



*Robert M. Anderson*  
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*Chair of the Assembly and the Academic Council  
Faculty Representative to the Board of Regents  
University of California  
1111 Franklin Street, 12th Floor  
Oakland, California 94607-5200*

July 5, 2012

**SUSAN CARLSON, VICE PROVOST  
ACADEMIC PERSONNEL**

**Re: Review of APM 010, 015 and 016**

Dear Susan:

As you requested, I sent the proposed revisions to APMs 010, 015 and 016 for systemwide review. Seven divisions and five committees responded. In addition, the Senate office received several communications from faculty, including a petition from over 100 UC Riverside faculty members, and the Berkeley and Davis Faculty Associations. Respondents were divided over the proposed revisions to APM 010 and 015, but were notably united (with two exceptions) to the proposed revisions to APM 016.

A majority of Senate agencies (UCD, UCLA, USSD, UCSB, and UCAF) strongly supported the addition of language to APMs 010 and 015 as an essential clarification of academic freedom in the light of the *Garcetti* decision. A minority (UCI, UCR, UCAP, UCEP) opposed the language because the rationale for its necessity was not presented and/or because they found the phrase “when acting as a member of the faculty” to be confusing and ambiguous. UCAP and UCP&T favored its inclusion in APM 015, but thought it unnecessary in APM 010. Similarly, UCI would prefer to retain the simple, unambiguous language of APM 010 defining academic freedom, but is open to a more clearly stated alternative in APM 015. Respondents requested clarification regarding when a faculty member is not acting as a faculty member. UCR’s Committee on Faculty Welfare notes, “This language begs the question of when a faculty member’s freedom begins and ends. Does it begin and end with classroom speech and scholarly expression in publications? Does it extend to political speech outside of class? Does it extend to comments about administrative action and student issues?” UCB focused on the issue of whether freedom to address any matter of institutional policy should be considered an element of academic freedom, and instead recommended that it be included only in the professional rights enumerated in the Faculty Code of Conduct (APM 015).

In discussion, it was noted that the comma following the word “publication” in APM 010 should instead be a semi-colon, to make it clear (consistent with APM 015) that the qualifier that follows applies only to “freedom to address any institutional policy or action” and not to “freedom of inquiry and research, freedom of teaching, and freedom of expression and publication.”

Council strongly supports modifying APMs 010 and 015, as recommended, provided that (1) the ambiguous phrase “when acting as a member of the faculty” is deleted and (2) the comma following “publication” is changed to a semi-colon. We recommend that your office issue a brief summarizing recent court decisions and explaining the impetus for proposing language to protect faculty when they speak on matters of institutional policy and governance.

Senate agencies, as well as numerous responses from other faculty, nearly unanimously opposed the proposed revisions to APM 016. The exceptions were UCAF, UCEP, and UCB (which was silent on this section). The proposal does not provide justification for the change; it is overly broad and vague and does not define the term “policy” vis-à-vis “rules and regulations;” and it places the determination of sanctions for faculty non-compliance with administrative policies beyond the procedural protections provided by the Faculty Code of Conduct and the oversight of their peers. The Academic Council objects to this in the strongest possible terms.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert Anderson". The signature is fluid and cursive, with the first name "Robert" and last name "Anderson" clearly distinguishable.

Robert M. Anderson, Chair  
Academic Council

Cc: Academic Council  
Executive Director Winnacker

Encl.

**From:** Andrea Green Rush [agreenrush@berkeley.edu]  
**Sent:** Monday, April 09, 2012 9:55 AM  
**To:** AS-SenateReview-SA  
**Cc:** Martha Winnacker; Bob Jacobsen; Marilyn Kwock  
**Subject:** Re: Systemwide Review of APM - 010, 015 and 016  
**Attachments:** UCB response to APM 010 and 015 amendments.pdf

Dear Martha and Clare,

I write on behalf of Division Chair Bob Jacobsen. The Berkeley Division will not be submitting comments on these proposed APM revisions. Instead, I am attaching the divisional response to this issue from AY2010-11. DIVCO's position is unchanged, so we do not see the need for additional comment. If you have any questions, please feel free to contact me. Best regards, Andrea

On Mar 29, 2012, at 11:54 AM, Martha Winnacker wrote:

CHAIRS OF THE SENATE DIVISIONS  
CHAIRS OF THE STANDING COMMITTEES OF THE ASSEMBLY

Dear Senate Committee and Division Chairs:

I am forwarding for full systemwide review proposed revisions to APM sections 010, 015, and 016, as described in the attached letter and its enclosure. The APM sections under review, with the proposed revisions, are posted on the UCOP web site at <http://www.ucop.edu/acadadv/acadpers/apm/review.html>

Please submit your committee's or division's comments by email to [SenateReview@ucop.edu](mailto:SenateReview@ucop.edu) by June 20, 2017. This will allow the Academic Council to discuss the responses and synthesize a Senate position at its June 27, 2012 meeting. I would appreciate being informed if your committee or division chooses not to opine. Thank you for your participation in this important review.

Sincerely,  
Martha

Martha Kendall Winnacker, J.D.  
Executive Director, Academic Senate  
(510) 987-9458

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**From:** Gina Durrin **On Behalf Of** Susan Carlson  
**Sent:** Friday, March 23, 2012 9:44 AM  
**To:** Robert Anderson; [APAlivisatos@lbl.gov](mailto:APAlivisatos@lbl.gov); [bresl@berkeley.edu](mailto:bresl@berkeley.edu); [hexter@ucdavis.edu](mailto:hexter@ucdavis.edu); [gottfred@uci.edu](mailto:gottfred@uci.edu); [swaugh@conet.ucla.edu](mailto:swaugh@conet.ucla.edu); [kalley@ucmerced.edu](mailto:kalley@ucmerced.edu); [dallas.rabenstein@ucr.edu](mailto:dallas.rabenstein@ucr.edu); [svcaa@ucsd.edu](mailto:svcaa@ucsd.edu); [Jeff.Bluestone@ucsf.edu](mailto:Jeff.Bluestone@ucsf.edu); [gene.lucas@evc.ucsb.edu](mailto:gene.lucas@evc.ucsb.edu); [gallow@ucsc.edu](mailto:gallow@ucsc.edu); Barbara Allen-Diaz  
**Cc:** President's Office; [chancellor@berkeley.edu](mailto:chancellor@berkeley.edu); [chancellor@ucdavis.edu](mailto:chancellor@ucdavis.edu); [chancellor@uci.edu](mailto:chancellor@uci.edu); [chancellor@conet.ucla.edu](mailto:chancellor@conet.ucla.edu); [chancellor@ucmerced.edu](mailto:chancellor@ucmerced.edu); [chancellor@ucr.edu](mailto:chancellor@ucr.edu); [chancellor@ucsd.edu](mailto:chancellor@ucsd.edu); [Chancellor@ucsf.edu](mailto:Chancellor@ucsf.edu); [henry.yang@chancellor.ucsb.edu](mailto:henry.yang@chancellor.ucsb.edu); [chancellor@ucsc.edu](mailto:chancellor@ucsc.edu); Lawrence Pitts; Dwaine Duckett; Sheryl Vacca; Janet Broughton; Maureen Stanton; Herb Herbert KILLACKEY; Carole Goldberg; David Ojcius; David Bocian; William Hodgkiss; Sally Marshall; John Talbott; Herbie Lee; Heather Archer; Binnie Singh; Kelly Anders; Joan Tenma; Pat Price; Fractor, Marsha; Hamil, Esther E.; Nancy Ochsner; Mary Treasure; Katina Napper; Larsen, Kristina; Field-Karsh, Lynn; [klindlar@ucsd.edu](mailto:klindlar@ucsd.edu); Leathers, Cynthia; Cindy Doherty; Pamela Peterson; Susan Carlson; Nancy Tanaka; Martha Winnacker; Kimberly Rodrigues; David Birnbaum; Leslie Van Houten; Peter Chester; Nadine Fishel; Janet Lockwood; Nancy J. Capell;



320 STEPHENS HALL  
UNIVERSITY OF CALIFORNIA

December 8, 2010

DANIEL SIMMONS  
Chair, Academic Council

*Subject: Proposed amendments to APM 010 and 015*

Dear Dan,

On November 29, 2010, the Divisional Council (DIVCO) of the Berkeley Division discussed the proposed amendments to APM 010 and 015, informed by the comments of the divisional Committee on Academic Freedom (ACFR). DIVCO supports amending the APM to explicitly protect UC faculty when participating in shared governance (formally or informally), however, it agreed with ACFR that the inclusion of the clause "freedom to address any matter of institutional policy ... institutional governance" in the preamble (APM 010) seemed awkward and misplaced. Indeed, DIVCO debated whether the freedom to address any matter of institutional policy is actually an academic freedom. However, it does not appear necessary to resolve this debate in order to protect the freedom of UC faculty to address any matter of institutional policy or action. Explicitly adding this freedom to the list of professional rights of the faculty achieves the desired protection without opening up the possibly controversial issue of what constitutes academic freedom.

Hence, DIVCO recommends that APM 010 not be amended, but that APM 015, Part I should be amended as proposed, to add "the freedom to address any matter of institutional policy..." as an enumerated professional right of the faculty.

Sincerely,

Fiona M. Doyle  
Chair, Berkeley Division of the Academic Senate  
Professor of Materials Science and Engineering

Cc: Arthur Reingold, Chair, Committee on Academic Freedom



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

June 12, 2012

**ROBERT ANDERSON, CHAIR**

University of California  
Academic Council  
1111 Franklin Street, 12<sup>th</sup> Floor  
Oakland, CA 94607

**Re: Systemwide Review: Proposed Revisions to APM 010 (Academic Freedom), 015 (Faculty Code) and 016 (Administration of Discipline)**

The proposal was forwarded to all Davis Division of the Academic Senate standing committees and Faculty Executive Committees within the schools and colleges for comment. Detailed responses were received from the Committees on Academic Freedom and Responsibility and Faculty Welfare, Graduate Council and the College of Engineering Faculty Executive Committee.

APM 010 (Academic Freedom) and APM 015 (Faculty Code)

The Davis Division of the Academic Senate strongly supports the proposed additions; particularly given the revision proposal was generated by the Davis Division Committee on Academic Freedom and Responsibility.

APM 016 (Administration of Discipline)

The Division is not supportive, in the strongest terms, of the proposed revision to APM 016. As stated by Faculty Welfare: "We have yet to see a clear justification for why this change is necessary. In what respect are University "policies" that govern faculty conduct not subsumed under its "rules and regulations"? What has been left out of the current formulation of APM 016 that this change is meant to rectify?"

Policy is defined as "a principle to guide decision making." Rule is defined as "a standard for activity" and regulation as "an administrative legislation that constitutes or constrains rights and allocates responsibilities." This revision, as written, would elevate all policies to the level of rules and regulations. The inclusion of library and parking policies as examples of guidelines becoming actionable under this revision implies a certain trivial nature to the ways in which APM 016 will be applied to faculty conduct by the administration. A structure of fines, tickets and fees already apply to use of the library and parking facilities. Thus a logical conclusion is that violation of library policies, such as not being quiet or running in hallways, are not what this proposed change hopes to be able to elevate to the level of faculty misconduct. We agree that there may be policies that require more stringent enforcement and consequence for non-compliance, such as those pertaining to laboratory safety, but suggest instead that such policies be altered to fit the definition of a rule or regulation following due consultation rather than elevating all policies to this status.

Further, if enacted, we expect this change to apply to all faculty including those in administrative positions and would strongly oppose exempting faculty administrators. Currently administrators are most often charged with policy implementation and compliance. Elevation of policy violation, which heretofore have been considered guides to administrative decision making, to that of violation of a University rule or regulation will open floodgates of complaints against faculty administrators that will be actionable under this change to APM 016. However, as much as we support efforts to enhance and assure accountability of administrators, there are better ways to go about it than this change to APM 016. "Policy" is too vague and broad of an umbrella covering everything from suggestions of best practices and guidelines to clear expectations of compliance to be included as a term in APM 016.

The College of Engineering Faculty Executive Committee wishes to go on record as being unanimously opposed to this revision of APM 016.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda F. Bisson".

Linda F. Bisson, Chair  
Davis Division of the Academic Senate  
Professor: Viticulture and Enology



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

June 12, 2012

Robert Anderson, Chair, Academic Council  
1111 Franklin Street, 12<sup>th</sup> Floor  
Oakland, CA 94607-5200

**RE: SYSTEMWIDE REVIEW OF APM 010, 015, 016**

At its meeting of June 5, 2012, the Irvine Division Academic Senate reviewed the Proposed Revisions to Academic Personnel Policies (APM) APM-010, *Academic Freedom*, APM-015, *The Faculty Code of Conduct*, and APM-016, *University Policy on Faculty Conduct and the Administration of Discipline*. The following comments were presented by the Council on Academic Personnel (CAP), and the Council on Faculty Welfare, Diversity and Academic Freedom (CFW).

The Cabinet agreed with the concerns expressed by several faculty and the Councils regarding the wording in APM-016, and strongly supported the deletion of "and policies" as recommended by the Councils.

**Council on Academic Personnel (CAP)**

Although CAP members understand the spirit of the revisions to APM-010 and APM-015, they voiced similar concerns to those circulated in Vice Provost Carlson's letter of March 23, 2012. CAP members were very concerned about the recent court cases yet the proposed new language is too ambiguous. In matters such as this, less verbiage is often better. Too much wording may introduce unanticipated problems down the road. The consensus was that it would be better to include new provisions in APM-015 than in APM-010, in other words revise APM-015 with clearer language, but keep APM-010 with the existing text (unrevised). Further information and review of APM-015 is needed.

The Irvine Faculty Association forwarded concerns about proposed changes to APM-016 that, in their view, erode academic freedom and expand the range of what requires compliance by the faculty (rules, regulations, and now also policies). CAP members agreed. Given that policies may be written or unwritten, clarification is needed whether APM-016 is referring to written policies.

**Council on Faculty Welfare, Diversity and Academic Freedom (CFW)**  
**APM-010. Academic Freedom and APM-015. The Academic Code of Conduct**

The proposed revisions to both APMs added the following wording:

“... freedom to address any matter of institutional policy or action, when acting as a member of the faculty whether or not as a member of an agency of institutional governance.”

The discussion focused on the part “when acting as a member of the faculty” since it is not clear when a faculty will not be a member of the faculty. It was reasoned that this phrase was introduced to enable the university and campus leadership to take appropriate action against the administrators who undermine the institutional policies, while protecting the faculty (same administrator when acting as a member of the faculty as in classroom teaching or research activity) from being harassed for such criticisms. On the other hand, CFW feels that any administrator should have the right to talk about the administrative policy with the understanding that his/her administrative position may not be protected, while his basic faculty position is protected by this APM. At the same time, since the APM spells out faculty’s, and not administrator’s, rights and responsibilities, by definition, it does not define or protect an administrator’s position and role. So there is no need for an explicit phrase such as “when acting as a member of the faculty”, as all the clauses are applicable only to the members of faculty and not to an administrator. Finally, since the faculty position of an administrator who comments on institutional policy has to be protected, an explicit statement in this regard has to be spelled out. So CFW unanimously endorsed forwarding the following alternative revision for APM-010 and APM-015 for the Cabinet’s consideration.

“... and freedom to address any matter of institutional policy or action. ~~when acting as a member of the faculty, whether or not as a member of an agency of institutional governance.~~ This right extends to members of the faculty who are participating in agencies of institutional governance.”

#### **APM-016. University Policy on Faculty Conduct and the Administration**

The proposed revision to APM 016 added and deleted the following wording:

“... faculty members are subject to the general rules and regulations ~~and policies~~ of the University; ~~such as these include but are not limited to,~~ those pertaining to parking, library privileges, health and safety, and use of university facilities. Faculty are subject to appropriate administrative actions for failure to comply with such rules and regulations ~~and policies.~~”

Members did not understand how the addition of “and policies” changes the meaning of the existing APM-016. CFW voted to strike the proposed addition of these two words until there is a clear explanation about how “policies” differ from “rules and regulations”.

The Irvine Division appreciates the opportunity to comment.



Craig Martens, Senate Chair

C: Martha Kendall Winnacker, Executive Director, Academic Senate



June 22, 2012

Robert Anderson  
Chair, Academic Council

**Re: Response to proposed revisions to APM 010 (Academic Freedom), 015 (Faculty Code of Conduct) and 016 (University Policy on Faculty Conduct and the Administration of Discipline)**


Dear Bob,

Thank you for the opportunity to review and opine on the above references proposed revisions to the APM. Upon receipt, I requested review by the FECs, the Committee on Privilege and Tenure, the Committee on Charges, and the Committee on Academic Freedom. I am attaching the responses I received, for your information. The Executive Board, which speaks for the division on such matters, has reviewed the proposed revisions as well as the responses we received.

1. Regarding the proposed revisions of APM 010 and 015, the UCLA Academic Senate agrees with the necessity and wording of the proposal. The proposed changes appear to respond the courts' recent decisions and thereby protect faculty when they speak on matters of institutional policy, governance, and action.
2. However, the Executive Board was persuaded by the concerns raised by the College FEC with regard to APM 016. No justification was provided for the inclusion of "policy" into the language, which was the cause of some concern. Moreover, the proposal provides no definition of "policy," "rules," and "regulations." Therefore, without clear rationale for the inclusion of "policy" into the language of APM 016, and without definition of the key terms, we cannot support the proposed language.

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

Sincerely,



Andrew Leuchter  
Chair, UCLA Academic Senate


Cc: Martha Kendall Winnacker, Executive Director, Academic Senate  
Jaime R. Balboa, CAO, UCLA Academic Senate

# UCLA MEMORANDUM

College Faculty Executive Committee  
A265 Murphy Hall

June 8, 2012

To: Andrew Leuchter, Chair  
UCLA Academic Senate

From: Michael Meranze, Chair   
UCLA College Faculty Executive Committee

**Re: College FEC response to the proposed revision of APM 010 (Academic Freedom), 015 (Faculty Code of Conduct), and 016 (University Policy on Faculty Conduct and the Administration of Discipline)**

The College FEC appreciates the opportunity to review and opine upon the proposed revisions to sections 010 (Academic Freedom), 015 (Faculty Code of Conduct), and 016 (University Policy on Faculty Conduct and the Administration of Discipline) of the Academic Personnel Manual. We discussed the proposal at our June 1, 2012 meeting. At present, the FEC endorses the revisions to sections 010 and 015, but rejects the changes in section 016 pending clarification (12 approve, 0 oppose, 0 abstain). The following summarizes our discussion:

1. The FEC supports the proposed changes to both APM 010 and 015. As you know, recent case law in California and elsewhere has raised questions about the rights of employees (including faculty members) to speak freely about matters internal to their institutions without fear of penalty.<sup>1</sup> By extending the privilege of academic freedom to “address any matter of institutional policy or action, when acting as a member of the faculty whether or not as a member of an agency of institutional governance,” the proposed changes to APM 010 and 015 appear to respond to the courts’ recent decisions. Faculty members, both in their roles within departments and in faculty governance, must be able to speak freely on matters of institutional policy and action. Neither shared governance nor academic freedom can be sustained, if faculty members do not have the right to comment on proposed policies or issues related to academic freedom without the threat of discipline. Consequently, we strongly support these changes.
2. The proposed changes to APM 016 were viewed by members as being far more problematic. On its face, the changes the addition of “policies” to “rules and regulations” in a variety of areas appears innocuous. And if you look at the list of examples you will see things like parking rules. The problem is that “policies” are never defined. It is difficult to understand the necessity of this change, particularly as they relate to the examples provided. From an institutional standpoint, what is gained by including “policy” as opposed to “rules and regulations” when it concerns parking? The addition makes sense only if there are other categories where policies might remain contentious after they have been promulgated. In

<sup>1</sup> Two relevant decisions concerning universities can be found at:  
<http://www.aaup.org/NR/rdonlyres/5556C028-6780-4B49-A8DE-F180A0E8C97F/0/HongvGrantCDCal.pdf> and  
<http://www.ca9.uscourts.gov/datastore/memoranda/2010/11/12/07-56705.pdf>.

such cases, the proposal would place the authority to discipline violations of such policies under administrative rather than faculty oversight. The proposed change of APM 016 is unclear, unnecessary, and uncontrolled. For these reasons the FEC cannot support it.

In sum, the FEC urges the Senate to support the proposed changes to APM 010 and 015, but reject the proposed change to 016. Our membership appreciates the consultative process. If you have any questions or concerns, please contact me at [meranze@history.ucla.edu](mailto:meranze@history.ucla.edu). Kyle Stewart McJunkin, Academic Administrator, is also available to assist you and he can be reached at (310) 825-3223 or [kmcjunkin@college.ucla.edu](mailto:kmcjunkin@college.ucla.edu).

cc: Jaime Balboa, Chief Administrative Officer, Academic Senate  
Lucy Blackmar, Interim Associate Dean, College of Letters and Science

## UCLA *Academic Senate*

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May 25, 2012

To: Andrew Leuchter  
Academic Senate, Chair

From: Joel D. Aberbach  
Faculty Welfare Committee Chair

Re: Senate Review of APM 010, 015, and 016

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The Faculty Welfare Committee reviewed the Senate Review of APM 010, 015, and 016, on Tuesday, April 10, 2012. There were no comments on the items themselves, which were regarded on non-controversial.

Cc: Jaime Balboa, Chief Administrative Officer, Academic Senate  
Dottie Ayer, Assistant to Chief Administrative Officer, Academic Senate  
Brandie Henderson, Policy Analyst, Academic Senate



CHAIR, ACADEMIC SENATE  
RIVERSIDE DIVISION  
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June 19, 2012

Robert Anderson  
Professor of Economics and Mathematics  
UC Systemwide Academic Senate  
1111 Franklin Street, 12th Floor  
Oakland, CA 94607

Dear Bob,

**RE: PROPOSED TECHNICAL REVISIONS TO APM 010, 015 AND 016**

Four standing Senate committees on our campus, Charges, Faculty Welfare, Privilege and Tenure and Academic Freedom reviewed the proposed technical revisions to APM 010 and 015 which are being revised to include within the protections of academic freedom, the freedom to speak on matters of institutional policy and 016 which remedies the omission of a single, clear statement. The following comments were received:

**Academic Freedom:**

The Committee on Academic Freedom questions the use of the word "as" in the sentence which reads "...when acting as a member of the faculty whether or not **as** a member of an agency of institutional governance.." The committee opines that it would be clearer to say "whether or not the faculty member is also a member ...."

**Faculty Welfare:**

The Committee on Faculty Welfare did not support the proposed changes to Sections 010, 015, and 016 because they find that puzzling language has been introduced with negligible or insufficient explanation as to why it is needed. The Academic Freedom section, APM 010, includes new language affirming rights of academic freedom for faculty "when acting as a member of the faculty." This language begs the question of when a faculty member's freedom begins and ends. Does it begin and end with classroom speech and scholarly expression in publications? Does it extend to political speech outside of class? Does it extend to comments about administrative action and student issues? Section 015 appears to make clear that faculty do enjoy freedom to address any matter of institutional policy or action "when acting as a member of the faculty whether or not as a member as an agency of institutional governance." If this language is intended only to enforce internal discipline among administrators who also hold faculty titles, it may be easier to appreciate, but absent a clear explanation of intention, they do not find it acceptable.

Section 016 is troubling in that it introduces a new category of "policies" to the current categories of "rules and regulations" for which faculty members may be subject to "appropriate administrative [disciplinary] actions." The

problem here is one of definition and differentiation between rules, regulations, and policies. Why is it necessary to add a new term without an explanation of why it is needed or how it differs from a rule or a regulation? May a policy exist only in the mind of an administrator? What is most worrisome is that it could be applied impulsively. Are policies subject to prior review by the Academic Senate before they are implemented? Must they be written and conveyed prior to implementation?

Parenthetically, Faculty Welfare Committee is aware from correspondence and conversations with faculty outside the committee that the concerns expressed above are not unique to the committee.

The other two committees; Charges and the Privilege and Tenure had no additional comments to make.

Sincerely yours,

Mary Gauvain  
Professor of Psychology and Chair of the Riverside Division

CC: Martha Kendall Winnacker, Executive Director of the Academic Senate  
Sellyna Ehlers, Director of UCR Academic Senate office



OFFICE OF THE ACADEMIC SENATE

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June 19, 2012

Professor Robert Anderson  
Chair, Academic Council  
University of California  
1111 Franklin Street, 12<sup>th</sup> Floor  
Oakland, California 94607-5200

Subject: Proposed Revisions:  
○ APM 010 – Academic Freedom  
○ APM 015 – The Faculty Code of Conduct  
○ APM 016 – University Policy on Faculty Conduct and the Administration of Discipline

Dear Chair Anderson,

The proposed revisions to APM 010, 015, and 016 were sent to the appropriate Divisional committees for review and comment and considered at the Senate Council meeting on June 4, 2012. Reviewers were supportive of the proposed revisions to APM 010 and APM 015.

The proposed revisions to APM 016 generated two concerns. First, Council members noted that replacing “such as” with “these include, but are not limited to” extends the meaning of “general rules and regulations and policies of the University”. The current language indicates that the rules, regulations, and policies referred to are similar to those listed. The proposed language broadens the scope to the point that there are no limits on what could fall in the category of “general rules and regulations and policies of the University.”

Second, some faculty urged that the terms “policy” and “rules and regulations” be clarified to determine if there are interpretations of these terms that could provide administrators with justification for interfering with academic freedom. These faculty members were concerned that the proposed language potentially provides administrators with the ability to require a faculty member to comply with University policies while permitting those same faculty to oppose the policy. For instance, this language could permit faculty who oppose charging for online education to voice this opposition while at the same time requiring their compliance with University policies forbidding them to make available their own course materials free of charge online. The academic freedom implications of such a situation were questioned.

Sincerely,

A handwritten signature in dark ink, appearing to read "T. Guy Masters", is written over a light blue horizontal line.

T. Guy Masters, Vice Chair  
Academic Senate, San Diego Division

cc: Divisional Chair Sobel  
Executive Director Winnacker



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Henning Bohn, Chair  
Deborah Karoff, Executive Director

June 18, 2012

Robert Anderson, Chair  
Academic Senate

RE: Proposed Revisions to APM 010, 015, and 016

Dear Bob,

Several groups at UCSB reviewed the proposed revisions to APM 010, 015, and 016 including: Council on Faculty Issues and Awards (CFIA), Committee on Academic Personnel (CAP), Committee on Privilege and Tenure (P&T), Committee on Diversity and Equity (CDE), and the Faculty Executive Committees from the College of Letters and Science, the College of Engineering (COE), the Bren School, and the College of Creative Studies. Several groups were unclear about the intention of the proposed changes and what exactly was prompting revisions to the APM. It would have been helpful if a stronger rationale for the proposed revisions had been provided.

All of the reviewing groups were supportive of the proposed revisions to APM 010 and 015 regarding academic freedom with the exception of CFIA and the Committee on Diversity and Equity (CDE). CFIA found the proposed language problematic particularly the second part of the proposed revision which says, "when acting as a member of the faculty whether or not as a member of an agency of institutional governance." Their concern is that the statement is overly broad and invites ambiguity of meaning. They ask, for example, if a faculty member is attending a protest on campus, are they acting as a faculty member, or not? CFIA suggests that simple language is best and to not include the second clause of the proposed revision. CDE felt that the need for revisions was not sufficiently explained.

Almost all of the reviewing groups were in agreement in not supporting the proposed revision to APM 016. Reviewing groups stated that the addition of the word "policy" in APM 016 was problematic because the language is nebulous and it assumes that faculty are familiar with various university policies. CFIA says, "Any number of campus offices may implement their own policies, and these are not on par with University-wide rules and regulations, which are subject to institutional review, and once approved are promulgated. It is not appropriate that the code of conduct should elevate "policies" to the same level as University rules and regulations." CAP is concerned that "Troubling ambiguities are created by the proposed language. Specifically, it appears possible that the proposed change will allow UC's administration to censure or punish faculty unilaterally for violations of policy that are currently covered by the Faculty Code of Conduct. In other words, the proposed changes create the prospect



that the Academic Senate might be bypassed as presumed violations are being adjudicated." CAP recommends that the proposed changes be tabled. The COE Faculty Executive Committee recommended clearer language; P&T had no objections. Given the ambiguity of the language and the possible punishment of faculty that the proposal suggests, the Division does not support the revisions to APM 016 as proposed.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script, reading "Henning Bohn".

Henning Bohn, Chair  
UCSB Division

Cc: Martha Winnaker



UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM (UCAF)

Roberta S. Rehm, Chair  
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Assembly of the Academic Senate  
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June 5, 2012

**BOB ANDERSON, CHAIR  
ACADEMIC SENATE**

**RE: Changes to APM 010/015**

Dear Bob,

I am writing to comment on implications for academic freedom of proposed changes to APM 010/015/016. The University Committee on Academic Freedom originally suggested that explicit language be inserted into the Academic Personnel Manual in response to various court cases that suggested that employees' rights to speak out on matters of institutional or agency policy may be limited in some circumstances, and that faculty rights would be better protected if the APM contained explicit language to assure their rights to speak about university policy. After acceptance by the Academic Council and modification by UCOP, the policy revisions are now under full system wide review. UCAF has discussed the modified policies extensively at both of our meetings this year, and on our e-mail list-serve of committee members. We are unanimous in urging adoption of these revisions, without further modification or delay.

The final language of the insertion into APM 010 and 015 is: *"freedom to address any matter of institutional policy or action when acting as a member of the faculty whether or not as a member of an agency of institutional governance."* The phrase "when acting as a member of the faculty" was added during UCOP review. In a letter to you, dated November 25<sup>th</sup>, 2011, I expressed our concern about this additional phrase, which we believe introduces a level of ambiguity and uncertainty into an otherwise clear statement. However, after further discussion with representatives of UCOP and experts in academic freedom from the American Association of University Professors, we have concluded that the proposed changes are extremely important, and will strengthen academic freedom for faculty members at the University of California. While the uncertainties introduced by the phrase "when acting as a member of the faculty" remain, this is standard language that does not negate the importance of the entire insertion.

In summary, UCAF fully supports this insertion into the APM of language meant to assure the rights of faculty members to speak about matters related to university policy. We assert that these changes should be approved and implemented without delay or further modification.

Sincerely,

A handwritten signature in black ink that reads "Roberta S. Rehm".

Roberta S. Rehm, RN, PhD, FAAN  
Chair, UCAF  
[roberta.rehm@nursing.ucsf.edu]



UNIVERSITY COMMITTEE ON ACADEMIC PERSONNEL (UCAP)  
Katja Lindenberg, Chair  
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June 12, 2012

BOB ANDERSON, CHAIR  
ACADEMIC COUNCIL

**RE: PROPOSED REVISIONS TO APMs 010, 015 and 016**

Dear Bob,

At its meeting of May 8, 2012, UCAP discussed proposed revisions to APMs 010, 015 and 016. The committee is very concerned about the vagueness of the phrase “when acting as a member of the faculty” and would like an explanation for why this phrase should be included in the policy.

Members also would like clarification about why both APMs 010 and 015 need to be modified by the phrase “and freedom to address any matter of institutional policy or action, when acting as a member of the faculty whether or not as a member of an agency of institutional governance.” The committee agreed that this phrase should only be added to APM 015.

Sincerely,

A handwritten signature in blue ink that reads "Katja Lindenberg".

Katja Lindenberg, Chair  
UCAP



UNIVERSITY COMMITTEE ON EDUCATIONAL POLICY (UCEP)  
Jose Wudka, Chair  
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May 29, 2012

Bob Anderson, CHAIR  
ACADEMIC COUNCIL

**Re: PROPOSED REVISIONS TO APMs 010, 015, and 016**

Dear Bob,

During its May meeting the University Committee on Educational Policy reviewed the proposed changes to the Academic Personnel Manual sections 010, 015, and 016. The Committee supports the general tone of the changes, but we are concerned about the wording, specifically, the use of the qualifying phrase "when acting as a member of the faculty". UCEP found this requirement confusing and vague, since it is not accompanied by the full list of acceptable activities, and also problematic, as it can be used to thwart the exercise of the rights that the proposed changes intend to protect.

For these reasons UCEP recommends that the phrase in question be dropped from APM-010 and APM-015, while keeping the rest of the modifications.

Sincerely,

A handwritten signature in cursive script that reads "Jose Wudka".

Jose Wudka, Chair  
UCEP



UNIVERSITY COMMITTEE ON LIBRARY AND SCHOLARLY COMMUNICATION  
Christopher Kelty, Chair  
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June 26, 2012

BOB ANDERSON, CHAIR  
ACADEMIC COUNCIL

RE: Proposed Changes to APM 010, 015 and 016

Dear Bob,

At our May 25<sup>th</sup> meeting, UCOLASC considered the proposed changes to APM 010, 015 and 016 regarding the rewording of the definition of academic freedom to include criticism of the institution and its administration. One obvious concern to us is whether "institutional matters" includes issues of scholarly communication, the immediate charge of our committee.

Some members questioned whether the change was necessary, or whether it would change the fact that on some campuses faculty might not feel comfortable criticizing the administration. There was some discussion about the role of faculty in shared governance, and the responsibility we have to make the university better. Some members suggested that there is a clear distinction between academic freedom in scholarship, and the freedom to discuss and criticize institutional policy or administration. Another member noted that it is important for faculty to have the ability to criticize things such as library closures. Overall, the committee was nonplussed by the need for these changes. No strong opinions were expressed nor was their consensus for or against the changes.

Sincerely,

A handwritten signature in dark ink, appearing to be "CKelty", written over a horizontal line.

Christopher Kelty, Chair  
UCOLASC

# UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

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*David Brundage, Chair  
University Committee on Privilege & Tenure  
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*University of California  
1111 Franklin Street, 12th Floor  
Oakland, California 94607-5200*

June 22, 2012

PROFESSOR ROBERT ANDERSON  
CHAIR, ASSEMBLY OF THE ACADEMIC SENATE

Dear Bob:

As you requested, the University Committee on Privilege & Tenure discussed the proposed revisions to APM 010, 015, and 016 at its May 30, 2012 meeting. By unanimous vote, the committee offers its opinion on the proposed changes in each of the three policies.

- APM 010: UCP&T believes that academic freedom extends to faculty speech on matters of institutional policy or action and that, as a result, the proposed new language in APM is not necessary. However, UCP&T does not object to the proposed new language.
- APM 015: UCP&T supports the proposed addition of an express faculty right to “address any matter of institutional policy or action.”
- APM 016: UCP&T objects to the deletion of “such as” and the substitution of “these include, but are not limited to” as descriptions of the “general rules and regulations and policies of the University” which may be enforced by “administrative actions” rather than disciplinary processes. Members of the committee also find the insertion of “and policies” problematic. The committee’s concerns arise from the indeterminacy of the undefined term “policy,” which sets no limits on the formality and intrusiveness of what might fall under this rubric. The committee is concerned that “policy” may come to include subject matter that now falls under the jurisdiction of privilege & tenure committees. This concern is heightened by the proposed substitution of “these include but are not limited to” for the existing “such as” language. The committee notes that faculty members who believe that their privileges have been violated by an “administrative action” may bring a grievance.

Thank you for the opportunity to opine on these proposed changes to the APM, which governs so much of the faculty’s employment relationship with the University.

Sincerely,

David Brundage

Cc: University Committee on Privilege and Tenure