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Universitywide Academic Senate
University of California
1111 Franklin Street, 12th Floor
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March 30, 2012

CHAIRS OF SENATE DIVISIONS
CHAIRS OF SENATE STANDING COMMITTEES

Dear Division and Committee Chairs:

On behalf of Academic Council Chair Bob Anderson I am forwarding for full Senate review proposed revisions to Sections 010, 015 and 016 of the Academic Personnel Manual.

- **APM – 010 (Academic Freedom) and APM – 015 (The Faculty Code of Conduct)**
Proposed revised language in both policies to include within the protections of academic freedom, the freedom to speak on matters of institutional policy.
- **APM – 016 (University Policy on Faculty Conduct and the Administration of Discipline)**
Remedies the omission of a single, clear statement in the Academic Personnel Manual that faculty will comply with University policy.

The proposals are on the Web at <http://www.ucop.edu/acadpersonnel/apm/review.html>.

The proposed revisions have already undergone a preliminary informal review by Senate committees on faculty welfare and academic personnel and selected administrators, which generated a number of substantive comments. These are summarized in Vice Provost Susan Carlson's cover letter (attached). Comment has focused on the implications of specific language choices in the extension of academic freedom to include freedom to comment on University policy. There has been little or no comment on the addition to APM of a statement that faculty will comply with University policy as well as rules and regulations.

Vice Provost Carlson has extended the review period for the Academic Senate in order to allow for discussion at the June 17 meeting of the Academic Council. Accordingly, your comments are requested by **June 20, 2012**. Please submit your comments to SenateReview@ucop.edu. As always, every committee is invited to opine on this report, but no committee is obligated to do so if the committee considers the report to be outside the scope of its charge.

Sincerely,

A handwritten signature in black ink, reading "Martha Kendall Winnacker". The signature is written in a cursive style with a long horizontal flourish at the end.

Martha Kendall Winnacker, J.D.
Executive Director, Academic Senate

Encl. (1)

Cc: Division directors
Committee analysts



OFFICE OF THE VICE PROVOST --
ACADEMIC PERSONNEL

OFFICE OF THE PRESIDENT
1111 Franklin Street, 11th Floor
Oakland, California 94607-5200

March 23, 2012

ACADEMIC COUNCIL CHAIR ANDERSON
COUNCIL OF VICE CHANCELLORS
LABORATORY DIRECTOR ALIVISATOS
ANR VICE PRESIDENT ALLEN-DIAZ

Dear Colleagues:

Re: Systemwide Review of Proposed Revised APM – 010, Academic Freedom; APM – 015, The Faculty Code of Conduct; and APM – 016, University Policy on Faculty Conduct and the Administration of Discipline

Enclosed for Systemwide Review are proposed revisions to Academic Personnel Policy (APM) Sections 010, Academic Freedom and 015, The Faculty Code of Conduct. Also enclosed for Systemwide Review are proposed revisions to APM section 016, University Policy on Faculty Conduct and the Administration of Discipline. Proposed language in 016 remedies the omission of a single, clear statement in the Academic Personnel Manual that faculty will comply with University policy.

At its meeting on January 26, 2011, the Academic Council adopted a resolution proposed by the Committee on Academic Freedom and reviewed by Senate committees to recommend revising the language of Sections 010 and 015 of the APM to include within the protections of academic freedom the freedom to speak on matters of institutional policy.

Following distribution of proposed revised language during Management Consultation, Academic Personnel received a broad set of comments from campus administration and Senate committees, which are summarized below for your consideration.

Some reviewers cited recent court cases including *Garcetti v. Ceballos*, 547 U.S. 410 (2006), as the impetus for adding the proposed language. More recently, similar issues arose in the case at Washington State University as cited in *The Chronicle of Higher Education*.¹ One reviewer, citing *Sweezy v. New Hampshire*, 354 U.S. 234 (1957), commented that the University should seek to strengthen APM – 010 with respect to the core of scholarship and teaching, rather than trying to develop an academic freedom notion of shared governance extending to all policy areas affecting the University.

Other reviewers cited various publications, including Larry Spurgeon's "A Transcendent Value: The Quest to Safeguard Academic Freedom"² and Frederick Schaffer's "A Guide to Academic Freedom"³ along with

¹ "Legal Dispute Pits Washington State University U.'s Journalism School Against Free-Speech Groups," *The Chronicle of Higher Education* (March 1, 2012).

<http://chronicle.com/article/Legal-Dispute-Pits-Washington/130979/>

² "A Transcendent Value: The Quest to Safeguard Academic Freedom," *Journal of College and University Law* 34: 209 (2007).

³ "A Guide to Academic Freedom." *Trusteeship* 19:4 (July/August 2011).

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the American Association of University Professors principal founder Arthur Lovejoy's definition of Academic Freedom.⁴

Some reviewers commented that the phrase "...when acting as a member of the faculty..." introduces ambiguity and should be clarified or dropped. Other reviewers would narrow the proposed expansion of protections under APM – 010 and APM – 015, believing that faculty have the freedom to address matters of institutional policy or action now within shared governance, commenting that expanding the definition of protected speech may dilute the core concept of academic freedom, or pose a threat to the legal status of academic freedom more broadly. These reviewers questioned the need for the revision, adding that the practical implications of the proposed new language are unclear. Yet other reviewers interpreted the language to mean that "...the University has a valid interest in controlling a faculty member's speech when he or she is not acting as a member of the faculty but gives no guidance for determining when that is the case." Some believe that the term "*institutional policy or action*" is too vague and others are supportive of the proposed draft language as written. Lastly, one reviewer questioned the appropriateness of the clause "...whether or not as a member of an agency of institutional governance."

Systemwide Review is a public review distributed to the Chancellors and Executive Vice Chancellors requesting that they inform the general University community, affected employees, and unions about the policy proposals. Systemwide Review also includes a mandatory, three-month full Senate review.

Employees should be afforded the opportunity to review and comment on the revisions, which are available online at: <http://www.ucop.edu/acadpersonnel/apm/review.html>. Enclosed is a model communication which can be used to inform non-exclusively represented employees affected by these proposals.

This letter and enclosures anticipate that you will begin Systemwide Review of the proposed draft and submit comments no later than June 21, 2012. Please send your comments and any questions to Janet.Lockwood@ucop.edu.

Sincerely,



Susan L. Carlson

Vice Provost

Academic Personnel

cc: President Yudof
Chancellors
Provost Pitts
Vice President Duckett
Senior Vice President Vacca
Vice Provosts of Academic Personnel
Academic Personnel Directors
Executive Director Tanaka
Executive Director Winnacker
Executive Director Rodrigues
Deputy General Counsel Birnbaum
Senior Counsel Van Houten
Associate Director Chester
Associate Director Fishel

⁴ 1940 Statement on Principles of Academic Freedom and Tenure, AAUP

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Manager Lockwood
Systemwide Policy Coordinator Capell
Human Resources Analyst Bello
Senior Administrative Analyst Rupert
Administrative Officer Abbott