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

May 9, 2023

**KATHERINE S. NEWMAN
PROVOST AND EXECUTIVE VICE PRESIDENT
UNIVERSITY OF CALIFORNIA**

Re: Request to Update the APM to Address Simultaneous Academic Misconduct Investigations and Personnel Actions

Dear Katherine:

At its April 2023 meeting, the Academic Council endorsed the attached recommendation from the University Committee on Privilege and Tenure (UCPT) to update the Academic Personnel Manual (APM) with new language to address the handling of simultaneous academic misconduct investigations and personnel actions. Currently, there is no mechanism or procedure in the APM to address such actions. The lack of systemwide guidance has resulted in inconsistent procedures and practices across campuses.

The proposed addition to APM 016 attached to this letter includes clear guidelines under which a personnel action could be paused. It will promote systemwide uniformity and preserve a firewall between the disciplinary process and the personnel process.


The proposed policy will allow a no-fault pause on a regular faculty merit or promotion action during a disciplinary action. The pause would initiate at the time formal charges are filed, except in the case of a faculty member being considered for tenure, where a pause would be allowable earlier after a formal investigation was initiated. The personnel action would proceed upon conclusion of the disciplinary action, with any advancement awarded retroactively. The policy also requires the campus to notify faculty about a pause, provides a process for allowing faculty to grieve on an expedited basis the imposition of the pause, and prevents the insertion of materials into the personnel file before the conclusion of the disciplinary proceedings.

UCPT conferred with the University Committee on Academic Personnel and the University Committee on Academic Freedom on the proposed policy. Council endorses the broad goals articulated by UCPT and believes the proposed language provides a strong starting framework. We ask the Office of Academic Personnel and Programs to initiate a systemwide review of the

proposed policy. Additionally, Council recommends that UCOP issue interim guidelines that address the issue while it considers next steps.

Thank you for your consideration. We look forward to working with you on this important issue. Please do not hesitate to contact me if you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Cochran". The signature is fluid and cursive, with a long horizontal stroke at the end.

Susan Cochran, Chair
Academic Council

Cc: Vice Provost Haynes
Associate Vice Provost Lee
Academic Council
UCPT Chair Simon
Campus Senate Executive Directors
Executive Director Lin

Encl.



UNIVERSITY COMMITTEE ON PRIVILEGE AND TENURE

Julia Simon, Chair
jsimon@ucdavis.edu

ACADEMIC SENATE

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

April 24, 2023

SUSAN COCHRAN, ACADEMIC SENATE CHAIR

Dear Chair Cochran,

Last year, UCPT brought forward some proposed language for the APM to advise the campuses in the handling of simultaneous academic personnel and misconduct investigations. The current version of the Academic Personnel Manual contains no mechanism for pausing personnel actions when there is a concurrent misconduct action. Although this lacuna does not grant administrators the authority to pause personnel actions, personnel actions are nonetheless being “paused” on many campuses. In the current situation, personnel actions are being paused at different stages of the disciplinary process on different campuses. Faculty members are not currently notified that their personnel actions have been paused. Moreover, without knowledge and without policy, faculty have no formal mechanism for filing a grievance concerning a paused personnel action.

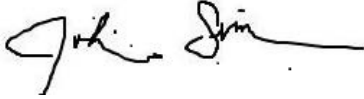
At the advice of Academic Council, UCPT conferred with UCAP and UCAF regarding this issue and on the language UCPT drafted. In my discussions with those committees, I explained that UCPT proposed this change to the APM to accomplish several goals:

1. To provide a uniform policy for handling concurrent misconduct and personnel actions across all campuses systemwide and end the ad hoc solutions currently being employed.
2. To provide clear guidelines for circumstances in which personnel actions may be paused. These will include:
 - a. A temporary no-fault pause may be imposed at the point in the disciplinary process when charges are filed in most cases. Currently, some administrations pause actions as soon as investigations are opened.
 - b. The misconduct being charged must have occurred during the period under review and have a direct bearing on research, teaching, or service.
3. To require that the faculty member under review be notified that their personnel action has been paused.
4. To establish procedures for grieving the imposition of the pause on an expedited basis.
5. To require the administration to provide a timeline for the anticipated conclusion of the disciplinary action and resumption of the personnel case.
6. To require the administration to provide periodic updates (at least every 6 months) on the status of the case to divisional privilege and tenure committees.
7. To prevent the insertion of materials into personnel files before the conclusion of disciplinary proceedings.

Both UCAF and UCAP agreed with the proposed language, so UCPT is bringing it forward to Council again in the hopes of having it forwarded to APP for inclusion in the APM.

The proposed language is enclosed. Please let me know if you have any question or if you need any additional information.

Sincerely,

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

Julia Simon,
UCPT Chair

c: James Steintrager, Academic Senate Vice Chair
Monica Lin, Academic Senate Executive Director
Michael LaBriola, Academic Senate Assistant Director
UCPT Members

From UCPT:

Proposed Language for the APM on Concurrent Misconduct and Personnel Actions

1. (a) The Chancellor or the Chancellor's designee may impose a temporary no-fault pause in an ongoing or upcoming personnel action of a faculty member when disciplinary charges pertaining to actions that occurred during the period under review (and are relevant to the assessment criteria used for personnel actions) are filed with the Chair of the Divisional Committee on Privilege and Tenure according to Bylaws 336.C.1.a.

(b) A request for a pause is to be directed to the Senate or administrative officer(s) responsible for the personnel case at its current stage in the personnel action process. The request for a pause must be kept confidential and shall not contain any details about the nature of the charges. A notification of the pause must be sent immediately to the faculty member, this notification must clearly state the stage at which the action has been suspended.

(c) The Chancellor's designee shall provide a timeline to the Divisional Committee on Privilege and Tenure for completion of the disciplinary action and periodic updates at intervals of no longer than 6 months.

(d) The personnel action will resume as soon as the disciplinary proceedings are concluded (whether by the withdrawal of the charges, a settlement by a negotiated resolution, a Chancellor's decision to impose disciplinary sanctions, or otherwise). The Chancellor or Chancellor's designee will send immediate communication of the conclusion of the disciplinary proceedings to the faculty member and to the senate or administrative officer(s) responsible for the case at the stage of the personnel process at which it was paused.

(e) If the disciplinary proceedings conclude with the imposition of sanctions, the communication of the conclusion of disciplinary proceedings will also contain a notification of the violation of the faculty code of conduct and of the imposed sanctions. These violations and sanctions will become part of the personnel review file. Consistent with APM 015 III.B.9, the contents of these records will be shared with Senate and administrative officers with a need to know in accordance with State law and University policy, including the department chair, and they might be taken into consideration during the resumed personnel action. If this information becomes available after a department has already issued its recommendation on the personnel action, the new material may be handled in accordance with APM 220.80.h.

(f) Once the personnel action has resumed, its effects are retroactive, as if the personnel action had taken place according to the original schedule. Any teaching, service, or research performed during the no-fault pause period will not be taken into account

during the resumed personnel action (they are rather going to count toward the following review period).

2. (a) In the case of personnel action concerning the promotion to tenure rank, the no-fault pause of the personnel action may be imposed by the Chancellor or the Chancellor's designee when there is either a pending disciplinary action or an ongoing investigation to warrant the opening of an investigation for possible violations of the faculty code of conduct pertaining to actions that occurred since the original appointment that are relevant to the assessment criteria used for personnel actions.

(b) When the pause is prompted by an ongoing investigation, the accused faculty member may grieve the decision to pause the personnel action requesting that it be handled by the Divisional Committee on Privilege and Tenure on an expedited basis.

(c) Regardless of the status of the investigation or disciplinary action, a temporary pause of a personnel action concerning the promotion to tenure rank will be automatically lifted at the beginning of the 8th year of service at the rank of Assistant Professor (or a combination of equivalent titles) unless the President has approved appointment of an Assistant Professor (or equivalent title) beyond the eighth year in accord with Board of Regents Bylaw 40.3.(c).

(d) Clauses 1 (b) through 1 (e) above also apply to the pause of a personnel action concerning the promotion to tenure rank.

Recommended additional change to APM 015.III.A (and possibly bylaw 336):

At the time the notice of proposed disciplinary action is initiated or when early resolution or a settlement is being discussed, the Chancellor must inform the accused faculty member that disciplinary action that is relevant to the personnel review process can be included in personnel review files.