



J. Daniel Hare
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*Chair of the Assembly of the Academic Senate
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University of California
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March 18, 2016

**SHERYL VACCA, SENIOR VICE PRESIDENT
ETHICS, COMPLIANCE AND AUDIT SERVICES**

Re: Report of the Joint Committee of the Administration and Academic Senate

Dear Sheryl:

As requested, I distributed for expedited systemwide Senate review the report of the Joint Committee convened by President Napolitano to review policies and processes related to the investigation, adjudication, and sanction of incidents of sexual violence, assault, and harassment involving faculty. Nine Senate divisions (UCB, UCD, UCI, UCLA, UCR, UCSD, UCSF, UCSB, and UCSC) and four systemwide committees (CCGA, UCFW, UCPB, and UCP&T) submitted comments. Several respondents expressed concern about the unusually short time period provided by UCOP for the review, which hampered their ability to thoroughly analyze the report. In general, reviewers found the recommendations sound, but also suggested several improvements and clarifications. The full set of Senate comments is attached for your reference and summarized below. The Academic Council looks forward to discussing a revised version at its March 30 meeting.

The Senate is aware that several recent high-profile cases of sexual harassment at UC, some involving administrators who also hold faculty positions, have damaged the reputation of the University and renewed a sense of urgency in both faculty and administrators about the need to help prevent sexual misconduct, impose discipline when it occurs, improve reporting policies and processes, and increase awareness of both.

The Joint Committee report is helpful in highlighting the general confusion shared by administrators, faculty, staff, and others about disciplinary processes for faculty accused of sexual misconduct. It recommends several significant actions to clarify, improve, and increase awareness of existing policy, procedures, and timelines. These include closer integration of the Title IX and the Privilege & Tenure investigations to reduce duplicative efforts while retaining the independence of each of these units; better communication between Title IX officers and chancellors and among all parties about faculty discipline processes; more educational outreach to faculty, graduate students, post-doctoral fellows, and administrators about reporting policies, responsibilities, and mechanisms; the designation of a confidential resource on each campus who is familiar with faculty and graduate students issues and exempt from reporting; clarification of existing policy governing interim measures that administrators may impose during an investigation; and better and more transparent collection of data about incidents and their resolution.

There is strong support in the Senate for many of these recommendations. Senate reviewers also have reservations about some specific recommendations. To be sure, victims need clear systems in place for the submission of complaints; they must have confidence that complaints will be addressed quickly and fairly, and that substantiated allegations will have appropriate and significant consequences for perpetrators, regardless of their position at the University, particularly for persistent patterns of behavior. The Senate believes clearer processes will improve the administrative handling of cases and will help produce positive change in the behavior and norms around what constitutes sexual harassment and what constitutes consent. At the same time, due process rights of the accused must also be honored.

Some of the major topics covered in the Senate commentary are summarized below.

Integration of Title IX and Senate Processes

Several reviewers expressed support for the recommendation to integrate Title IX investigations with other investigations under the SVSH policy, to reduce, when possible, the occurrence of multiple investigations into the same set of facts, although reviewers differed about what form the integration should take. UCPB notes that integration would also decrease the isolation of the Title IX Officers and improve their understanding of the culture of a given department. Several reviewers, including UCSC and UCR, ask that the report provide more detail about how investigations will be integrated, and outline specific procedures, roles, and responsibilities for each party who participates in the investigation. UCR recommends that the specific manner of integration be addressed in a systemwide policy, while UCSB expresses concern that integration will reduce the autonomy of the Senate and discourage reporting. UCP&T likewise expresses concern, stating that faculty familiar with APM discipline procedures and P&T processes should remain independent in their role of making findings of fact based on evidence. UCLA notes the importance of separating the discipline and remedy processes. Reviewers also asked for clarification about whether the authority to determine a breach of the Faculty Code of Conduct would reside with the Privilege and Tenure committee or the Title IX officer. According to UCP&T, this determination should rest with the Chancellor in consultation with campus P&T committees as is currently the case. UCSF recommends that gender and racial balance be considered when forming integrated investigation teams.

Confidential Resources and Faculty as “Responsible Employee”

Many reviewers reiterated concerns expressed in the [October 2015 review](#) of the Presidential Policy on Sexual Violence and Sexual Harassment, about the designation of all faculty as “Responsible Employees” obligated to report to the Title IX Officer all instance of possible sexual misconduct that comes to their attention. Reviewers remain concerned that mandatory reporting requirements could undermine the faculty-student relationship, discourage victims from confiding in a faculty member, or prevent them from seeking help. Reviewers also expressed concern about the extent to which graduate students and post-doctoral fellows will share a similar reporting obligation. CCGA endorses the designation of a confidential resource to advise graduate students on reporting issues as they may be especially vulnerable to retaliation. The Joint Committee’s recommendation to designate a single Confidential Resource on each campus who is exempt from the reporting requirement went some way to allay these concerns, but it was seen as inadequate by some reviewers. UCPB recommends appointing not one, but *at least one* confidential resource per campus, including a faculty member familiar with the academic culture. UCSD notes that a panel of Confidential Resource individuals would provide more effective assistance. UCPB also notes that junior faculty members face a high professional risk in choosing to file a complaint, and it recommends the appointment of a faculty advocate to support junior victims through career-related complications arising from a complaint. UCSD recommends housing confidential resources independently of the administration and giving them clearly defined responsibilities and reporting lines.

Increased Training and Education

Reviewers expressed strong support for the recommendation to increase education and training of administrators and faculty to promote awareness of existing policies, available resources, reporting mechanisms, and responsibilities; and to clarify the chain of communication for reporting allegations. UCR also notes the need to increase education around policy regulations that protect complainants against retaliation. Reviewers note that department chairs will largely be responsible for implementing the recommendations, and that campuses will need additional resources to support training and educational outreach. UCB recommends that the report summarize the Title IX and subsequent disciplinary processes in a user-friendly flow-chart that is annotated to map out different ways reports can progress. UCFW makes a similar recommendation.

Enhanced Data Collection

Reviewers expressed strong support for the Joint Committee's recommendation to enhance and make more transparent the collection of data about sexual misconduct and cases (excluding information that would identify the parties), including the number of allegations, their progress through campus processes, the time elapsed at various stages of the process, recommended discipline, and various formal and informal resolutions. Campus P&T committees have long requested information on cases resolved through informal negotiations in order to maintain complete records on disciplinary and grievance matters. Information would be redacted to preserve confidentiality of all persons.

Three-Year Rule

Reviewers support the recommendation to clarify the "three-year rule," which refers to the time the Administration has to conduct an investigation and initiate disciplinary action after it becomes aware of an allegation. For cases of sexual violence and harassment, the three-year period begins when a department chair or Title IX Officer first learns of a complaint. However, there continues to be some confusion about the role of the department chair in this context. UCP&T believes the three-year rule places the burden on department chairs and administrators to act sooner rather than later in investigating and bringing disciplinary charges.

Misconduct in Merit and Promotion

Reviewers expressed some reservations about the recommendation for the Provost and Council Chair "to consider ... how misconduct might factor in review of merit and promotion cases." In general, Senate reviewers believe that the merit and promotion process should be based on the evaluation of teaching, research, and service only, and should remain separate from disciplinary procedures, except when the faculty misconduct is directly relevant to the academic advancement process, as stated in APM 016. Reviewers noted the need to clarify that the APM does not explicitly allow for past formal or informal disciplinary complaints or actions to be a factor in an appointment, promotion, or appraisal review. However, the administration can impose interim measures (e.g. physical separation) within a few days of the issuance of a complaint and can delay a decision on a merit or promotion until the conclusion of the investigation.

Interim Measures

Reviewers note that the report should address in more detail University policy around interim administrative measures, including involuntary leave, imposed by a chancellor on a faculty member accused of misconduct; procedures and standards governing interim measures; and the consultative role of the Senate in the chancellor's decision. UCLA notes that, not only can interim administrative measures be imposed during an investigation, but non-disciplinary administrative actions are allowed for violations under UC policies.

Transparency and Due Process

Reviewers expressed support for the Joint Committee's recommendation for more transparent communication about investigation outcomes to complainants, including disclosure of disciplinary actions and early resolutions, although reviewers also note that full transparency can carry unintended consequences. Reviewers also emphasized the need to balance transparency with due process rights for the accused, and to ensure that intentionally false complaints carry consequences. Reviewers noted that the report is not clear concerning when and how the complainant should be updated, nor does it specify whether the complainant will be obliged to keep any information that is received confidential.

Involuntary Leave

UCP&T writes that faculty placed on involuntary leave must be apprised of the reasons for imposing leave as well as their right to contest it in a grievance proceeding before the Committee on Privilege & Tenure. (APM 016 provides guidance on this issue.) Further, UCP&T believes the existing 10-day deadline to file charges after placing a faculty respondent on involuntary leave may be impractical from an administrative standpoint. However, due process requires that a respondent not be placed on involuntary leave for an indefinite period of time. The Joint Committee should consider increasing the 10-day period by a specific amount, with scope for extension (with faculty involvement) when needed for a case.

Other comments:

- UCLA expresses concern about amending the Faculty Code of Conduct to prohibit "sexual violence and sexual harassment, *as defined by University policy*" (emphasis added). These acts already are prohibited in the Faculty Code of Conduct and the additional phrase is unnecessary. If added, it should be accompanied by a statement making the definition of sexual violence and sexual harassment subject to existing free expression and academic freedom protections.
- UCR appreciates the need for and advantages of the informal resolution, but encourages implementing protections against using it as a means to suppress serious allegations.
- UCSC notes the need for more clarity about the roles of the Charges Committee and the role of the campus P&T committee in the formal hearing a correspondent is guaranteed under the discipline policy.
- UCSC recommends systemwide standardization of disciplinary procedures, with clear and uniform expectations and procedures, and wants input in to the report from non-UC sources with expertise in victim's rights policies.

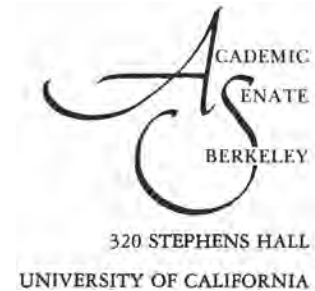
Thank you for the opportunity to opine.

Sincerely,



J. Daniel Hare, Chair
Academic Council

Cc: Academic Council
Senate Director Baxter
Policy Director Lockwood
Martha Winnacker, J.D.



March 16, 2016

J. DANIEL HARE
Chair, Academic Council

Subject: Report of the Joint Committee of the Administration and Academic Senate on Faculty Discipline

Dear Dan,

The Divisional Council (DIVCO) of the Berkeley Division discussed the Report of the Joint Committee of the Administration and Academic Senate on Faculty Discipline with input from our divisional committees on Faculty Welfare (FWEL); Diversity, Equity, and Campus Climate (DECC); and Privilege and Tenure (P&T). Because of the compressed review period, we did not have time to review the report in as great a depth or with as great a care as it deserves. We take this opportunity to remind the Office of the President that, given the importance of the issues addressed in the report, it should allow sufficient time for thoughtful advice and consultation. This is a key component of shared governance.

The discussion in DIVCO underscored the following salient points.

We echoed P&T's recommendation to summarize the Title IX and any subsequent disciplinary process in a clear, user-friendly format:

P&T strongly believes that the report would benefit from an annotated flow chart that maps out the different ways that SHSV [sexual harassment/sexual violence] reports can progress. This could also be done or augmented with hypothetical case studies and associated timelines.

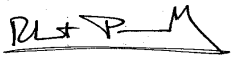
DIVCO and the reporting committees also welcomed clarification of the "three-year rule" which is often mischaracterized as a "statute of limitations." We support the report's recommendation to educate department chairs and other administrators about their reporting responsibilities, and the implications and practical effects of the three-year rule.

While we agree with many of the points raised in the P&T commentary, we also note that some of the issues raised in its report might be addressed in the revised policy on sexual violence and sexual harassment (SVSH). The committee did not, however, have

sufficient time to fully analyze the report in the context of the policy document. Going forward, it might be useful for the report to provide links directly to the relevant definitions and provisions in the SVSH policy, as appropriate.

Given the truncated timeline for divisional review, I am forwarding commentary from FWEL and P&T in its entirety, rather than a synthesis of our divisional position, as is customary. DECC did not have sufficient time to draft a written report, and thus presented an oral report to DIVCO.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R. Powell', with a horizontal line drawn underneath.

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

Encls. (2)

cc: Chancellor Nicholas Dirks
Executive Vice Chancellor and Provost Claude Steele
Wanda Ellison Crockett, Interim Chief Ethics, Risk and Compliance Officer and
Deputy Associate Chancellor/Chief Operations Officer
Donna Jones, Chair, Committee on Diversity, Equity, and Campus Climate
Mark Gergen, Chair, Committee on Faculty Welfare
Vern Paxson, Chair, Committee on Privilege and Tenure
Andrea Green Rush, Executive Director staffing Committee on Privilege and
Tenure
Diane Sprouse, Senate Analyst, Committee on Diversity, Equity, and Campus
Climate and Interim Senate Analyst, Committee on Faculty Welfare

March 10, 2016

TO: CHAIR, BERKELEY DIVISION OF THE ACADEMIC SENATE

Re: Report on Joint Committee on Faculty Discipline

Dear Ben,

The Faculty Welfare Committee endorses the recommendations in the Report of the Joint Committee on Faculty Discipline. We find the Report does a commendable job in clearing up some misconceptions about the ability of the Administration to take effective and quick action when a faculty member is accused of misconduct that warrants quick action. The recommended changes will improve an already sound system.

As the Report explains, the Administration has the power to place a faculty member on involuntary leave outside the discipline process during an investigation, if circumstances warrant. We concur in the recommendation to replace the current rule in APM-016, which imposes a 10-day deadline to file charges after placing a faculty member on involuntary paid leave, with a rule requiring that the faculty member be given notice of the reasons for the involuntary leave, including the allegations being investigated, within 5-working days of the imposition of the leave. It is in the interest of both the faculty member who is accused of violating the Code of Conduct and the University that the Administration has an opportunity to fully investigate an accusation before filing charges. Notice of the allegation within 5 days adequately protects the interests of the accused.

Under APM-015 and Senate Bylaw 336.B.4 disciplinary action may not be commenced against a faculty member if more than three years have passed between the time when the “Chancellor knew or should have known about the alleged violation” and the faculty member being given notice of the proposed disciplinary action. This so-called “three-year rule” simultaneously protects faculty from having to defend themselves from stale claims while ensuring the Administration has an opportunity to investigate allegations and take disciplinary action when warranted. The Report recommends the rule be clarified so that it is clear that the clock begins to run only when a violation is reported to an “academic administrator at the level of department chair or above or additionally, for an allegation of sexual violence, sexual assault, or sexual harassment, when the allegation is first reported to the campus Title IX Officer.” A sexual violence or sexual harassment claim might still fall through the cracks if a department chair (or higher administrator) fails to report a claim to the campus Title IX Officer. The Report recommends educating chairs and higher administrators of their reporting obligation to address this risk. We concur.

We concur in the Report’s recommendations that a standard format be developed for transmitting data on complaints of sexual violence or sexual harassment to UCOP, and that this data be transmitted periodically. We underscore the recommendation that the data exclude information that would identify the parties. We also concur in the recommendation that records of charges of violations of the Code of Conduct, and actions

taken in response to charges, be maintained in a manner that maintains confidentiality while enabling Administrators to determine if a faculty member accused of violating the Code of Conduct has faced earlier charges.

March 9, 2016

Dear Ben,

Please find appended P&T's comments on the Joint Committee report, per your request from last month.

Best wishes,

Vern

Vern Paxson
Chair, Privilege & Tenure Committee
Professor, EECS Department
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University of California
Berkeley, CA, USA 94720-1776
+1 510 643-4209
vern@berkeley.edu

On behalf of:

Steve Beissinger
Mary E. Berry
Jennifer Chatman
Lisa Garcia-Bedolla
Martin Head-Gordon
Sharon Inkelas
Christopher Kutz
Samuel Otter

Comments from UCB P&T on Report of the Joint Committee on Faculty Discipline

UCB Privilege & Tenure Committee members read and extensively discussed the draft Report on SVSH. Overall, P&T finds it to be a well-done and quite helpful document - comprehensive and thoughtful, doing an effective job of addressing a difficult set of issues. We do however have a number of comments and concerns.

* P&T strongly believes that the report would benefit from an annotated flow chart that maps out the different ways that SHSV reports can progress. This could also be done or augmented with hypothetical case studies and associated timelines. Doing so would help address some of the points we frame below.

* Regarding the discussion of Title IX procedures, the text should clarify the key distinction between an "investigation" versus a "formal investigation", and use a different term for the former (perhaps "initial complaint"). What determines when an initial complaint becomes a formal investigation? What are the procedures and standards for this determination?

* The report often uses the term "investigation" without the qualifier "formal". These instances should be disambiguated to make it clear whether the reference is to an initial complaint versus a formal investigation. For example, I.A.2 (page 2) states:

Consider including Senate faculty and/or other non-Title IX
Officers to augment teams at the time of the Title IX investigation

where it's not clear what level of investigation this refers to.

* I.A.4 (page 3) states: "At the beginning of a formal investigation, provide all parties with a clear written description of the Title IX and faculty discipline processes and notice of rights related to the process". Does this mean that for investigations not yet determined to be formal, the parties are not necessarily notified?

* The report should clarify what sort of information is conveyed, and by whom, at what other points in the process. How routinely are complainants and respondents brought up to date?

* Related to this, Appendix A lists eight recommendations made by the 2014 Presidential Task Force on Preventing and Responding to Sexual Violence and Sexual Assault, including (#8, p. 31):

Provide equitable respondent support services to faculty accused
of sexual violence or misconduct.

The report should describe progress on this important recommendation, beyond the current note ("Respondent support services were instituted for undergraduate students in July 2015. Work continues, by way of the Joint Committee, on faculty investigations, adjudication, and sanctions, to be followed by the same approach for staff.").

* We find it quite concerning that the reported dismissal/alternative settlement rates are so high. If possible, these should be distinguished between cases dismissed as unsubstantiated versus those resolved by some form of alternative settlement. The former would imply that many claims are brought without merit - though an alternative explanation would be the unhappy possibility that Title IX offices do not diligently assess initial complaints.

* Related to this, we found the analogy with the criminal justice process (page 17) unconvincing (apples-and-oranges) and somewhat apologist.

* We appreciate the need for some sort of review process concerning the imposition of interim measures such as involuntary leave. If P&Ts are expected to serve in this capacity, then this raises several issues that the Report should identify:

- (1) What standard of evidence does P&T use in its determination?
- (2) What evidence does P&T consider to make its determination?
- (3) What sort of time frame accords with "expedited"?

It appears to us that if expedited means turned around within a couple of weeks (which seems like the minimum that can be promised; maybe not even that during Summer), then the process would need to be something along the lines of: P&T operates for these appeals in a manner similar to a prima facie determination. A quorum of the Committee reads a set of documents; does not consider further evidence; and does not conduct any interviews. The Committee holds a private meeting to determine whether based on those documents the interim measure appears warranted. The decision gets written up in a timely fashion and returned to the Title IX office, the respondent, and perhaps the complainant.

Regarding the documents considered, where do these come from? The Title IX office, plus a write-up provided by the respondent explaining the grounds for their appeal?

* The text as written indicates that only the imposition of involuntary leave qualifies for such an expedited determination, but it would seem that other forms of interim measures should, too, such as no-contact or mandatory counseling. (Also, it was not clear to us just what involuntary leave entails - a campus stay-away?)

* I.A.3 on page 3 states:

Require Title IX Officers to inform the Chancellor or designee for faculty discipline

whenever the Title IX Office begins an investigation of a faculty respondent

The text should clarify (1) whether this refers to initial complaints or only formal investigations, (2) just what information is conveyed regarding the nature of the allegations and the identities of the parties.

* It was not clear the degree to which Title IX offices will facilitate tracking patterns of behavior, of either individuals or particular work environments such as departments. Will the reports conveyed to the Chancellor per the previous item have enough information to enable this?

* While we agree with the benefits of designating non-mandatory-reporter contacts, we identified three potential concerns.

(1) What resources and training will these contacts have? Under what circumstances would they become mandatory reporters?

(2) If the contact is a regular faculty member, as suggested, then they will at some point return to the regular pool of faculty. When they do, under what circumstances might they become obliged to report incidents they initially learned in their earlier role? (One possibility to address this concern would be to employ emeriti for this service.)

(3) A given situation (e.g., department) will need multiple contacts to avoid conflict-of-interest issues and ensure confidentiality.

* I.D.2 (page 5) states:

delays occur throughout the disciplinary process, including in administrative offices, for reasons beyond anyone's control

".. beyond anyone's control" comes across somewhat apologist in tone, since surely other delays also arise that could be avoided with different prioritizations by some of the parties.

* Regarding the three-year rule, I.D.2.c (page 6) states:

The three-year period begins when the Administration learns of the allegation.

...

ii. In addition, for an allegation of SVSH, the Administration is considered to have learned of the allegation when it is first reported to the Title IX Officer.

Does this mean when an "initial complaint" is made, or when a "formal investigation" begins? If the former, and the Title IX office concludes not to proceed to formal investigation, this would appear to undermine grievants who initially make a limited complaint but then much later return to the complaint to pursue it more vigorously.

* I.C.2.a (page 5) states

... replace the 10-day deadline to file charges after placing a faculty respondent on involuntary paid leave with provisions that are reasonable and realistic

We agree with this goal, but feel that this needs some sort of manageable bound for how long the process will take, particularly when burdensome interim measures are imposed.

* I.E.2 (page 8) mentions an "indefinite timeframe" for retaining records of discipline. It's not fully clear just what "indefinite" means, though presumably it's for at least the period of employment. (Also, a formatting glitch: this paragraph should be indented further.)

*In general, the report would benefit from a more explicit structure. We found the current outline organization difficult to work with. It would help to (1) number each subsection in full (e.g., "I.C.2.a" rather than just "a"), and (2) include a table of contents.

Additional points as of March 13, 2016:

* It would be valuable for the report to discuss the appeals process available to complainants at different stages, including the "initial complaint" stage. Statistics on the number and nature of such appeals should be kept and made available in some fashion.

* Some way of conducting "test complaints" should be considered as a way of auditing the effectiveness of / barriers present in the reporting procedures. It is worrisome that there does not appear to be a way of ensuring that the early stages of the procedure do not unduly dismiss well-founded complaints.

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March 15, 2016

Dan Hare, Chair
Universitywide Academic Senate

RE: Report of the Joint Committee of the Administration and Academic Senate

Dear Dan:

The Report of the Joint Committee of the Administration and Academic Senate was forwarded to all standing committees of the Davis Division of the Academic Senate, including school and college Faculty Executive Committees. Responses were received from the committee on Faculty Welfare and the committee on Privilege and Tenure (P&T).

The Davis Division supports the Joint Committee Report and the recommended reforms. Additional recommendations are made by P&T. Seeing as a complainant in a P&T faculty disciplinary action has “the right to a hearing at which the burden of proof is one of clear and convincing evidence,” as opposed to a simply a “preponderance of evidence” in a Title IX investigation, P&T recommends that communications be developed to explain these proceedings clearly to the complainant. Finally, P&T recommends a process be put in place for reporting previously unidentified Sexual Violence and Sexual Harassment actions that are uncovered during an investigation/hearing.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Knoesen".

André Knoesen
Chair, Davis Division of the Academic Senate
Professor: Electrical and Computer Engineering

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



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March 16, 2016

Dan Hare, Chair, Academic Council
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**RE: Systemwide Review of the Report from the Joint Committee of the
Administration and the Academic Senate**

Dear Dan:

At its March 15, 2016 meeting, the Irvine Division Senate Cabinet reviewed the Report from the Joint Committee of the Administration and the Academic Senate. The report details the review of and committee recommendations around (1) current policies and practices for investigation, adjudication and sanction processes in disciplinary cases involving faculty, (2) clarity of procedures and mechanisms for reporting incidents of sexual violence or sexual harassment, (3) university policies governing the imposition of interim measures, and (4) criticisms of current policies, practices, or mechanisms related to faculty discipline. Both the Council on Faculty Welfare, Diversity and Academic Freedom (CFW) and the Committee on Privilege and Tenure (CPT) reviewed the report and identified some concerns.

The Cabinet discussion was spirited with a great deal of attention given to the lack of time provided for adequate consultation on such an important and complex document that contains a set of recommendations with far reaching consequences and implications.

The concerns identified in their reviews of the Report, and supported by the Cabinet, include:

- The limited timeframe for review of the Report is a source of great concern for the Irvine Division. The report itself is dense and a substantive and meaningful review requires more time than the Divisions were afforded. Short review periods limit the Senate's ability to fulfill its shared governance obligation. They can easily result in a limited faculty review that can be misconstrued as general agreement versus inability to thoroughly weigh in on the issues that the content both demands and deserves.
- There is a great deal of legalese throughout the report that further complicated the review process. It would be helpful for future iterations to both include information

on the implications of the recommendations and provide scenarios to illustrate how the implementation of these changes would alter the faculty discipline process.

- The Cabinet shared the concerns raised by Irvine's CPT around the limitations of the designation of a confidential resource, the need for department chair training, and the policies and procedures associated with the ability to remove a faculty member without investigation.

The Irvine Division appreciates the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Alan Terricciano". The signature is written in a cursive, flowing style.

Alan Terricciano, Irvine Division Senate Chair

Attachments: CFW Memo
 CPT Memo

c: Hilary Baxter, Executive Director, Academic Senate

March 15, 2016

ALAN TERRICCIANO, CHAIR
ACADEMIC SENATE – IRVINE DIVISION

Re: Systemwide Review of the Report of the Joint Committee of the Administration and the Academic Senate

At its meeting on March 8, 2016, the Council on Faculty Welfare, Diversity and Academic Freedom (CFW) reviewed the report of the Joint Administration-Academic Senate Committee on Faculty Discipline to review how the University manages faculty disciplinary proceedings in cases related to sexual violence, sexual assault, or sexual harassment.

The Council was unable to opine on the report given the limited turnaround time. Furthermore, the Council was skeptical an adequate commentary could be generated without information about which, if any practices are in place at UC Irvine and whether or not any assessment by campus's Title IX Officer had been completed.

The Council would welcome the opportunity to submit an evaluation of the report at a later time and would highly encourage the Senate to, in the future, consider an expanded period for reviewing information, especially information with such a large impact on the entire system. The Council feels strongly that submitting information for feedback with short review periods significantly undermines the idea of shared governance and that asking Councils to generate feedback under these circumstances is akin to asking the Senate to rubber stamp decisions already made.
Sincerely,



Jean-Daniel Saphores, Chair
Council on Faculty Welfare, Diversity, and Academic Freedom

c: William Parker, Chair-Elect
Academic Senate

Natalie Schonfeld, Executive Director
Academic Senate

March 14, 2016

**ALAN TERRICCIANO, CHAIR
ACADEMIC SENATE, IRVINE DIVISION**

At its March 3, 2016 meeting, the Committee on Privilege and Tenure reviewed the Report from the Joint Committee of the Administration and the Academic Senate. The report details the review of and committee recommendations around (1) current policies and practices for investigation, adjudication and sanction processes in disciplinary cases involving faculty, (2) clarity of procedures and mechanisms for reporting incidents of sexual violence or sexual harassment, (3) university policies governing the imposition of interim measures, and (4) criticisms of current policies, practices, or mechanisms related to faculty discipline.

The Committee on Privilege and Tenure found the report to be well-reasoned and generally successful in its efforts to clarify current practices and procedures. The Committee's review identified a number of concerns:

- The work of CPT is complex. It will be helpful for subsequent documents on this issue to detail the specific steps CPT is to take at each location to implement any agreed-upon recommendations in the implementation of faculty discipline processes.
- The Committee felt that the designation of a confidential resource to provide advice or support to faculty related to reporting/participating in an investigation at each location would not have a meaningful impact. The Committee asserted that faculty want to be able to select their own confidential resource, based on prior relationship. Having a specific person designated at each location would not address this need.
- The Committee noted that training for department chairs is critical and found no recommendations in the report that specifically address this issue.
- The Committee was very concerned about the 10 day rule and the ability to remove someone without investigation. The Committee would recommend the addition of language to the rule that limits the number of

times the 10 day can be extended to ensure that faculty receive timely notice about the imposition of disciplinary sanctions and are not left on involuntary leave for a prolonged period of time.

The Committee on Privilege and Tenure appreciates the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to be 'Greg Evans', with a stylized, cursive script.

Greg Evans
Chair, Committee on Privilege and Tenure

cc. Natalie B Schonfeld, CPT Analyst

March 17, 2016

Daniel Hare
Chair, Academic Council

Re: Report from the Joint Committee of the Administration and Academic Senate to review the disciplinary processes for faculty related to sexual violence, sexual assault and sexual harassment

Dear Dan,

The Executive Board of the UCLA Academic Senate discussed the draft recommendations from the Joint Committee of the Administration and Academic Senate to review the disciplinary processes for faculty related to sexual violence, sexual assault and sexual harassment at its meeting on March 10, 2016. The Executive Board solicited comments from the standing committees of the Senate, as well as the Faculty Executive Committees, to maximize faculty feedback; the individual responses are available [online](#).

This issue is an important concern to the campus and the faculty and the Academic Senate is glad to be able to opine on the report. In general, we are supportive of the administrative training and data collection efforts outlined in the recommendations. As indicated below, however, we have several concerns and a few editing suggestions.

In addition to the interim remedies available during an investigation, UCLA's Privilege and Tenure Committee (P&T) would like to "recognize that not only can interim administrative measures be imposed during an investigation, but non-disciplinary administrative actions are allowed for violations under UC policies."

Possible disciplinary actions are found in Appendix E. However, APM 016 also describes other non-disciplinary administrative actions for failure to comply.

It is important not to confound discipline and remedy processes. Prompt use of administrative actions as remedies also allows the Senate to begin the due process of a disciplinary hearing. By separating the discipline into a separate process, the focus after finding a Title IX violation can be on restoring the equal access to education for the offended party while maintaining the due process rights of the accused. The letter from the P&T Committee provides a five-step diagram to illustrate how to keep the remedy and discipline processes apart and to change the Title IX investigation so that it reaches a conclusion based on "clear and convincing evidence" rather than "preponderance of evidence" (Letter from P&T).

Recommendation I.A.1

The Charges Committee was concerned about amending the Faculty Code of Conduct to prohibit "sexual violence and sexual harassment, as defined by University policy." These acts are already prohibited in the Faculty Code of Conduct and the additional phrase "as defined by University policy" is unnecessary. If added, it should be accompanied by a statement making the definition of sexual violence and sexual harassment subject to existing free expression and academic freedom protections.

Recommendation I.D.1

Since most complaints have historically been proven to be unsubstantiated, public dissemination of the settlement terms may have negative consequences to an individual faculty member's reputation. The format for this public dissemination may be the issue. As an aggregate number, there may not be an issue, but if individuals are identified then the Charges Committee rejects this recommendation. The Graduate Council, however, recommended more transparency.

Recommendation I.D.2

The Charges Committee letter indicates that the 3-year rule was intended to be a kind of statute of limitations, albeit a 'soft' one subject to exceptions. The intent was to protect faculty from defending themselves from events that took place in the distant past when memories have faded and witnesses are no longer available. The three-year rule has been applied in the past "to bring their complaints to the attention of the Senate within three years of discovery of the factual basis of a claim absent some equitable basis for delay." (Letter from the Charges Committee). In sum, the "soft" three-year rule has operated fairly even in the context of sexual misconduct cases and should not be changed. There is disagreement on this point as noted by the letter from P&T that argues the "clock" begins at the moment the conduct has been repeated enough to be made serious.

Finally, the Report fails to address the consequences for filing "malicious, frivolous or bad faith charges in the disciplinary process" or as stated in P&T's letter, the policy does not adequately provide for restoration of faculty rights for those accused and later found not responsible.

The Executive Board urges you to read the individual committee responses.

Please feel free to contact me should have any questions.

Cordially,



Leobardo F. Estrada
Chair, Academic Senate
Los Angeles Division

cc: Hilary Baxter, Executive Director, Systemwide Academic Senate
Jim Chalfant, Vice Chair, Academic Council
Michael LaBriola, Principal Policy Analyst, Systemwide Academic Senate
Linda Mohr, Chief Administrative Officer, UCLA Academic Senate
UCLA Academic Senate Executive Board Members



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

JOSE WUDKA
PROFESSOR OF PHYSICS AND ASTRONOMY
RIVERSIDE, CA 92521-0217
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March 15, 2016

Dan Hare, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

RE: Report from the Joint Committee of the Administration and Academic Senate

Dear Dan,

Executive Council reviewed the Joint Committee report during its March 7 meeting. The general sentiment of the group was that this report is an important first step in implementing a robust and versatile infrastructure to deal with issues of sexual harassment and violence. There were, however, various points that the group felt were not fully addressed in the report.

Of particular concern was the interface between the Senate and Title IX processes. It was the opinion of Council that the manner in which this is arranged should be decided systemwide, and not individually by campuses in order to ensure a coherent, consistent and predictable process. Allowing campuses to devise their own procedures opens the door for inconsistencies, difficulties in coordinating with OGC (should that be required as well), and makes the campus processes vulnerable to local pressures and idiosyncrasies.

Council also recommends clarifying (and justifying) whether it is the Privilege and Tenure committee or the Title IX officers who determine whether the faculty code of conduct has been breached; and while we support the idea of having Senate participation in Title IX investigations, we note that the process under which this would occur remains unclear. Council also recommends that all investigations involving and beyond Title IX should be carried out by people credentialed under law and policy.

Council viewed the small number of complaints that reach a full hearing stage as quite possibly indicative of a culture that discourages complaints, more than an indication of the success of the informal resolution process. This situation may lead to a culture of impunity, which is pervasive, insidious and damaging to the institution. Simple procedural changes will not address this point; it will require a commitment by both the Administration and the Senate to a paradigm change within the University. While appreciating the need and advantages of the informal resolution process, Council encourages implementing protections against using it as a means to suppress serious allegations; procedures for addressing the misuse of this process should be put in place.

As parts of this culture change, Council supports the proposed disclosure of sanctions to complainants, the creation of provisions for enhanced communications, reporting and regular updates, and especially the creation of a confidential resource to advise complainants, to provide updates and advocate for victims' rights. We also support the proposed enhanced record keeping-requirements, but recommend adding that the Chancellor (or designee) be required to inform the campus on the number of disciplinary cases and their status (to the extent allowed by law) .

Council recognizes the existence of regulations for protection against retaliation, but considers the campus infrastructure is insufficient to ensure they are properly enforced, and that the campus community is aware of them. Council also recommends that the procedures should emphasize the victim's rights to maintain control (within the constraints imposed by law)

Finally, Council recommends that it should be made abundantly clear the forceful, fair, and prompt response to all acts of sexual violence and harassment should apply to all members of the campus community.

Council is grateful for the opportunity to comment on this important and urgent issue.

Sincerely yours,

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

Jose Wudka
Professor of Physics & Astronomy 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 **Academic Senate**
COMMITTEE ON FACULTY WELFARE

March 4, 2016

To: Jose Wudka
Riverside Division Academic Senate

From: Jennifer Hughes, Chair 
Committee on Faculty Welfare

Re: Report from the Joint Committee of Administration and Academic Senate

UCR's Committee on Faculty Welfare offers the following response to the Report from the Joint Committee on Sexual Violence and Harassment

In general the Committee supports the intention and recommendations of the report and affirms that many of the recommendations will improve the climate for faculty and students on our campus. Most importantly here we affirm especially the following recommendations:

1. The integration of Title IX investigations with other processes and the recommendation to include appropriate senate faculty representative in Title IX investigations (although here the language could be clarified to specify the inclusion of senate faculty in investigations involving either a faculty member complainant or respondent).
2. The recommendation (D1) to disclose to the complainant any sanction or agreement with a faculty respondent in an effort to increase transparency.
3. The recommendation for improved communication especially the requirement to provide updates to the complainant.
4. The recommendation (2F) that designates, "A confidential resource on every campus who possesses the knowledge, insight, and training to advise faculty, other academic appointees, and graduate students should be designated to advise how to file complaints and what the consequences may be after filing complaints."

We express concern over the following:

1. The recommendations suggest that all faculty and graduate student instructors have a "responsibility to report allegations of SVSH." Although the Joint Committee recommends requiring campuses to communicate clearly the consequences for retaliation, the CFW does not believe at this time that most campuses are fully prepared and equipped to protect faculty and graduate student reporters from retaliation. Graduate Student Instructors in particular, who hold less power than

their faculty supervisors, may be vulnerable to retaliation. The Joint Committee might require instead that faculty and GSIs be mandated to formally “refer” (even by way of “reporting”) the victim to the campus officer/s designated for confidential conversation—thus preserving the victim’s confidentiality and control over their situation. Additionally, it is unclear whether the Joint Committee is suggesting that faculty/graduate student instructors have a legal “mandate” to report: “responsibility” to report and “mandate” to report may not be regarded as the same thing. Will there be consequences for those who do not report?


2. Also related to above, the designation of a “single resource” (B3) for confidential conversation may not be enough of an “opening” or “pathway” for allegations of SVSH to come forward. Often confidential conversations with faculty mentors and TAs may be the first step to assisting a student or colleague in regaining control over their situation and taking appropriate action. In general we feel the report could affirm more strongly the victim’s right to regain and maintain control over their situation and how it is handled and to consider what mechanisms will best accomplish this.
3. The CFW does not regard the “low number” of cases that come before P&T (celebrated by the Joint Committee) as necessarily reflecting successful resolution of process or redress of complaints. In many (if not most) instances a low number of cases may indicate the opposite—the suppression of legitimate complaints.
4. With respect to “early resolution”. The report recommendations do not appear to consider first and foremost the “victim” in determining the effectiveness of these “early resolution” processes. Recommendations should emphasize that the goal of productive resolution is resolution specifically for the victim with appropriate disciplinary action. The mechanism of “early resolution” has too often been used to suppress serious allegations leaving victims/complainants without appropriate redress, resolution, or restorative process. The victim should have a role in assessing whether a resolution process (whether “early” or otherwise) has been successful or not.
5. A similar set of circumstances (to above #4) applies to “alternative resolution.” The report’s statistic that 76% of all reported cases are either unsubstantiated or addressed through “alternative resolution” is an alarming “red flag”. Campuses would benefit from clear guidelines specifying that “alternative resolution” should be initiated by the victim/survivor only. Safeguards need to be mandated and in place on every campus to insure that victims/survivors are not coerced into “alternative resolution” processes. Formal redress, especially of criminal behavior, is always preferable.
6. The recommendations are framed too narrowly, assuming (in general) a faculty (harasser) and a student (victim). More careful language should be employed to account for faculty (harasser) - faculty (victim) instances of SVSH as well.
7. We also argue strongly for clear and consistent timelines for response to grievances and complaints across campuses. Currently there are some campuses (like UCR’s own P&T committee) that lack timelines guiding the response process.



Committee on Charges

March 2, 2016

To: Jose Wudka
Chair, Riverside Division Academic Senate

Fr: Benjamin Liu
Chair, Committee on Charges 

Re: Systemwide Review of the Joint Committee Report (2/17/16)

The Charges Committee reviewed the Joint Committee Report and is in support of the recommendations. The Committee notes that the explicit references to the SVSH policy helps clarify the Code of Conduct. The Committee would like to offer some specific suggestions to the clauses below:

- 'of' changed to 'against'
- The three phrases need to be regularized with regard to 'and' and 'or'

"4. Sexual violence and sexual harassment, as defined by University policy, of a student."

b. Suggested language to be added to Section II.C, The University Types of Unacceptable Conduct:

"6. Sexual violence and sexual harassment, as defined by University policy, of a University employee."

c. Suggested language to be added to Section II.D. Colleagues Types of Unacceptable Conduct:

"3. Sexual violence or sexual harassment, as defined by University policy, of a colleague."

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



Committee on Privilege and Tenure

March 4, 2016

To: Jose Wudka
Chair, Riverside Division Academic Senate

Fr: Stefano Lonardi
Chair, Committee on Privilege and Tenure

Re: Systemwide Review of Joint Committee Report (2/17/16)

The Committee on Privilege and Tenure at UC Riverside has been asked to provide feedback on the report by the Joint Committee of the Administration and the Academic Senate that reviewed how UC campuses manage disciplinary actions in cases of sexual violence, sexual assault or sexual harassment. In general, we agree that the current policies are clearly written, reasonable, and consistent with the relevant APMs. We also agree with the recommendations provided by the Joint Committee (including the proposed amendments to the APM), but we respectfully request the Joint Committee to provide some clarifications.

Comments on Page 1: the Joint Committee has identified several important questions related to the interface between of the Title IX investigation and the Administrative investigation (carried out for the purpose of a disciplinary action). These questions are:

"Does the Title IX Officer determine whether a Faculty Code of Conduct policy violation has occurred? Does the Title IX Office recommend discipline?

If so, to whom? What role does the Title IX Officer have after the Title IX report is issued and before a disciplinary hearing occurs?

What is the interface between initial investigations of alleged SVSH by Title IX Officers and investigations that take place during subsequent disciplinary hearings?" The Joint Committee recommends that "the Chancellors or designees, Title IX Officers, and Senate leaders consider answering these questions as part of an overall review of campus procedures." We believe that the answer to these questions should not be left to individual campuses, but consistent UC-wide policies should be developed to clarify the role of these investigations to (1) reduce the number of times witnesses are questioned about the facts related to alleged sexual violence, sexual assault or sexual harassment, (2) clarify the

relevance of the Title IX findings in the Administrative and P&T disciplinary process, considering the different evidence standards.

Comments on Recommendation A.2.b (page 2) which states "Consider including Senate faculty and/or other non-Title IX Officers to augment teams at the time of the Title IX investigation."

This recommendation needs to be expanded to provide guidelines on the process in which faculty will be chosen to augment the investigative team. How will be faculty be selected? Can these faculty be any Senate Member or members of P&T and/or Charges?

Comments on Recommendation A.2.d (page 3) which states "In cases where subsequent investigations are conducted by those outside of the Title IX Office, campuses should ensure that those conducting the investigations receive the training required by law and policy."

We suggest to include that the Administration should also ensure that individuals carrying out the investigations should have the credential required by law and policy.



Committee on Planning & Budget

March 3, 2016

To: Jose Wudka
Chair, Riverside Division Academic Senate

Fr: Kenneth Barish 
Chair, Committee on Planning and Budget

Re: Systemwide Review of Joint Committee Report (2/17/16)

On February 23, 2016, the Committee on Planning and Budget (CPB) reviewed and discussed the report from the Joint Committee of the Administration and Academic Senate. CPB is in support of the report and notes its importance, but felt that it was not central to the charge of the committee and has no further recommendations.



COMMITTEE ON ACADEMIC PERSONNEL

March 4, 2016

To: Jose Wudka
Riverside Division Academic Senate

From: Georgia Warnke, Chair
Committee on Academic Personnel

A handwritten signature in blue ink, appearing to read "Georgia Warnke", written over a horizontal line.

Re: Report from the Joint Committee of Administration and Academic Senate

At its meeting on March 2, 2016, the Committee on Academic Personnel considered the report from the Joint Committee of the Administration and Academic Senate and opined that it is not sure that the document adequately resolves tension between the liability and trusts of the University and protecting all members of the university community.



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March 4, 2016

TO: Jose Wudka, Chair
Riverside Division

FR: Srikanth Krishnamurthy, Vice Chair
Executive Committee, Bourns College of Engineering

RE: Report from the Joint Committee of the Administration and Academic Senate -
Preventing and Responding to Sexual Violence and Sexual Assault

The BCOE Executive Committee met on Friday, February 26, 2016 and *reviewed the Report from the Joint Committee of the Administration and Academic Senate - Preventing and Responding to Sexual Violence and Sexual Assault*. The Committee was pleased to see that the importance of the interface between Title IX and University of California Administration was identified. It recommends that consistent policies throughout the University of California be developed, to help explain the role of Title IX personnel with regard to any investigations. Overall, the committee concurs with the findings and recommendations.

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

RIVERSIDE, CALIFORNIA 92521-0132

March 4, 2016

TO: José Wudka, Chair
Academic Senate

FROM: Jason Weems, Chair
CHASS Executive Committee

RE: Joint Committee of the Administration and Academic Senate: Review the Disciplinary Processes for Faculty Related to Sexual Violence, Sexual Assault and Sexual Harassment

The Committee received the request for response to the report too late for consideration at a regular committee meeting. Given these circumstances, the Committee is reluctant to offer specific comments at this time.

The committee remains supportive of efforts to build a university policy on sexual violence, sexual assault, and sexual harassment that is well informed and founded upon strong ethical ideals. It should ensure fairness, transparency, timeliness, and empathy.

Jason Weems, Chair

UCR CHASS Executive Committee

March 2, 2016

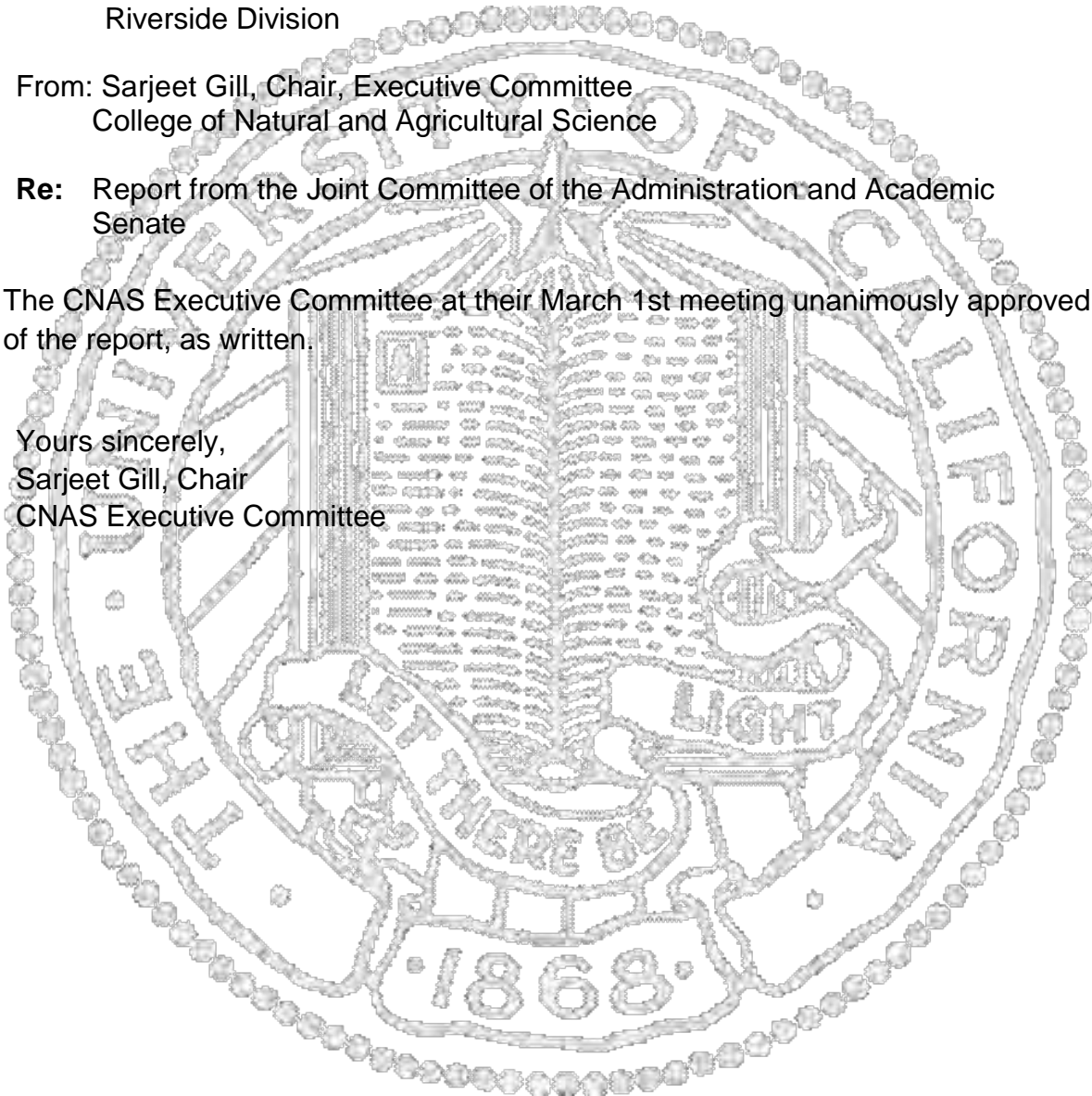
To: Jose Wudka, Chair
Riverside Division

From: Sarjeet Gill, Chair, Executive Committee
College of Natural and Agricultural Science

Re: Report from the Joint Committee of the Administration and Academic
Senate

The CNAS Executive Committee at their March 1st meeting unanimously approved
of the report, as written.


Yours sincerely,
Sarjeet Gill, Chair
CNAS Executive Committee



UC RIVERSIDE UNIVERSITY OF CALIFORNIA | **Academic Senate**
COMMITTEE ON DIVERSITY & EQUAL OPPORTUNITY

March 4, 2016

To: Jose Wudka, Chair
Riverside Division of the Academic Senate

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

Re: Report from the Joint Committee of Administration and Academic Senate

At its meeting on March 3, 2016, the Committee on Diversity and Equal Opportunity considered the report from the Joint Committee of the Administration and Academic Senate and provided the following comments:

The Joint Committee of the Administration and Academic Senate, charged with examining University disciplinary proceedings in cases of sexual violence, assault and harassment, has concluded that “the systemwide and campus policies are clearly written and reasonable” (p. 1). The Committee’s recommendations for adjustments relating to language, procedure (e.g., on the place of Title IX investigations), educational outreach, faculty rights, etc. are very reasonable and entirely acceptable. However, the report only touches upon an important question that in CoDEO’s opinion is not sufficiently addressed. How will the University deal with the two most common concerns raised by complainants, that is, the length and confidentiality of the disciplinary process which has given rise to “a perception that both fosters a culture of impunity and discourages reporting” (p. 5)? What will be done in the future to avoid “discouraging complainants from reporting” (p. 5)? A 1995 report by the Disciplinary Procedures Task Force made the recommendation “that the disciplinary process be expedited....” and called for “increased participation by the complainant in faculty disciplinary actions” (p. 33). Considering the findings of the 2013 Climate Study, which indicates that 3% of respondents (and a higher percentage of students) “believed they have experienced unwanted sexual contact while at a UC campus/location” (p. 33), it would seem very important to look more deeply into how common concerns raised by complainants can best be addressed. The proposed appointment of “a single individual in the Chancellor’s Office ...to provide complainants with updates” (p. 9) would be a welcome first step. But what other efforts will be made in the future “to protect and assist complainants” (p. 10)?

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ACADEMIC SENATE
Santa Barbara Division
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Kum-Kum Bhavnani, Chair
Deborah Karoff, Executive Director

March 15, 2016

Dan Hare, Chair
Academic Council

RE: Report from the Joint Committee of the Administration and Academic Senate on Faculty Discipline, Sexual Violence, Assault and Harassment

Dear Dan,

The Report from the Joint Committee on Faculty Discipline, Sexual Violence, Assault and Harassment was distributed broadly in the Santa Barbara Division: the following groups offered comments: Charges Advisory Committee (CAC), Privilege and Tenure (P and T), Graduate Council (GC), Committee on Diversity and Equity (CDE), the College of Letters and Science Faculty Executive Committee (L and S FEC) and two standing committees of the CRIR – the Committee on Library, Information, and Instructional Resources (CLIIR) and the Committee on Research Policy and Procedures (CRPP).

Several groups appreciated the thoroughness of the Report, especially for its discussion of a complicated and important subject, and appreciated the intent to overcome misunderstandings in this thorny tangle of practices, policies and procedures. However, there were a number of serious reservations.

Of considerable concern is that faculty are required to report instances of sexual assault and/or harassment. The hesitation expressed by members of CAC and P and T was that such a reporting requirement could, “potentially prevent students from speaking frankly with faculty members.” In a similar vein, CDE noted that such required reporting could “undermine the trust needed in building and sustaining academic relationships.” However, these concerns were not unanimously held; some Senate members argued that mandatory reporting is important to prevent any cover-up of allegations. A question that follows from this, as raised by CAC and P and T, is whether students are aware that a faculty member is obligated to report any and all such allegations to the Title IX Office.

CDE and GC expressed further concern about the challenging role for graduate students regarding reporting requirements. GC:

Graduate students are concerned that consulting their peers regarding SVSH issues may result in automatic reporting requirements to the administration. In its discussion, GC members voiced concern that this may lead students to avoid raising their concerns at all, for fear of prompting an investigation. GC recommends that the Office of the President give further thought to these issues and work to expand educational outreach regarding reporting requirements, or, if appropriate, re-examine policy.

The L and S FEC does not agree that additional integration of the Title IX office and the Senate Charges Officers/committees (as discussed in pages 16-19 of the report) is the best way to aid the efforts to tackle complaints about SVSH. They advocate:

retaining the autonomy of Senate designees/Charges Officers in cases of SH and their ability to determine the merits of cases of SH brought before them. The independence of the two bodies guarantees that cases of misconduct/SH among academic employees are heard by an investigative body that is aware of the nuances of academic culture and able to account for them in its determinations... In our view, these are separate entities whose integration might well discourage reporting.

All reviewing councils and committees endorse the idea that there be an identifiable confidential resource (presumably a faculty member) for faculty – someone who is not required to report to the Title IX Office. In fact, the members of CAC and P and T suggest that more than one faculty on each campus be identified in this way. However, there was confusion on the part of the GC as to whether this identified position is part of the Ombuds Office or separate from it.

All groups support the recommendation to inform the complainant about the outcome of a case. CRIR urged that a complainant be informed if no action is taken on a particular complaint, and noted a potential ambiguity in recommendations 2.a. (p.8) and 3.b. (p. 9), both of which reference the three-year rule. Similarly, all groups support the tracking of aggregated data to better understand the number of instances/cases that emerge, with regular and public updates of the aggregated data. CRIR recommends that possible guidelines for negotiations be developed to clarify how the negotiation process might work.

GC suggested that more guidance is necessary regarding placing a respondent on leave without pay in the “rare and egregious cases” mentioned in the report.

There are different opinions on the required training for faculty. Some groups find the annual mandated training too onerous. Other groups suggest that greater training is needed to increase understanding among faculty about their responsibilities and what options are available in the event they have a personal experience of sexual assault and/or harassment. CDE supports the idea of regular education on university and campus policies for faculty and also requests that a short Executive Summary accompany this document, as the report, in its current form, “simply not accessible to most readers, faculty among them.”

Thank you for the opportunity to comment.

Sincerely,

Kum-Kum Bhavnani

Kum-Kum Bhavnani, Chair
Santa Barbara Division



Office of the Academic Senate
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March 15, 2016

Dan Hare, Chair
Academic Council

**Re: Report of the Joint Committee of the Administration and Academic Senate on
Faculty Discipline**

Dear Dan,

The UC Santa Cruz Division has reviewed and discussed the Joint Committee report on faculty disciplinary processes in cases alleging sexual violence, sexual assault or sexual harassment (SVSH). Our Committees on Affirmative Action and Diversity (CAAD), Faculty Welfare (CFW), Privilege and Tenure (P&T), and Graduate Council (GC), have responded.

Given the detail and purview specific perspective present in the committee responses, we are forwarding you the complete responses. Please find the documents attached.

Sincerely,

A handwritten signature in dark ink, appearing to read "Don Brenneis".

Don Brenneis, Chair
Academic Senate
Santa Cruz Division

cc: Miriam Greenberg, Chair, Committee on Affirmative Action and Diversity
James Zachos, Chair, Committee on Faculty Welfare
Jorge Hankamer, Chair, Committee on Privilege and Tenure
Don Smith, Chair, Graduate Council

March 10, 2016

Don Brenneis, Chair
Academic Senate

Re: Report of the Joint Administration-Academic Senate Committee on Faculty Discipline

Dear Don,

The Committee on Affirmative Action and Diversity has reviewed the February 17, 2016 report of the Joint Administration-Academic Senate Committee on Faculty Discipline relating to the recently adopted University of California Policy on Sexual Violence and Sexual Harassment. Specifically, the report looks at disciplinary proceedings for faculty respondents in cases alleging sexual violence, sexual assault, or sexual harassment.

The committee agrees with many of the recommendations made in the report but suggests that more clarity is required with regard to the disciplinary process and with education and outreach efforts focused on SVSH policies. As well, we renew concerns raised in our October 22, 2015 letter to you where we suggested that victims' rights and other outside consultants be part of any team that reviews the systemwide SVSH policy. This will ensure that the policies not only protect the university, but also protect the rights and needs of all involved parties, particularly those filing claims of sexual harassment or violence themselves or on behalf of others. The committee also suggested that the language of the policy was overly legalistic. This diminishes the impact and functionality of the policy and the ability to identify actions that constitute harassment, which in turn facilitates silence rather than action. We explain our areas of agreement with the report and ongoing concerns with the policy in greater detail below.

CAAD members were in agreement with many of the recommendations put forth by the Joint Committee. We strongly support the recommendation in Section B.3 of the executive summary for the designation of confidential resource at each location "who is exempt from reporting and has appropriate insight into the unique demands, opportunities, and risks of mentorship relationships and academic careers who is available to advise faculty, other academic appointees, and graduate students who believe they have experienced SVSH or retaliation for reporting or participating in an investigation." CAAD members expressed a general misgiving about how the mandatory reporting requirements would work out in practice. While understanding that this is meant to protect against coercion and other pressures placed on a victim to withdraw a claim, or in retaliation for a claim, members expressed concern that forms of coercion and retaliation could nonetheless occur, often in subtle ways. Without confidentiality, knowledge of this risk on the part of complainants could lead to the abandonment of claims—and has led to such a result in many documented cases. A designated person or ideally, persons, with whom one can consult in confidence without implicating any party would be a vital resource.

The committee is also in agreement with recommendations put forth in section E of the executive summary. Data collection is essential to tracking the progress the campus is making in preventing SVSH incidents from occurring and tracking campus response to reports. Crime statistics data collection is a requirement in the Jeanne Cleary Act and bolstering this with data on claims that may have been resolved without a disciplinary action could prove invaluable. Incidents need to be tracked, whether or not they result in a disciplinary hearing. Claims are "resolved" for many reasons. Having data would help to detect patterns of claims within departments which could be helpful in situations where victims may have dropped their claims, but the perpetrator persists in their behavior.

CAAD also sees some areas for improvement in the report. First, we think that more should have been suggested in the way of systemwide changes. In particular the committee would like to have seen a recommendation for the standardization of disciplinary procedures applied systemwide. In section C of the executive summary, the descriptive tone of the current variation of disciplinary procedures on the ten campuses seems to be one of resignation. Clear expectations need to be set and this requires a process that is fair, reliable and to a certain degree predictable in terms of procedural mechanics. Victims of sexual assault, as well as those accused, need a process that is accessible not just procedurally but conceptually. Expectations need to be established and understood early on and they need uniformity across the ten campuses. In support of a system-wide process, there needs to be a concerted effort to engage in a comprehensive education outreach campaign focused on increasing awareness and understanding of common policy and procedures.

In addition, CAAD wrote in its October 22, 2015 letter to you that a review of the President's policy on Sexual Harassment and Sexual Violence should include input from outside sources well versed in victims' rights policy. The committee reviewed the composition of the Joint Committee and noted, that to the member, they were all affiliated with the UC system. This committee suggests a UC-centric view of disciplinary processes may not take into account the best interests of those who have been victimized by sexual violence or harassment. Members would like to have seen some reference to procedural best practices in the higher education context or at the very least, have seen the names of outside consultants with expertise in victims' rights.

This leads to a final concern with the report. In our October letter we suggested that the language of the policy was overly legalistic. Some exception was taken to the term "complainant." Some thought that this may be a trigger word as the term "complain" tends to have a negative connotation in the vernacular. CAAD understands that this is a formal word, that individuals file a "complaint" in a court of law. It is understood that UC wants to give to this process every semblance of procedural integrity. Members think that this can be achieved without using terms that may ostracize victims by being overly legalistic and/or unintentionally patronizing.

Sincerely,

/s/

Miriam Greenberg, Chair

Committee on Affirmative Action and Diversity

Cc: CAP Chair Dean
CFW Chair Zachos
GC Chair Smith
P&T Chair Hankamer

March 10, 2015

Don Brenneis, Chair
Academic Senate

Re: Report of the Joint Committee of the Administration and Academic Senate

Dear Don,

During its meeting of March 3, 2016, the Committee on Faculty Welfare (CFW) reviewed the report of the Joint Committee of the Administration and Academic Senate to examine how the University manages disciplinary proceedings for faculty respondents in cases alleging sexual violence, sexual assault, or sexual harassment (SVSH). In general, it appears that the Joint Committee was relatively thorough in its evaluation of the SVSH policy as it relates to faculty and APM Faculty Code of Conduct. The recommendations are generally sound. Still, CFW raised several concerns about the requirement for “Responsible Employees” to report incidents shared with them and the potential for the disciplinary process to be intertwined into the personnel review process. The committee further noted a critical need for outreach and education on the UC campuses with regards to requirements and available resources.

The new legislation, and interim and proposed UC processes for addressing SVSH, affect faculty welfare on many levels. CFW members raised concerns about the possible negative effect that the “responsible employee” requirement to report all incidents shared and the need to tell students (in particular) up front that all information shared will be reported, will have on faculty/student relations. Members are additionally concerned that the requirement to report may discourage complainants from seeking counsel or help. To counter potential negative effects of this requirement, CFW concurs with the report recommendations that targeted outreach focused on educating faculty and staff about requirements, available resources, and procedures is needed in order to enable them to be advocates and not just reporters of incidents. As noted in 1.B. of the report¹,

“The Joint Committee found that all campuses have established clear reporting procedures and mechanisms, but many faculty, other academic appointees, including postdoctoral scholars and graduate student employees (hereafter referred to as “academic appointees”), and graduate students do not know what these procedures are or where to report.”

CFW members agree that outreach and education are key if the new process is to work effectively and aid the complainant instead of hinder them.

¹ University of California Report of the Joint Committee of the Administration and Academic Senate, page 3.

CFW is further concerned about the Joint Committee's recommendation to include misconduct in the personnel review process in section F of the report, which follows suggestions for changes to AMP 015 and 016²:

“the Joint Committee recommends that the President direct Council Hare and Provost Dorr to consider the issue of faculty misconduct and how misconduct might factor in review of merit and promotion cases.”

CFW would like to emphasize that according to APM 016, the University Policy on Faculty Conduct and the Administration of Discipline, the disciplinary and personnel review processes are two distinct and separate processes except when the misconduct is directly relevant to the academic advancement process for the faculty member. (APM 016.2.3) Including SVSH misconduct in the review of merit and promotion cases would significantly alter both of these established processes, and may open the University up to litigations particularly for respondents who are on call during an active SVSH investigation. Further, inclusion of misconduct in personnel review files that are reviewed by several layers of collegial committees (department, CAP, *ad hoc* committee, etc.) creates a host of issues with regards to confidentiality.

CFW notes that the personnel review process is based on the evaluation of teaching, research, and service, and not on conduct. Members agree that there is already an established disciplinary process that deals with misconduct, and as such, there is no need to include misconduct in personnel reviews. The potential effects of including misconduct in personnel reviews should be evaluated in detail by the administration and legal counsel before potential proposed changes to APM 015 and 016 are sent for systemwide review. However, CFW strongly recommends that the disciplinary and personnel review process remain separate processes.

Sincerely,

/s/

James Zachos, Chair
Committee on Faculty Welfare

cc: Carolyn Dean, CAP Chair
Miriam Greenberg, CAAD Chair
Don Smith, GC Chair
Jorge Hankamer, P&T Chair

² University of California Report of the Joint Committee of the Administration and Academic Senate, page 9.

March 10, 2016

Don Brenneis, Chair
Academic Senate

RE: Joint Administration-Academic Senate Committee on Faculty Discipline Report

Dear Don,

Graduate Council has reviewed the report of the Joint Administration-Academic Senate Committee on Faculty Discipline (hereafter “the report”), which examines how the University manages disciplinary proceedings for faculty respondents in cases alleging sexual violence, sexual assault, or sexual harassment (SVSH), and makes recommendations addressing disciplinary processes. The report’s recommendations are multi-faceted, and given the short timeline for review, the Council’s comments are broadly focused.

The Council concurs with the report’s recommendations that explicit language prohibiting sexual violence should be added to APM-015, and that campuses should integrate Title IX investigations with other investigations under the SVSH policy, to lessen the occurrence of multiple investigations into the same set of facts when possible and appropriate.


Suggested revisions to APM-016 (page 5), which call for replacing the ten-day deadline to file charges after placing a faculty respondent on involuntary paid leave, are appropriate.

The Council strongly concurs with the outreach and education recommendations that are made in the report. In particular, the Council agrees that there is confusion about the “three-year rule” which is not a statute of limitations, but as the report makes clear, it “defines a time period for the Administration to conclude an initial investigation and inform the faculty respondent of resulting charges, if any, within three years of receiving a report of an allegation that the Code of Conduct has been violated” (Section D, page 6 of the report). The Council also has some concerns about defining a department chair as “responsible administrator” when defining the three-year rule. The department Chair is not a career administrator in the way other positions are (i.e. academic deans), and the Council is concerned that there may be more room for confusion and misunderstanding in the reporting process and communication chain. To counter that possibility, a concerted effort on outreach and education should be undertaken at each campus to make clear the responsible administrator and the chain of communication for reporting allegations.

The Council also has expressed concern about the designation of graduate students as “responsible employees” in context of the report’s recommendations on procedures and mechanisms for reporting (Section B, page 3-4). The Council agrees that extensive education and outreach on the new SVSH policy and specifically, graduate student responsibilities as mandated reporters, should be a clear focus on each campus, and this should include reporting procedures, rights of complainants, and available resources. The Council also agrees with the report that the designation of all faculty as responsible employees could potentially negatively impact opportunities to consult their peers in confidence about a potential complaint. Although this report is focused on faculty discipline, we also note that this will also potentially impact graduate students who report

harassment from a faculty member. In these cases, we may see a “chilling effect” on reporting when students are weighing the decision to report against the potential negative impact on their careers.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donald Smith".

Donald Smith, Chair
Graduate Council

Cc: CAP Chair Dean
CAAD Chair Greenberg
CFW Chair Zachos
P&T Chair Hankamer

March 10, 2016

Don Brenneis, Chair
Academic Senate

Re: Report of the Joint Administration-Academic Senate Committee on Faculty Discipline

Dear Don,

The Committee on Privilege and Tenure (P&T) has reviewed the February 17, 2016 report of the Joint Administration-Academic Senate Committee on Faculty Discipline relating to disciplinary proceedings for faculty respondents in cases alleging sexual violence, sexual assault, or sexual harassment pursuant to the recently adopted University of California Policy on Sexual Violence and Sexual Harassment.

The Task Force Report is useful in highlighting the general level of confusion among faculty and others about the discipline process. Members of P&T have identified several ways in which we believe it falls short of proposing an adequate remedy, which we will detail below. Much of what we say, however, is not so much a criticism of the report as a set of questions about how transparency concerning the process might be enhanced on this campus.

The report emphasizes the importance of reducing the amount of duplicative investigations by different parties, but it doesn't give clear recommendations regarding how such reduction can be done. Appendix D (pp. 36-37), which gives the general framework for faculty discipline, for example, mentions "preliminary assessment" (who conducts this in the case of SVSH?); it is followed by a "formal investigation," which "could be led by the Academic Senate, by the Title IX office, ..." and "may be done a second time by the Academic Senate Charges Committee, ..."; it is followed by a "formal decision by the Chancellor," followed by a "formal hearing" by P&T. And according to the report, different campuses vary considerably with regard to the assigned roles and responsibilities of different parties (p.16). It may be helpful to have a clearer procedure and roles and responsibilities of each party involved that can be used by all campuses in dealing with SVSH cases.

A second concern arises in connection with the "3-year rule" and the role of Department Chair as the point at which the Administration (in the person of the Chancellor) is to be deemed to have known about an allegation of faculty misconduct. This section is somewhat confused, in part because SVSH violation allegations are treated differently from allegations of other misconduct. The Chancellor is presumed to know about an SVSH allegation when it is brought to the attention of the Title IX officer; that is straightforward enough, since policy dictates that any suspected SVSH misconduct must be immediately reported to that officer by any responsible employee who becomes aware of it. In the case of other kinds of faculty misconduct, however, our own campus policy does not seem to involve the Department Chair at all. CAPM 002.015 E.1 (Submitting a Formal Complaint) says:

Allegations of violations of the Faculty Code of Conduct against a Senate faculty member, originating from any source, shall normally be addressed to the Campus Provost, and shall normally be accepted only on the basis of a written, signed complaint form from the complainant (see Appendix A for the Formal Complaint Form). It shall be the complainant's responsibility to draft the complaint in accordance with the requirements described herein, and enumerated in Appendix A (see page 2) of these procedures.

This being the campus policy, it is unclear under what circumstances a Department Chair would be expected to know about an allegation of misconduct. It would seem to make more sense to assume that the Chancellor knows about an allegation of misconduct when the Campus Provost receives a formal complaint. That would make the SVSH cases and other cases more parallel, and make it clearer when the three-year clock starts.

Another area of general unclarity is in the roles of P&T and the Charges Committee. The Charges Committee is mentioned only once in the document, in Appendix D (p. 36), where it is mentioned that the Charges Committee (or its equivalent) may conduct a second investigation if the first did not adequately involve the faculty. This may be one of the areas where practice varies from campus to campus, but it is symptomatic of the general muddle that the Charges committee barely gets a notice in a report on faculty discipline processes. A related uncertainty is the systemwide role of P&T committees in the formal hearing that a correspondent is guaranteed under the discipline policy. Our campus Personnel Manual makes it clear that P&T is responsible for providing this hearing (CAPM 002.015.L); the Task Force Report mentions the respondent's right to a hearing (pp. 16, 17), but does not mention the campus P&T committee. Is this another instance of variation in practice? If not, the report should be explicit about the role of P&T; if practice does vary, we should all know more about it.

We have a couple of further worries, which we will simply flag as things that we are concerned about. One is the designation of all faculty as "Responsible Employees" who are obligated to report to the Title IX Officer any instance of possible SVSH that comes to their attention. The effect of this is that almost 100% of the people that a potential victim might want to confide in or seek counsel from are made unavailable for confidential advice. The proposed designation of a single individual per campus who would be free of this reporting requirement does not seem an adequate replacement.

Finally, the report focuses mostly on the need for education and transparency rather than changes in policy, but it does not provide much in the way of specific suggestions about how to improve transparency and inform the university community about the discipline process (except for the proposal, which we applaud, that complainants should always be informed of what action has been taken, whether it is a formal disciplinary action or not). The need for training is mentioned in various places, but it is not clear what shape it would take or what good it would do.

Sincerely,

/s/

Jorge Hankamer, Chair

Committee on Privilege and Tenure

Cc: CAAD Chair Greenberg
CAP Chair Dean
CFW Chair Zachos
GC Chair Smith



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March 15, 2016

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

SUBJECT: Response to the Report of the Joint Committee of the Administration and Academic Senate

Dear Dan:

The San Diego Division convened an Ad Hoc committee to discuss the Report of the Joint Committee of the Administration and Academic Senate on March 4, 2016. The report was discussed further by Senate Council on March 14, 2016. Generally, we found the recommendations of the Joint Committee to be reasonable but had concerns in three primary areas. The concerns are summarized below.

Senate Oversight and Interim Administrative Measures

Members agreed that increased Senate consultation in the faculty disciplinary process would be beneficial. In particular, Senate consultation is especially important in the event a Chancellor elects to exercise their ability to impose interim administrative measures on a faculty member. However, the procedures and standards that govern how interim administrative measures are imposed need to be more clearly explained. The Senate's role as a consulting body should be explicitly stated in delineating these criteria. For example, University policy should clarify what circumstances would warrant the imposition of involuntary leave and at what stage of the complaint process should such a measure be imposed. The Senate should be consulted in these situations, in part, as a check on the fairness of invoking such measures to ensure these measures are being used in a consistent manner. Any actions taken by a Chancellor in the preliminary stages of the complaint resolution process should be limited to the least restrictive measures necessary to minimize further trauma to the complainant while respecting the fact that the matter is still pending a final determination. Interim administrative measures need to be imposed in such a way that they do not cast the pall of guilt on the accused thereby tainting the rest of the process.

Independence of the Confidential Resource

It was agreed that a non-reporting confidential resource could be helpful in the complaint resolution process. However, Senate Council strongly suggests that this confidential resource be housed independently of any administrative office, including the office of the Chancellor or Executive Vice Chancellor, to ensure that those in need of counsel can trust that any advice they receive will be untainted

by outside interests. Further, this confidential resource should have clearly defined responsibilities and reporting mechanisms to maintain accountability within the broader complaint process.

It was also suggested that, given the volume and complex nature of complaints, designating a single individual as the Confidential Resource might not be as effective as establishing a panel of individuals who would be able to provide this assistance. Such a panel would not have to be very large, but having more than one person could serve to ensure the depth of understanding necessary to handle potential issues.

Confidentiality, Transparency, and Due Process

Senate Council agreed with the report's suggestions to make the disciplinary process more transparent to the complainant and agreed that there should be increased communication between the Academic Senate and Title IX officer during investigations of faculty. However, while transparency can help make the process more effective by increasing accountability, the need for transparency must be balanced with the due process rights of the accused. The due process rights of the accused require clarification of the circumstances under which certain aspects of the complaint resolution process must remain confidential in order to respect those rights. For example, confidentiality at the start of the process while information about the incident is being gathered is important to ensure a fair outcome. At the same time, it is important that a complainant be kept aware of where their complaint is in the resolution process. However, the report is not clear concerning when and how the complainant should be updated, nor does the report specify whether the complainant will be obliged to keep any information that is received confidential.

Thank you for the ability to comment on this important issue.

Sincerely,



Robert Continetti, Chair
Academic Senate, San Diego Division

cc: K. Roy
R. Rodriguez
H. Baxter

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Ruth Greenblatt, MD, Chair
David Teitel, MD, Vice Chair
Arthur Miller, PhD, Secretary
Jae Woo Lee, MD, Parliamentarian

March 15, 2016

J. Daniel Hare, Ph.D.
Academic Council
Systemwide Academic Senate
University of California Office of the President
1111 Franklin Street, 12th Floor
Oakland, CA 94607-52000

Re: Joint Committee of the Administration and the Academic Senate

Dear Dan:

UCSF's Committee on Equal Opportunity (EQOP) has reviewed the recommendations from the Joint Committee of the Administration and the Academic Senate, and makes the following two comments:

1. The recommendations broadened representation on Title IX Investigatory Committees to include Senate members. EQOP suggests that the broadening of these committees should also take into consideration gender and under-represented minority (URM) balance. Consider including Senate faculty and/or other non-Title IX Officers to augment teams at the time of the Title IX investigation. [Recommendation (A)(2)(b)].
2. To the extent possible, compile data on the existing processes, including, for example, data on the number of allegations, elapsed time at various stages of the process, efforts of informal resolution, formal P&T hearings, findings and recommended discipline, and final resolutions. [Recommendation E(1)(a), E(1)(b)]

I would also reiterate the opinion of EQOP, which notes that URM data should not be posted publicly, but it should be collected in order to facilitate data analyses related to gender, race/ethnicity, as long guidelines and best practices for maintaining the confidentiality of such data are followed. Thank you for the opportunity to review these recommendations. If you have any questions, please let me know.

Sincerely,



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

CC: Systemwide Academic Senate Executive Director Hilary Baxter

Encl. (1)

March 14, 2016

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

Re: Joint Committee of the Administration and Academic Senate

Dear Chair Greenblatt:

The UCSF Academic Senate Committee on Equal Opportunity (EQOP) reviewed the report of Joint Committee of the Administration and Academic Senate. EQOP appreciates this opportunity to review the report and respectfully submits the following comments.

Consider including Senate faculty and/or other non-Title IX Officers to augment teams at the time of the Title IX investigation. *[Recommendation (A)(2)(b)]*

EQOP recommends that this broader representation be balanced and inclusive of underrepresented groups.

To the extent possible, compile data on the existing processes, including, for example, data on the number of allegations, elapsed time at various stages of the process, efforts of informal resolution, formal P&T hearings, findings and recommended discipline, and final resolutions. *[Recommendation E(1)(a), E (1)(b)]*

EQOP is in favor of transparency and welcomes data. While data regarding gender, race, ethnicity and other underrepresented groups should not be posted publicly as they can be identifiers, it is recommended that this data be mandatorily recorded and made available for data analyses related to gender, race/ethnicity following guidelines of maintaining confidentiality of involved parties.

Thank you again for the opportunity to opine.

Sincerely,



Janice Tsoh, PhD
Chair, UCSF Academic Senate Committee on Equal Opportunity



UNIVERSITY COMMITTEE ON PLANNING AND BUDGET (UCPB)
Shane N. White, Chair
snwhite@dentistry.ucla.edu

Assembly of the Academic Senate
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Phone: (510) 987-9466
Fax: (510) 763-0309

March 15, 2016

**J. DANIEL HARE, CHAIR
ACADEMIC COUNCIL**

RE: Report of the Joint Committee (on Faculty Discipline)

Dear Dan,

The University Committee on Planning and Budget (UCPB) has discussed the report of the Joint Committee of the Administration and the Academic Senate (on Faculty Discipline). Overall, UCPB supports the general conclusions of the Joint Committee: The document clarifies a number of misunderstandings and recommends appropriate modifications of the various APM by-laws, and extensive training.

In the view of UCPB, the recommended integration of Title IX investigation with other investigations (recommendation A 2) is particularly important. In addition to minimizing multiple investigations based on the same nucleus of facts, such integration would decrease the apparent isolation of the Title IX Officers and improve their understanding of the culture.

Although the document focuses mostly on faculty discipline, as specified by the charge, it may not give enough weight to the problems faced by potential junior academic complainants. The professional risk of filing a complaint, present in all professions, is aggravated for academic victims by the extensive use of letters of recommendation in postdoctoral and assistant professorship applications and tenure cases. It is not an accident that the recent Berkeley case emerged only when the complainants were senior enough to feel professionally secure and risk filing a complaint. Filing a complaint about one's thesis adviser may also impose a redirection of a graduate student's research effort.

To better mitigate the specific risks for junior academic victims, the Joint Committee might want to consider one modification and one addition:

- a) When the report speaks of confidential resources, (page 4, recommendation C3, and page 9, F), it specifies "one confidential resource per location" (although p.4 in the same paragraph it speaks of "at least one"): at the minimum, the report should consistently speak of "*at least one* confidential resource per location". There might be some advantage for potential academic complainants in having as a confidential resource a trained faculty member familiar with the culture and hiring practice of the academic field of the victim, not just a staff person only knowledgeable about the law. This would imply several such faculty resources per campus (e.g., Sciences, Engineering, Economics/Political Sciences, Humanities, etc.).

- b) In cases involving junior academics, the Joint Committee might recommend the appointment, e.g., by the Department chair, of a faculty advocate who could facilitate the change of research group for a graduate student victim, insure that enough letters of recommendation from UC are submitted in cases involving postdoctoral scholars' or assistant professors' applications or tenure reviews, and communicate, if needed, with the hiring department to explain the delicate situation. This advocate would have to be trained and his/her access to confidential information specified. In addition to potentially mitigating the professional impact of filing a complaint, such a practice would send a powerful message to our young scientists that they will be strongly supported by the faculty in any case where they are victims of sexual violence and/or harassment.

Additionally, in some instances, "campuses" are directed to take necessary actions, and in other instances, it is the chancellor, the Title IX officer, or another specified person who is directed to take necessary actions. It is not immediately apparent to us why only sometimes a responsible individual is specified. We believe that specificity is important in this complicated area.

Thank you for the opportunity to review this important issue.

Sincerely,

A handwritten signature in dark ink, appearing to read "Shane N. White", with a large, sweeping flourish underneath.

Shane N. White, Chair
UCPB

cc: UCPB
Hilary Baxter, Executive Director, Systemwide Academic Senate



UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
Calvin Moore, Chair
ccmoore@math.berkeley.edu

Assembly of the Academic Senate
1111 Franklin Street, 12th
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Phone: (510) 987-9466
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March 16, 2016

**DAN HARE, CHAIR
ACADEMIC COUNCIL**

RE: Report of the Joint Committee on Faculty Discipline

Dear Dan,

The University Committee on Faculty Welfare has met and discussed the report of the Joint Committee on Faculty Discipline. Overall, the committee finds the report and its recommendations to be useful clarifications of a complex and difficult process. UCFW welcomed the addition of both the stronger record-keeping requirements and the non-reporting advisors to help impacted individuals decide how best to proceed. The committee finds that the recommendations would be improved still more had they included a decision tree, process map, and/or a clearinghouse of relevant resources. On page 8, UCFW would like to see “periodic” reporting replaced with “annual” reporting.

Thank you for the opportunity to comment on this important report.

Sincerely,

Calvin Moore, UCFW Chair

Copy: UCFW
Hilary Baxter, Executive Director, Academic Senate

UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

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SANTA BARBARA • SANTA CRUZ

COORDINATING COMMITTEE ON GRADUATE AFFAIRS (CCGA)

Valerie Leppert, Chair
vlleppert@ucmerced.edu

ACADEMIC SENATE

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

March 17, 2016

ACADEMIC COUNCIL CHAIR DAN HARE

Dear Dan:

CCGA has reviewed the report of the Joint Administration-Academic Senate Committee on Faculty Discipline in cases alleging sexual violence, sexual assault, or sexual harassment (SVSH).

The committee has the below comments to offer.

1. CCGA reiterates that adequate training must be implemented in order to ensure that all mandatory reporters, including graduate students, fully grasp and are prepared to carry out their responsibilities. This is crucial both for successfully addressing SVSH complaints, and for protecting victims and reporters from the consequences of incorrect handling of such cases.
2. CCGA is concerned about the same level of reporting responsibilities being placed on graduate students as for faculty, given the differences in their experience, training, and support; and the possibility of retaliation given their especial vulnerability.
3. The committee endorses the designation of a confidential resource to advise graduate students on reporting issues, as is suggested in the report. Some monitoring of the workload of this individual to ensure adequate support for graduate students dealing with SVSH incidents is recommended.
4. We agree with other senate committees that similar considerations should apply to post-doctoral scholars as apply to graduate students.

Sincerely,

A handwritten signature in blue ink that reads "Valerie Leppert".

Valerie Leppert, Ph.D.
Chair, CCGA

cc: Dan Chalfant, Academic Council Vice Chair
CCGA Members
Hilary Baxter Academic Senate Executive Director



Jeff Lansman, Ph.D.
Chair, University Committee on Privilege and Tenure
Email: jeff.lansman@ucsf.edu

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

March 18, 2016

ACADEMIC COUNCIL CHAIR DAN HARE

Re: Joint Committee of the Administration and Academic Senate

Dear Dan:

UCP&T reviewed and discussed the Joint Committee report. All committee members expressed frustration and outrage at the short timeframe provided to consider the policy and procedural issues related to this complex topic of handling sexual harassment and sexual violence cases on our campuses. These cases include an enormous range of potential behaviors, multiple offices for investigation and making charges, and differing standards of evidence involved in Title IX and Senate processes. I note that two UCP&T members felt we should withhold our response given the complexity of the issues and unreasonable deadline for comment, which made it impossible to formulate more comprehensive policy recommendations and degrades shared governance.

What follows are preliminary comments on the report, which UCP&T believes highlight the most flawed Joint Committee recommendations regarding critical issues of due process and evidentiary standards in sexual harassment and sexual violence cases.

1. Role of the Title IX Office. There is a lack of clarity about the role of the Title IX Office and recommendations concerning integrating Title IX investigations with other investigations, such as those conducted by divisional Privilege & Tenure Committees.

Committee members agreed that faculty familiar with APM discipline procedures and P&T processes should remain independent in their role of making findings of fact based on the evidence. The Chancellor or designee in consultation with the Title IX Office and/or campus Charges Committees should have as their primary responsibility the determination of whether there is probable cause for filing misconduct charges. Subsequently, the determination of whether there were violations of the Faculty Code of Conduct and determination of appropriate disciplinary sanctions should rest with the Chancellor in consultation with P&T, as at present; UCP&T disagrees with the report's suggestion that the Title IX Office be involved at this stage. As a result, UCP&T does not support the re-training of Title IX staff to make findings based on the standard of "clear and convincing evidence" that is used in Privilege & Tenure disciplinary hearings, unless such training is deemed necessary to the function of the Title IX Office in its investigative role and there are mechanisms in place for providing, implementing, and validating such training.

2. Designation of an individual(s) on each campus as a confidential resource for victims and witnesses. Members agreed that non-reporting intermediaries are needed to answer questions about the law, procedures, and/or policy when someone is victimized, either directly or indirectly, by acts sexual violence or sexual harassment. Anonymity and confidentiality must be assured in this counseling process.

3. Complainants views on their cases and “appropriate outcomes.” UCP&T expressed reservations about the recommendation that affords complainants an opportunity to express their views on their cases and on appropriate outcomes—particularly disciplinary sanctions. While UCP&T supports due process in informing defendants of the nature of allegations as well as their rights to a Privilege & Tenure hearing, individual offices or committees should not be unduly burdened with a requirement for unlimited updating on procedural issues.

4. “Responsible individuals.” UCP&T took particular exception to the expectation that all parties be considered “responsible individuals” It is unreasonable to expect, for example, that faculty will report a colleague—particularly a senior colleague or department chair—when there is a perceived threat of career damage. It is also unreasonable to expect a faculty member to report a colleague in more complex cases of sexual harassment which have evolved over a long period of time, may have elements of consensual behavior, and in which facts are unclear. A “Responsible Employee” is deemed as such by the leadership position held at the department or other administrative level. The responsibility of faculty in leadership positions and administrators to report cases of sexual harassment and sexual violence must be made clear at every level. Mechanisms for censure must be developed and put in place for those who fail to carry out this critical reporting responsibility.

5. Consultation with the Academic Senate. In some instances, the Chancellor or designee should be required to consult with Academic Senate leaders, such as the Division Chair and/or the Chair of Privilege & Tenure regarding proposed disciplinary charges and possible sanctions. Consultation is particularly important in cases where involuntary leave or dismissal is encouraged or imposed.

6. Imposition of involuntary leave. Faculty placed on involuntary leave must be apprised of the reasons for imposing leave as well as their right to contest it in a grievance proceeding before the Committee on Privilege & Tenure. APM 016 provides guidance on this issue. UCP&T members believe the existing 10-day deadline to file charges after placing a faculty respondent on involuntary leave may be impractical from an administrative standpoint. However, due process requires that a respondent not be placed on involuntary leave for an indefinite period of time. The Joint Committee should consider increasing the 10-day period by a specific amount, with scope for extension (with faculty involvement) when needed for a case. The proposal by the Joint Committee to allow for involuntary leave *without pay* is a significant departure from present practice that is not justified in its report, and should be rejected.

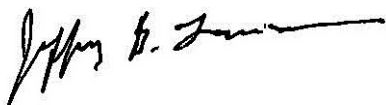
7. Three-year rule. UCP&T believes that the statutory “three-year rule” places the burden on department chairs and administrators to act sooner rather than later in investigating and bringing disciplinary charges. Members agree there is a need to educate all faculty regarding the three-year statutory period in bringing disciplinary action and their responsibilities in filing misconduct allegations.

In addition to the foregoing comments on the Joint Committee report, UCP&T asks Council to disseminate a memo to department chairs regarding their responsibilities concerning department climate. These responsibilities include supporting faculty who wish to file grievances and, when called for, taking steps to initiate disciplinary actions through the Vice-Provost's or other administrative office. The forthcoming UCP&T memo will outline responsibilities concerning incidents of sexual harassment and sexual violence, bias and discrimination based on racial or ethnic background as well as other protected categories, and discrimination for arbitrary and personal reasons.

Also, UCP&T requests all divisional Privilege & Tenure Committees receive information from the administration about all cases that are resolved through informal negotiations. This information has not been available and has prevented UCP&T from fulfilling its APM charge of "maintaining records" regarding disciplinary and grievance cases. This information would be provided in a redacted form to preserve confidentiality of all persons. There is a concern that a faculty member may agree to a settlement without being fully aware of his or her rights. In this regard, UCP&T would like the attached handout made available to all defendants charged with violations of the Faculty Code of Conduct when they are informed that they may be subject to disciplinary action.

Finally, UCP&T supports zero tolerance for sexual harassment and sexual violence. In some cases, swift and definitive actions must be taken immediately, particularly when there is any concern of a threat of danger to any member of the University community. However, our experience has shown that sexual harassment cases may be complex, involving behaviors and relationships that may be innocuous and non-threatening at first, but over time become intimate with potential for crossing boundaries. To protect all parties, UCP&T believes there must be both firm standards of due process and strict evidentiary standards as outlined in the Academic Personnel Manual.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Lansman", with a long horizontal flourish extending to the right.

Jeff Lansman, Ph.D.
Chair, UCP&T
Department of Cellular & Molecular Pharmacology
University of California, San Francisco

cc: UCP&T

Notice to faculty on their rights in disciplinary cases

A faculty member may be subject to disciplinary sanctions for professional or personal misconduct. A charge of misconduct requires one or more violations of the Faculty Code of Conduct. The Faculty Code of Conduct is outlined in the Academic Personnel Manual (APM-015). The Administration must prove allegations of misconduct by “clear and convincing evidence.” “Clear and convincing evidence” requires that the facts as presented are *more highly probable to be true than not. This means that the Hearing Committee has a firm belief or conviction in the facts of the case.* This is a higher standard than “preponderance of the evidence,” which requires only that the facts are *more likely than not* to prove the issue (51% certainty)

If charges of misconduct are made against you, the Administration may offer you a settlement agreement, which may include disciplinary sanctions. You may accept the offer or suggest alternatives. Any settlement that you and the Administration find acceptable is an *informal resolution*. An informal resolution may be reached at any stage in the disciplinary process and serves to dispose of the charges.

Informal resolution, however, is not mandated. If you choose, you have the right to a full evidentiary hearing before the Committee on Privilege and Tenure of the Academic Senate. The members of this committee are faculty charged with conducting an independent and impartial review of the evidence. An attorney from the Office of General Counsel will present the Administration’s case at the hearing. You are entitled to be represented by your own attorney and to “present [your] case by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts” (Senate Bylaw 335.D.3). The hearing before a Privilege and Tenure committee is confidential.¹

The details of the formal disciplinary process are specific to each campus, but there are constraints that safeguard your rights:

1. If more than three years have elapsed between the time an administrator (or other supervisory employee) knew about the alleged misconduct or if the Chancellor or Chancellor's designee² should have known about it, disciplinary action cannot be taken. The three-year statute of limitations in disciplinary proceedings applies to all campuses.
2. The Chancellor may not initiate disciplinary action unless there has been a prior finding of *probable cause*. The *probable cause* standard means that the facts as alleged in the complaint, if true, justify the imposition of discipline and that the Chancellor is satisfied that the University can produce credible evidence to support the claim.
3. If there is a finding of *probable cause* and the Chancellor wishes to impose disciplinary sanctions, written charges *must* be filed with the Committee on Privilege and Tenure, which communicates the charges to the accused faculty member. The charges shall contain notice of the proposed disciplinary action and a complete accounting of the facts and findings supporting the charges.³

1 Information about an ongoing disciplinary proceeding, including information about the outcome, may be shared with the complainant(s) to the extent allowed by State law and University policy.

2 Typically the Provost on each campus.

3 If the accused faculty member wishes to reach a settlement, they may accept the proposed disciplinary action or – as at any other point in the disciplinary process – negotiate an informal resolution.

4. Proposed discipline may only be one or more of the following sanctions in increasing order of severity: 1) Written Censure; 2) Reduction in Salary; 3) Demotion; 4) Suspension; 5) Denial or Curtailment of Emeritus Status; 6) Dismissal (APM 016)⁴.

5. If there is no informal resolution, the Committee on Privilege and Tenure is charged to conduct a formal disciplinary hearing where a hearing committee will assess whether the Administration has met its burden of proof. Following the hearing, the hearing committee makes “findings of fact, conclusions supported by a statement of reasons based on the evidence, and a recommendation,” which it forwards to the Chancellor (Senate Bylaw 335.D.8). If the committee finds the Administration has met its burden of proof, it will recommend that disciplinary sanctions be imposed. If the hearing committee recommends disciplinary sanctions, the sanction(s) cannot be more severe than that sought by the Administration.

Note that the Committee on Privilege and Tenure makes its recommendations directly to the Chancellor, who makes the final decision on the case, usually after consultation with University counsel. Because the Committee on Privilege and Tenure acts in a “quasi-judicial” capacity to resolve disputed issues with authority derived from the University of California bylaws, the Chancellor must weigh any legal consequences of not upholding the committee’s recommendations based upon its findings of fact.

The above description is based on Sections 15 and 16 of the APM and Academic Senate Bylaw 336:

<http://www.ucop.edu/academic-personnel-programs/files/apm/apm-015.pdf>

<http://www.ucop.edu/academic-personnel-programs/files/apm/apm-016.pdf>

<http://senate.universityofcalifornia.edu/manual/blpart3.html#bl336>

This notice serves as a guide to the disciplinary process and your rights and does not replace the written guidelines set forth in the Academic Personnel Manual.

If you have questions about your particular case, you are free to consult the Chair of the Committee on Privilege and Tenure at your campus for advice about the process. You may also wish to seek advice about the merits of your case from faculty familiar with the Privilege and Tenure process or from an attorney familiar with University of California policies and procedures. Any consultation with the Committee on Privilege and Tenure remains confidential.

Campus Policies:

Berkeley

Davis

Irvine

Los Angeles

Merced

Riverside

Santa Barbara

Santa Cruz

4 Other disciplinary action that is not included in this list may be taken as part of an informal resolution.

San Diego
San Francisco