which a complainant may report an alleged violation.") does not really belong in this section, which is about the three-year window in which the administration is required to initiate a disciplinary action after presumably knowing about an allegation. Perhaps that statement should go in a section of its own, since it is about an entirely different timing issue.

APM 016

Section II -- Types of Disciplinary Actions

In the paragraph on the authorization of the Chancellor to impose involuntary leave with pay prior to the initiation of a disciplinary sanction: "... within five working days after the imposition of involuntary leave, the Chancellor must explain to the faculty member in writing the reasons for the involuntary leave including the allegations being investigated and the anticipated date when charges will be brought, if substantiated. Every such document must include the following two statements: (1) the leave will end either when the allegations are resolved by investigation or when disciplinary proceedings are concluded and a decision has been made whether to impose disciplinary sanctions; and (2) the faculty member has the right to contest the involuntary leave in a grievance proceeding that will be handled on an expedited basis." It does not seem appropriate to us that the policy should prescribe the precise wording in the Chancellor's letter,

which seems to be implied in saying that these two "statements" must appear there. We suggest instead some language like "Every such document must apprise the faculty member of the following two stipulations: ...".

SB 336

There is one point on which we want to voice an opinion, even though it does not involve the proposed changes to the bylaw. We bring it up because as long as changes to the bylaw are being considered, we think there is another change that ought to be considered. In 336.B.1, we read "Upon receipt of the charges, the Chair of the Divisional Privilege and Tenure Committee shall promptly deliver a copy to the accused faculty member ...". This is not the practice on our campus (we don't know what the practice is on other campuses, but will try to find out). On our campus, the practice is that the CPEVC (acting as the Chancellor's designee), in the presence of the Chair of P&T, delivers a letter detailing the charges to the accused faculty member. (If physical presence is not possible, the Chair of P&T receives a copy of the letter sent to the accused faculty member.) The current P&T's opinion is that the campus practice is the right way to do it. The letter to be delivered is the administration's statement, not P&T's. Relatedly, in section 336.B.2, the accused has 21 days from the receipt of the letter in which to file an answer in writing with the Committee (P&T). This seems strange, since the response is to the administration's letter, not P&T's. Perhaps there is some deeper thinking behind the language in the bylaw, but we do not understand what it is. In any case, either the bylaw should be brought into line with our practice, or our practice should be brought into line with the bylaw.

In 336.B.1, there is an errant comma in "... the chair of the Committee, may grant ...".In the same sentence, "Upon receipt of a written application" might better say "Upon receipt of a written application from the accused, ...", just to make it clear who would be making the application.

Regarding the bylaw as a whole, there is some inconsistency in terminology which is sometimes confusing but could be easily remedied. In 336.A, we read: "... proceedings shall be conducted before a Divisional Privilege and Tenure Committee (hereafter, the Committee)." But hereafter in the document, "the Committee" is not consistently used instead of "the Divisional Privilege and Tenure Committee". Furthermore, in this very place, the term is misused because proceedings, if any, will be conducted before a Hearing Committee, which is established by P&T but is not in general the same as the P&T committee. We recommend that "the committee" be replaced everywhere in the text with the full name of the committee intended.

Section 336.B.3, which is concerned with timing and timeliness in the P&T review process, is clumsy because it mixes aspirations about timeliness with guidelines regarding timing. This section should be rewritten to clearly separate the desirability of proceeding as briskly as possible from the setting of deadlines for various steps in the process. It should also be recognized that any strict timing guidelines, if set with promptness in mind, will have to be regularly evaded, because it is in the nature of the hearings in question that scheduling depends on the calendars of many individuals who have numerous other commitments. It is not just the faculty who make up hearing committees, but also lawyers, who tend to have busy schedules, and sometimes even the availability of witnesses that one side or the other wishes to produce. Everybody involved in this process has many other things to do.

In the same section, one of the proposed changes has introduced a probably unintended error. The original language said "The Committee may refer the case to mediation (SBL 336.C) or appoint a hearing committee (SBL 336.D)." The proposed amendment deletes "refer the case to mediation (SBL 336.C) or", leaving ""The Committee may appoint a hearing committee (SBL 336.D)." The resulting language is inconsistent with APM 015.III.A.4, which says that "In cases where the Chancellor wants a disciplinary action to proceed, the Divisional hearing committee must hold a hearing ...". SB 336.B.3 should say "The divisional P&T committee must appoint ...". Note also that APM 015.III.A.4 confuses the Divisional P&T committee with the (ad hoc) hearing committee in the way we complained about above.

In section 336.C.1.c: "If a negotiated resolution is reached after charges are filed, the Chancellor ... should inform the Privilege and Tenure Committee if the matter is resolved." We have two issues with this language. First, we think it should be that the Chancellor _must_ inform the P&T committee, since in that situation P&T will be making arrangements for a hearing, and really _must_ be informed if a negotiated resolution has been reached. The second issue is that under the circumstances described, the P&T committee should not be notified *if* the matter has been resolved (since it has), but that the matter has been resolved.

Section 336.C.3: "Once charges have been filed with the Committee, the Chair of the Divisional Privilege and Tenure Committee should request that the Chancellor or Chancellor's designee consult with the Committee or its chair prior to the completion of an early resolution." This is very troublesome language. First, it is redundant with 336.C.1.c, which says much the same thing, except that here the P&T chair is supposed to "request" from the Chancellor what the Chancellor is "encouraged" to do in the earlier text. This kind of language does not belong in a policy document.

Our final worry is about section 336.C.2, which mentions mediation. Mediation is discussed only slightly more extensively in APM 015.III.B.4. Our concern is that we have no idea what is meant in this context by mediation, how it works, what the guidelines are, or anything. We understand that the term may have meaning to some people, but it has no particular meaning to us, and its mention in the bylaw makes us nervous.

Sincerely,
/s/
Jorge Hankamer, Chair
Committee on Privilege and Tenure

Cc: CAAD Chair Greenberg
CAP Chair Freccero
CFW Chair Profumo
RJ&E Chair Nielsen
SEC

SANTA CRUZ: OFFICE OF THE ACADEMIC SENATE

November 3, 2016

Ólöf Einarsdóttir, Chair
Academic Senate

Re: Systemwide Review of Proposed Revised Academic Personnel Manual (APM)
Section 015, the Faculty Code of Conduct;
Section 016, University Policy on Faculty Conduct and the Administration of Discipline; and
Senate Bylaw 336, Governing Privilege and Tenure Hearings

Dear Ólöf,

The Committee on Rules, Jurisdiction, and Elections (RJ&E) reviewed the proposed revisions to Academic Personnel Manual sections 15 and 16, and Senate Bylaw 336 at its October 4, 2016 meeting. These revisions come as a follow up to a report drafted by the Joint Committee of the Administration and Academic Senate and submitted for systemwide review in February of 2016. In that report recommendations were made by the Joint Committee in which revisions to the Academic Personnel Manual and Senate Bylaws were suggested. These suggestions were reinforced by a supplemental Joint Committee report submitted to President Napolitano in August 2016. It is our understanding that these proposed revisions to APM 15, APM 16 and Senate Bylaw 336 stem from the changes in policy prescribed in the supplemental report.

The committee is cognizant of the efforts behind the drafting of the proposed amendments to the above mentioned polices but suggests that further clarification and redrafting may be warranted in some sections to reinforce the intent and effectiveness of the revisions.

APM 15

The committee agrees with the additional language in Part II §§A(3), C(6), and D(3) that now specify "Sexual violence and sexual harassment, as defined by University policy, of another member of the University community" as Types of Unacceptable Conduct.

We applaud the clarification to the 3 year rule made in Section III – Enforcement and Sanctions §A(3). This being said, it is the opinion of members that the main emphasis of this subsection could be made clearer by redrafting the paragraph. RJ&E suggests this section be rewritten as:

> *The Chancellor must initiate related disciplinary action by delivering notice of proposed action to the respondent no later than three years after the Chancellor is deemed to have known about the alleged violation.*
>
> *The Chancellor is deemed to know about an alleged violation of the Faculty Code of Conduct when it is reported to any academic administrator at the level of department chair or above or additionally, for an allegation of sexual violence or*

sexual harassment, when the allegation is first reported to the campus Title IX Officer.

There is no limit on the time within which a complainant may report an alleged violation.

The committee, as well, supports the language change in Section III §B(4), where "informal" is changed to "early" as it recognizes the appropriate weight and significance of this aspect of the disciplinary process.

APM 16

The committee appreciates the changes made to APM 16 Section II – Types of Disciplinary Sanctions, regarding the imposition of involuntary leave and suspension of pay. The committee believes that the shortening of the time required for the Chancellor to provide his rationale for involuntary leave to 5 days is an improvement over the original 10 days. Members think that separating the provision allowing for the suspension of pay and placing it at the end of the subsection is a good move and value the clarification specifying that these sanctions are to be reserved for "rare and egregious" cases.

What is not clear is how or if faculty are notified when a claim or allegation is *initially* filed against them. The rules for the exceptional situations are clear such as "involuntary leave or suspension without pay" and "notice of proposed action," however, these questions remain:

- What is the general notification policy for the respondent when a claim is initially filed or an allegation made but an action has not yet been proposed?
- Is there to be an interim preliminary investigation during which the respondent receives no notice of such activity?

This preliminary process should be explicitly described in the policy.

SB 336

The language of SB 336 §(B)(4) should be redrafted to match the language proffered for APM 15 Section III §(A)(3) above. Describing the Chancellor's duty to initiate within three years is the most important point of this subsection and having stated that, it is logical to then afterward describe when the Chancellor is deemed to know about an alleged violation. The committee suggests that redrafting the paragraph in this way would improve its logical cohesion.

In SB 336 §(C)(1)(a), the term "Chancellor or Chancellor's designee" should be used consistently throughout. Further, the committee recognizes the concern for protecting the due process rights of the Respondent, which is reflected in the changes to this subsection. Requiring an agreement between the Respondent, the P&T chair, and the Chancellor or Chancellor's designee helps to

ensure that the timeliness of a hearing, where formal charges will be deliberated, is not affected without an express agreement between these parties.

Finally, regarding SB 336 §(D)(5), members note the clarifying language and approve of its inclusion. There is some question as to how a settlement reached as the result of a *mediation* might be treated under this subsection. Are mediations exempt from this rule? The committee was also unclear as to whether or not negotiations that occur prior to charges being brought become part of the permanent record. Relatedly, just how "permanent" is the record? How long is the campus required to maintain records related to faculty discipline cases? Does the Chancellor's duty to initiate disciplinary action within three years have any impact on how long records are to be kept?

The committee is pleased to have had the opportunity to review the proposed revisions to these important policies and offers these suggestions and queries in the spirit of collegiality and with the belief that they will help make the related processes stronger.

Sincerely,
/s/
Jason Nielsen, Chair
Committee on rules, Jurisdiction, and Elections

Cc: CAAD Chair Greenberg
CAP Chair Freccero
CFW Chair Profumo
P&T Chair Hankamer

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November 14, 2016

ACADEMIC COUNCIL CHAIR JIM CHALFANT

RE: Proposed Technical Revisions to APM – 015 and APM – 016 and the Concurrent Set of Proposed Amendments to Senate Bylaw 336

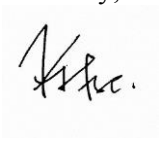
Dear Jim,

CCGA discussed at its November meeting the proposed revisions to APM 015 and APM 016 and the concurrent set of proposed amendments to Senate Bylaw 336 to address recommendations from the Joint Committee of the Administration and Academic Senate regarding sexual violence and sexual harassment, and the "three year rule."

Members of CCGA did not have any concerns regarding the proposed revisions and viewed them as the appropriate amendments made to carry out the recommendations of the Joint Committee.

CCGA appreciates the opportunity to review and provide feedback on the proposed revisions.

Sincerely,



Kwai Ng
Chair, CCGA

cc: Shane White, Academic Council Vice Chair
CCGA Members
Hilary Baxter, Academic Senate Executive Director
Michael LaBriola, Academic Senate Analyst

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Jonathan Simon
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November 18, 2016

ACADEMIC COUNCIL CHAIR CHALFANT

Re: Proposed revisions to APM 015 & 016 and to Senate Bylaw 336

Dear Jim:

UCPT reviewed revisions proposed to APM 015 and APM 016 based on recommendations of the April 2016 Joint Committee report as well as conforming amendments proposed to Senate Bylaw 336 regarding Privilege and Tenure proceedings in discipline cases. Significant discussion among committee members brought forth issues of note outlined below.

Types of unacceptable conduct in APM 015, Part II, A, C, & D. While acknowledging the need for the Code of Conduct to address sexual violence and sexual harassment, some committee members suggested prohibitions against these behaviors might be combined with existing text on discrimination in the three relevant subsections rather than being called out separately in each.

No limit on the time within which a complainant may report an alleged Code of Conduct violation – APM 015, Part III, A.3. The committee discussed this provision which aims to clarify that the "three-year rule" is not a statute of limitations. Members noted the absence of a time limit for purposes of faculty discipline matters stands in contrast to conventions for bringing grievances. Specifically, Senate Bylaw 335 prohibits consideration of grievances "if more than three years have passed between the time the grievant knew or should have known about the violation of his/her rights and privileges." UCPT recommends grievances brought by faculty not be subject to a three-year limit if complaints against faculty are not subject to the same. Establishing parallel practices would require subsequent amendment of Senate Bylaw 335.

Within five days of imposition of involuntary leave, notify faculty member of reasons for leave as well as anticipated date charges, if substantiated, will be brought – APM 016, Section II. Committee members agreed that the current 10-day window for notifying faculty *and* initiating disciplinary hearings is difficult to meet. A few noted that specifying an "anticipated date" to bring charges should not be construed as setting a firm deadline which, if missed, could provide a basis for suing the University.

Authorizing the President (rather than the Regents) to suspend pay of a faculty member on involuntary leave pending disciplinary action – APM 016, Section II. Though suspension of pay is only for "rare and egregious cases," some UCPT members expressed concern that vesting the

authority to do so in the President rather than the Regents may result in such action becoming more common than is warranted. In particular, it may be more challenging for a single University leader than the Board as a whole to resist external pressure to suspend pay in highly publicized cases of alleged misconduct. Such decisions should be made based on University practice and the circumstances at hand—not driven by people and entities outside UC.

Finally, the committee raised two concerns about existing text in APM 016, Section II that relate to—but do not come directly from—proposed revisions. First, with respect to imposing involuntary leave prior to the initiation of disciplinary action, UCPT recommends establishing some guidelines for determining when "there is a strong risk that (an) accused faculty member's continued assignment to regular duties or presence on campus will cause immediate and serious harm to the University community." Such guidelines would provide faculty, students, and staff some common standards or reference points for the factors relevant to making this determination.

In addition, current APM language directs divisional P&T committees to handle *"on an expedited basis"* grievances involving the decision to place a faculty member on involuntary leave. Committee members noted the ambiguity of what constitutes "an expedited basis" and expressed concern that the term may lead to faulting of P&T committees for delays. These local committees cannot completely control timelines or prevent delays that arise from, among other things, the schedules of private legal counsel representing faculty respondents. It was noted that having P&T meetings set in advance and reserved on committee members' calendars is good practice to keep cases moving along and to minimize scheduling delays.

Sincerely,

Jonathan Simon
Chair, UCPT
Center for the Study of Law & Society
UC Berkeley, School of Law

cc: UCPT members
Academic Council Vice Chair White

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November 18, 2016

JIM CHALFANT, CHAIR
ACADEMIC COUNCIL

RE: Proposed Revisions to APM 015, 016 and SR 336

Dear Jim,

The University Committee on Faculty Welfare (UCFW) has discussed the proposed revisions to APM 015, 016 and SR 336 governing faculty discipline in cases of alleged sexual harassment or sexual assault. Overall, the committee finds the clarifications helpful in specifying processes and timelines more clearly. Nevertheless, we note some vague wording that could be improved or contextualized in accompanying implementation guidelines and/or additional revisions.

First, Part II, Section 1, number 6 retains this language without emendation: "Participating in or deliberately abetting disruption, interference, or intimidation in the classroom." Members were concerned that uses of free speech and academic freedom may be seen to overlap with deliberate actions of intimidation or disruption. Ongoing discussions in the academy writ large over "trigger warnings", and UC-specific concerns over various campus speakers and the like illustrate the need for clarity in this area.

Second, Part III. B. 4., "Enforcement and Sanctions", notes that "Procedures should be developed for mediation of cases where mediation is viewed as acceptable by the Chancellor and the faculty member accused of misconduct." The question members raised was why only the Chancellor and the accused are mentioned, and whether, in cases where there is a complainant, the complainant also should be consulted about whether mediation is acceptable. Further clarification on whether such cases can and should be mediated without participation of the complainant should be carefully explicated.

Third, in the companion SR 335, B.6., "Preliminary Procedure in Grievance Cases", states that "No grievance may be considered by the Committee if more than three years have passed between the time the grievant knew or should have known about the violation of his/her rights and privileges and the resulting injury therefrom, and the filing of a grievance with the Committee." Based on discussion with members of UCAADE, there appears to be an inconsistency with the statue of limitations in SR 335 and the revised SR 336, where "There is no limit on the time within which a complainant may report an alleged violation." (SR 336 B.4.) The concern raised is that the grievant could be a junior faculty member who may not feel comfortable bringing a formal grievance until he/she gets tenure, which could easily exceed the three-year time limit. The reasons for the differences in the time limits in these two documents should be clarified and reconciled as necessary.

Thank you for your concern to these important topics.

Sincerely,

Lori Lubin, UCFW Chair

Copy: UCFW
Hilary Baxter, Executive Director, Academic Senate

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November 19, 2016

JIM CHALFANT, CHAIR
ACADEMIC COUNCIL

RE: PROPOSED REVISIONS TO APMs 015 and 016 and SB 336

Dear Jim,

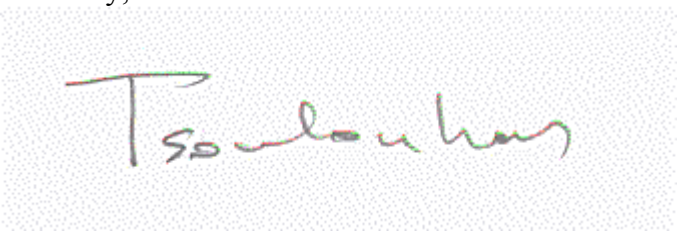
UCAP discussed the proposed revisions to APMs 015 and 016 and SB 336 during its November 9th meeting and we offer the following comments.

The existing language in the third paragraph of Section II of APM 016 reads: "A Chancellor is authorized to initiate involuntary leave with pay prior to the initiation of a disciplinary action if it is found that there is a strong risk that the accused faculty member's continued assignment to regular duties or presence on campus will cause immediate and serious harm to the University community or impede the investigation of his or her wrongdoing, or in situations where the faculty member's conduct represents a serious crime or felony that is the subject of investigation by a law enforcement agency." The committee recommends deleting the phrase "or in situations where the faculty member's conduct represents a serious crime or felony that is the subject of investigation by a law enforcement agency." Members agreed that this phrase is already covered by the first two parts of the statement and it assumes guilt.

UCAP recommends deleting the final paragraph in Section II of APM 016 which reads: "In rare and egregious cases, a Chancellor may be authorized by special action of the President to suspend the pay of a faculty member on involuntary leave pending a disciplinary action. This is in addition to the Chancellor's power to suspend the pay of a faculty member who is absent without authorization and fails to perform his or her duties for an extended period of time, pending the resolution of the faculty member's employment status with the University." In addition to finding the vague phrase "rare and egregious" problematic and questioning what would be achieved by cutting off an individual's salary prior to a disciplinary action, members agreed that, overall, the policy does not benefit from the inclusion of this paragraph. Further, the paragraph suggests that the Chancellor can act without due process, which is both morally and legally questionable.

We appreciate the opportunity to participate in this review. Feel free to contact me if you have any questions.

Sincerely,



Fanis Tsoulouhas, Chair
UCAP

UNIVERSITY COMMITTEE ON AFFIRMATIVE ACTION, DIVERSITY, AND EQUITY (UCAADE)
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December 14, 2016

JAMES A. CHALFANT
ACADEMIC COUNCIL CHAIR

Dear Jim:

Per the November Academic Council meeting, UCAADE respectfully submits this revised comment related to proposed changes to APM 015, APM 016, and SBL 336.

UCAADE commends the Joint Committee of the Administration and Academic Senate for their important work in examining disciplinary proceedings related to sexual violence, sexual assault, and sexual harassment; and proposing revisions intended to draw attention to sexual violence, assault and harassment and clarify procedures related to the administration of discipline.

As you are aware, one of UCAADE's main activities last academic year was a review of UC's anti-discrimination policies. This included a review of the APM, Senate Bylaws, Standing Orders of the Regents, and other policy statements and reports. During our review, the Joint Committee of the Administration and Academic Senate was convened. Concerned that our work might be duplicative, we consulted with then Council Chair Dan Hare and were encouraged to continue our work given the specificity of the charge of the Joint Committee and the broader examination underway within UCAADE.

UCAADE discussed the current proposed revisions to APM 015 (Faculty Code of Conduct), APM 016 (University Policy on Faculty Conduct and the Administration of Discipline), and Senate Bylaw 336 (Privilege and Tenure: Divisional Committees – Disciplinary Cases) at our meeting on October 13, 2016, which raised ongoing concerns about some of our policies including APM 015, APM 016, SBL 335 (Privilege and Tenure: Divisional Committees – Grievance Cases) and SBL 336 in relation to discrimination and harassment. In the interest of responding to the proposed revisions and not adding another set of concerns to the existing proposal, our prior comment focused on APM 015, 016 and SBL 336. We now provide extended comments including concerns related to SBL 335, for your consideration.

APM 015: Faculty Code of Conduct

- Part II, 1.2: The sentence reading, "Discrimination, including harassment, … medical condition (cancer-related or genetic characteristics), genetic information (including family medical history, …". We recommend adding the word/phrase "including" or "including, but not limited to" just before "cancer-related" to convey that this list is not exhaustive.

  The same revision is recommended for Part II, C.5 and D.2

- Concern was raised about the inclusion of harassment "for reasons of…sex, sexual orientation, gender, gender expression, gender identity..," in Part II, 1.2 and the partially duplicative statement about sexual violence and sexual harassment in Part II, 1.3 potentially causing some confusion. Part II, 1.2 includes sexual harassment, but not sexual violence. Part II, 1.3 includes both sexual violence and sexual harassment. UCAADE members recognized the challenge of emphasizing the importance of sexual violence and sexual harassment pursuant to the recently revised University policy and the VAWA while also ensuring protections for discrimination and harassment for other affinity groups not defined by sex. However, members felt that some additional attention to these two paragraphs may be warranted and encourage the policy writers to consider further revisions.

  - One suggestion is to pull out matters pertaining to harassment based on sex from Part II, 1.2 and instead placing all such language in Part II, 1.3.

    - Example for Part II, 1.2: "Discrimination, including harassment, against a student on political grounds, or for reasons of race, color, religion, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, …"

    - Example for Part II, 1.3: "Sexual violence and sexual harassment of a student, as defined by University policy."

  - A second suggestion is to include all forms of harassment in Part II, 1.2, indicating equal weight for all forms of harassment and discrimination. If this were done, the same might apply to 1.4 pertaining to disability since physical and mental disability are already mentioned in 1.2.

    - Example for Part II, 1.2: "Discrimination, including harassment or violence, against a student on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition (e.g., cancer-related or genetic characteristics), genetic information (e.g., family medical history), or service in the uniformed services as defined by the Uniformed Services

Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons. Sexual violence and sexual harassment, as defined by University policy, of a student."

- UCAADE members also felt that the language should include attention to behavior promoting a hostile work environment (which may include, but is not limited to discrimination or harassment) and mistreatment based on socioeconomic status/social class.

- Harassment, discrimination, and violence should be defined in a section on definition of terms. Violence includes not only physical aggression or force but verbal aggression/hostility and other practices or norms that prevent individuals or groups from fulfilling their duties, performing their appropriate University activities (e.g., as a student), or harm or injure them in some way. In the above statement, "student" may be replaced with "faculty" in relevant sections of the policy statement.

The same revisions are recommended for Part II, C.5, C.6, C.7, D.2, D.3, and D.4

- Additionally, after careful review, UCAADE members expressed concern about the attention paid to sexual harassment and violence with far less accountability for violations related to race and ethnicity, and other protected groups. Choosing the second suggestion above would create equity in the seriousness of all enclosed violations.

- In Part III, A.3: We recommend clarifying that, "There is no limit on the time within which a complainant may report an alleged violation, where a complainant is any current or prior member of the University community (faculty, staff, student)." The motivation for the additional language is to indicate that complainants are not restricted to reporting prior to separation from the University. Additional clarity on the definition of "complainant" is also warranted perhaps in a section on definition of terms. This becomes important in relation to other policies such as SBL 335 in distinguishing between a "complainant" and a "grievant" since faculty could be either.

- Part III, A.3: Given recent cases of sexual harassment and sexual violence at UC, attention should be given to instances where breaches of the faculty code of conduct are an "open secret," even if not reported to an academic administrator at the level of Department Chair or above. What is the Department Chair's responsibility or what should his/her responsibility be in such cases to prevent ongoing harassment, discrimination, or violence (e.g., Marcy case)? UCAADE expresses concern that not attending to this will result in a loophole or vehicle through which ongoing harassment may persist.

- Part III, B.4: Acceptability of mediation should not be limited to the Chancellor and faculty member accused of misconduct, but also the complainant.

APM 016: University Policy on Faculty Conduct and the Administration of Discipline

- Section II: Though not proposed for revision, UCAADE expresses concern about the authority of the Chancellor to "waive or limit" disciplinary action against a faculty member found to have violated APM 015. Anecdotally, prior cases of sexual misconduct with promises to not repeat the behavior and racial discrimination have resulted in continued offenses and more importantly continued harm to students and faculty and an overall decline in climate in academic units. Notwithstanding this anecdotal evidence, the concentration of authority at the level of the Chancellor does not provide accountability for decision-making; and in prior cases has been met with overt contempt by broader campus communities due to the perception of sweeping incidents under the rug or not living up to the principles that the University endorses. This recommendation is motivated by previous concerns where the "administration has demonstrated a lack of leadership on these issues", as stated in the Moreno Report. Approval of such waivers through appropriate bodies (e.g., Senate committees, the President) is recommended.

- Concern was raised that while mediation may be favorable in some cases, care should be taken so that mediation does not mask statistics on reported violations.

- UCAADE also notes considerable differences in the level of Senate involvement between campuses in disciplinary cases (e.g., UCM and UCR). At UCM, formal complaints against a faculty member are addressed to the Provost. *If the Provost determines that the complaint has merit*, he/she shall designate an Academic Senate member (or up to four committee members) as an Investigative Officer/Committee. This Committee reports back to the Provost. UC Riverside has a Senate Committee on Charges that reviews charges of faculty misconduct. If a formal complaint is pursued, it goes through the Senate Committee on Charges. "To complete the Academic Complaint Form, the complainant must identify the relevant section(s) of the University Policy on Faculty Conduct and the Administration of Discipline and include a full statement of the facts that allegedly constitute a violation of the University Faculty Code of Conduct. The Form must be signed by the complainant and submitted to the Chancellor. Materials elaborating the evidence may be appended to the Academic Complaint Form. *The Chancellor shall promptly transmit the signed formal complaint to the Committee on Charges of the Academic Senate*."

  We recommend standardizing procedures across campuses with respect to the degree of Senate involvement in disciplinary cases.

- UCAADE also recommends standardizing the standards of evidence in disciplinary cases across UC campuses. APM 016 indicates a standard of *probable cause*. UCR states, "If the Committee on Privilege and Tenure determines that there is *clear and*

convincing evidence that the accused Faculty member has violated the Faculty Code of Conduct, the Committee shall also recommend an appropriate sanction that shall not be more severe than the maximum sanction specified in the formal charge from the Chancellor." We propose that upholding the principles of the University requires consistent standards in the administration of discipline across the UC, including standards of evidence.

Senate Bylaw 336: Privilege and Tenure: Divisional Committees – Disciplinary Cases

- Section B.1: Clarify "promptly." UCAADE members encourage greater specificity related to the time that the Divisional P&T Committee has for delivering a copy of the charges to the accused faculty member.

- Section B.2: Clarify "immediately." We encourage language that specifies a time limit for the P&T Committee to provide a copy of the faculty member's answer to the Chancellor or Chancellor's designee or for informing the Chancellor (or designee) of a granted extension.

- Section B.3: We recommend revising the aspirational language, "ideally…within 90 days" and instead indicate that a hearing should be scheduled within 90 days, and that if a hearing is not scheduled within 90 days, the Committee on P&T must provide written notice to the accused faculty member and the complainant indicating the reason for the delay and the anticipated length of the delay. Although this is implied, we encourage more explicit language. Additionally, we encourage language providing the faculty member and the complainant recourse if the time allowed for scheduling the hearing is not met.

- Section B.4: As stated above for APM 015, we recommend clarifying that, "There is no limit on the time within which a complainant may report an alleged violation, where a complainant is any current or prior member of the University community (faculty, staff, student)." The motivation for the additional language is to indicate that complainants are not restricted to reporting prior to separation from the University.

- Section B.4: Given recent cases of sexual harassment and sexual violence at the UC, attention should be given to instances where breaches of the faculty code of conduct are an "open secret," even if not reported to an academic administrator at the level of Department Chair or above. What is the Department Chair's responsibility or what should his/her responsibility be in such cases to prevent ongoing harassment, discrimination, or violence (e.g., Marcy case)?

- Section C.1.a: Does "negotiations" mean the same thing as "mediation" and/or "early resolution" as referenced in APM 016? Although it does not appear to necessitate "early" resolution, and seems different than "mediation," some clarity on what the term means is warranted.

- Section C.1.a: UCAADE reiterates its concern about the Chancellor having the ability to "negotiate" (presumably waive disciplinary action) without appropriate accountability procedures. Although the policy states that the Chancellor should consult with P&T, the authority for decision-making rests solely with the Chancellor. We recommend that accountability procedures be put in place to address this concern (see comment above under APM 016).

Senate Bylaw 335: Privilege and Tenure: Divisional Committees – Grievance Cases

Although not proposed for revisions, UCAADE raises the following concerns and proposes the following revisions to SBL 335:

- Include a definition of "grievance" and "grievant." It appears that grievance refers to instances where the faculty member believes his/her rights have been violated by the University (not by another member of the faculty pursuant to APM 015). Further clarity is needed on the difference between a grievance and violations covered by APM 015.

- Section B.6: The policy states that "No grievance may be considered by the Committee if more than three years have passed between the time the grievant knew or should have known about the violation of his/her rights and privileges and the resulting injury therefrom, and the filing of a grievance with the Committee." UCAADE strongly urges revisions to this 3-year time limit in order to provide the maximum protections to the alleged aggrieved party. For example, a junior faculty member may feel that his/her rights have been violated but may not feel comfortable filing a formal grievance until after their tenure review. The power structure in academic units and procedures for voting on a faculty member's promotion may cause a faculty member to delay reporting a grievance. Also, if a faculty member feels that his/her rights have been violated by an administrator, he/she may not feel comfortable filing a grievance until after that faculty member has separated from the University (e.g., retirement), in which case the grievance may not be filed for many years. In either case, UCAADE strongly recommends that the 3-year time limit be lifted and that, similar to APM 015 and APM 016, there be no time limit for filing a grievance. At a minimum, we recommend it be increased to 8 years in order to cover the pre-tenure period.

- Section C.1: Define "negotiations"

- Section C.7: Why is the standard of evidence higher for grievances (preponderance of the evidence) than for disciplinary actions (i.e., violation of faculty code of conduct) – probable cause? UCAADE recommends revisiting this standard, if allowed by law, and consideration of probable cause as the standard of evidence for grievances.

Other summary comments:

There is a continued focus on diversity at UC. Statements, even practices abound that diversity in numbers must be not only maintained but increased. However, concern is expressed about efforts to guarantee that underrepresented and other protected groups not experience prejudice, discrimination, harassment, aggression—micro or otherwise—and exclusion at UC. The University does a good job of advertising its diversity—especially racial/ethnic diversity—and stating protections whereby diversity will be maintained and/or increased, especially through hiring. However, there is increased need to create processes whereby protected groups are treated justly and experience a climate where they feel comfortable being whoever they may be while at UC.

There is increasing discussion about equity, inclusion, micro-aggression and the like, but how much change there has been is unseen. Personnel processes—especially at, but not limited to, the departmental and decanal levels— are a major concern, and one that was noted in both the Moreno Report and reaffirmed by the After the Moreno Report Task Force Report and the Campus Climate Survey.

Additionally, the Moreno Report recommended that a Discrimination Office be responsible for collecting and analyzing and reporting annual data on discrimination. While this is needed, some analysis and reporting of data on discrimination is clearly within the purview of Senate Committees for local campuses and the system as an entity. Determined effort should be made to annually collect and report data regarding not only the hiring of women, underrepresented minorities and other minorities, and members of the LBGTQ community but also data on their retention, advancement, and "employment well-being" and comparing these data with those on other faculties.

UCAADE appreciates the opportunity to comment and is encouraged by efforts to ensure full protections for faculty, students and staff in relation to misconduct and the administration of discipline.

Respectfully submitted,

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UCAADE Members