MAPP Section 110:
Faculty Conduct and Discipline Policies and Procedures - Academic Senate Titles

The UC Merced Academic Personnel Policies and Procedures (MAPP) are intended to supplement the Academic Personnel Manual (APM) and reflect the local campus policies and procedures.

111. POLICY REFERENCES

APM 015 – The Faculty Code of Conduct
APM 016 – University Policy on Faculty Conduct and the Administration of Discipline
Academic Senate Bylaws 335, 336, and 337
Standing Orders of the Regents 100.6(a), 103.9 and 103.10
Sexual Harassment Policy

112. OVERVIEW, AUTHORITY, AND AFFECTED APPOINTEES

At UC Merced, the following serves to implement the University Policy on Faculty Conduct and the Administration of Discipline as approved by the Assembly of the Academic Senate and by The Regents. While the Faculty Code of Conduct ("the Code") applies to all faculty members, both Senate and non-Senate, these procedures apply exclusively to members of the Academic Senate (as listed in the Standing Order of The Regents (SOR) 105.1), including those titles defined as equivalent under SOR 103.3. The rights and adjudication procedures for non-Senate academic appointees is set forth in Section 140 of the Academic Personnel Manual. AFT Unit 18 members should contact the Labor Relations Director, the Academic Personnel Office, or their union representative for further information about applicable grievance procedures.

The authority to discipline faculty members derives from The Regents. The Regents has made the Chancellor of each Campus responsible for administering discipline on the campus, subject to certain procedures involving the Academic Senate and the President. There is to be no re-delegation of the Chancellor's authority to impose disciplinary sanctions within the terms of the University Policy on Faculty Conduct and the Administration of Discipline, and no such sanction shall be imposed except as a consequence of the processes set forth below. However, in any case of discipline of a Senate faculty member, the Chancellor will normally delegate to the Campus Provost/Executive Vice Chancellor ("Campus Provost") the authority to initiate disciplinary action.

In the event that the Campus Provost recuses himself or herself from a disciplinary case at any stage, the Chancellor may delegate his or her authority at that stage for that case to a person or persons whom the Chancellor judges to be appropriate.

The Chancellor will discuss the choice of the appropriate person with the Chair of the Academic Senate.

The Standing Orders of the Regents provide that actions of certain types, some of them disciplinary in character, may not be carried out without the opportunity of a prior hearing before, or without advance consultation with, "a properly constituted advisory committee of the Academic Senate" (Standing Orders 100.4 (c) and 103.10).

The Academic Senate has established Committees on Privilege and Tenure in each of the ten Divisions. The traditional roles of the Divisional Committees on Privilege and Tenure are to take under consideration complaints against or by members of the Academic Senate and – in certain cases – other members of the faculty. The Committees hold hearings and advise the administration.

Nothing in the Faculty Code, or in this Policy, is intended to change the various authorities and responsibilities of the Academic Senate, the administration, or The Regents as currently set forth in the Standing Orders of The Regents, the policies and regulations of the University, and the Bylaws and Regulations of the Academic Senate.

The Faculty Code explicitly does not deal with policies, procedures, or possible sanctions pertaining to strikes by the members of the faculty. These are covered by Regental and administrative policies external to the Code.

With respect to the imposition of disciplinary sanctions, the Faculty Code deals only with professional conduct or misconduct. However, faculty members, in common with all other members of the University community, are subject to the general rules and regulations of the University, e.g., those pertaining to parking, library privileges, health and safety, and use of University facilities, and are subject to appropriate sanctions for failure to comply with such rules and regulations. Senate faculty members holding administrative appointments may be subject to disciplinary action under the Code for professional misconduct in their administrative role that falls within the types of unacceptable conduct set forth in the Faculty Code of Conduct. In addition, the Chancellor and Provost may take administrative actions (e.g., removal from the administrative position), which need not adhere to the disciplinary procedures outlined herein.

These procedures shall apply to allegations of violations of the Code by members of the Academic Senate, except for allegations of sexual harassment, which shall be dealt with following the campus procedures issued by the Chancellor's office. The UC Merced campus policy regarding Sexual Harassment may be found at: http://hr.ucmerced.edu/docs/sexualharr.pdf.

Disciplinary action is to be distinguished from certain other administrative actions taken as the result, not of willful misconduct, but rather, for example, of disability or incompetence. These actions are subject to separate procedures with due process guarantees and should not be confused with disciplinary action with its implications of culpability and sanction. Academic Personnel Policies: APM 016 and

APM 075 articulate the conditions under which faculty members with tenure or security of employment may be terminated for incompetent performance.

The following procedures apply only in those instances in which a member of the Academic Senate is charged with unacceptable conduct in alleged violation of the Faculty Code of Conduct. No faculty member's right to a hearing before the Committee on Privilege and Tenure under Academic Senate Bylaws 335, 336 and 337, or SOR 103.9 and SOR 103.10, shall be abridged in any way by these procedures.

Throughout these procedures, the party filing the formal complaint is referred to as the "complainant" and the Senate faculty member accused of violating the Faculty Code of Conduct is referred to as the "respondent."

When a complaint has been made, all faculty members, campus officers and agencies shall treat the identities of the complainant and the faculty member against whom the complaint is made as a matter of the utmost confidentiality.

113. FILING A COMPLAINT

113-1. Filing a Complaint

A complaint may be brought under these procedures by any student, staff member, or faculty member of the University of California. Systemwide policy statements clearly imply that the investigation of faculty misconduct should be an administrative function, while holding hearings on such charges is an academic senate function to be carried out by the Committee on Privilege and Tenure.

113-2. Informal Complaint Procedures

In some circumstances, informal means may be appropriate as a first resort. Such efforts may include discussion with the faculty member as well as the pursuit of all available administrative actions. Informal complaints may be heard by the relevant Dean or Assistant Dean, Human Resources or the Academic Personnel office, or the complainant's immediate supervisor.

The informal complaint may also be referred to the Campus Provost. The Campus Provost may ask the Charges Committee to assist in the informal resolution of the complaint.

Any recipient of an informal complaint may in all cases listen to the complaint without informing the accused of it. If the recipient of the complaint, or any campus officer or agency, begins to investigate the merits of the complaint, beyond what can be established by talking to the complainant, the accused faculty member shall at that stage have a right to notification. Should the complaint be resolved informally or not pursued further, all documents, notes, or other evidence shall be destroyed or returned to the complainant.

If the recipient of the informal complaint deems it to be appropriate, and if procedures of informal resolution are either unsuccessful, unacceptable to the complainant, or deemed inappropriate by the campus officer or agency involved, then that officer or agency shall refer the complainant to the Campus Provost. The Campus Provost will notify Chair of Privilege and Tenure apprised of all such actions. At this stage of the process, the Campus Provost is not required to notify the faculty member against whom the complaint has been made.

113-3. Formal Complaint Procedures

If the complainant pursues the complaint, established procedures must be followed.

Allegations of violations of the Faculty Code of Conduct against a Senate faculty member shall be addressed to the Campus Provost and shall normally be accepted only on the basis of a written, signed letter from the complainant. The complainant must include a written explanation of any attempts made to resolve the matter prior to the filing of the formal complaint. The complainant should, whenever possible, identify the section(s) of the Faculty Code of Conduct alleged to have been violated. Faculty may be subjected to disciplinary action for any type of conduct which, although not specifically enumerated in the Code, meets the standard for unacceptable faculty behavior described by the Ethical Principles set forth in the Code. It is important that the complainant submit supporting documentation sufficient to substantiate the alleged misconduct.

The Campus Provost shall review the complaint to insure that it conforms to these requirements, and to a reasonable standard of conciseness and order. The Campus Provost may also consult with the appropriate School dean as necessary. The Campus Provost may, in his or her discretion, reject any complaint that does not meet these requirements. In this event, the complaint will be returned to the complainant who shall have the opportunity to correct the stated deficiencies, and then return the complaint for consideration.

The Campus Provost will conduct a preliminary inquiry to determine whether there are reasonable grounds to believe that a violation of the Faculty Code of Conduct may have occurred. The Campus Provost may use one or more members of the Charges Committee and/or appoint additional internal or external faculty or administrators to conduct the informal, preliminary inquiry. The respondent will be notified by the Campus Provost that a formal complaint has been filed against him or her, and will receive a copy of the complaint with all supporting documentation.

If there is apparent merit to the complaint, the Campus Provost shall convene the full Charges Committee to investigate and provide a determination as to whether there is probable cause that a violation has occurred. The Charges Committee will provide a written report of their findings to the Campus Provost. In the case of a finding of probable cause, the Campus Provost may refer the complaint to the Privilege and Tenure Committee.

113-4. Charges Committee

On behalf of the Campus Provost, the Charges Committee conducts probable cause complaints brought against Academic Senate members charged with unacceptable conduct in violation of the Faculty Code of Conduct in order to determine whether there is sufficient evidence to warrant the initiation of a disciplinary action by the administration.

The Charges Committee is composed of three Academic Senate members. No two members may have faculty appointments in the same School. The members of this committee shall be selected by the Academic Senate Committee on Committees, subject to approval by the Campus Provost. Any member of the Charges Committee who has the same School affiliation as the respondent and/or the complainant will normally be expected to excuse himself or herself from a complaint. The Campus Provost may need to appoint additional faculty members and/or senate members from another division to assist the review of the complaint.

Appointments to the Charges Committee normally shall be staggered for one to three year periods, to assure continuity from year to year, with the expectation that a term of service will be for more than one year. While the Charges Committee will normally convene during the academic year as needed, it may be necessary for the Campus Provost to call upon the Committee to serve during the summer period depending on the nature of the complaints. Staff will be assigned to assist the Charges Committee.

The Charges Committee will advise the Campus Provost:

a. Whether any of the allegations in the formal complaint, if true, would constitute a violation of the Faculty Code of Conduct;

b. If so, whether there is a probable cause to warrant the initiation of disciplinary action by the administration (i.e., the probable cause standard means that the facts as alleged in the complaint, if true, justify the imposition of discipline. (see APM 015, Part III.A.4); and

c. If there has been a finding of probable cause, what specific disciplinary sanction(s) the Committee recommends.

If the Charges Committee determines that a complaint does not warrant investigation, it shall report this conclusion in writing, generally within thirty (30) days of receipt of the complaint, to the Campus Provost.

The Charges Committee may discuss procedural and interpretive questions with the Campus Provost at any stage of the investigation and may seek legal interpretation. In addition, the Charges Committee has the Campus Provost's authority to seek further information (normally in writing, but also in person as deemed appropriate) from individuals who may have relevant information. All confidential documents shall remain confidential within the Committee.

The Charges Committee should advise individuals who have been consulted that the University will do all in its power to assure that information will be kept confidential to the extent allowable by law and University policy. Additionally, all parties involved will be instructed on the strict confidentiality of the review.

Following its investigation of the formal complaint, the Committee shall write a final report to the Campus Provost. The report shall include the Committee's assessment of the evidence, a recommendation to dismiss the complaint or to initiate disciplinary action, and a recommendation of the type of disciplinary sanction proposed, if any. It is expected that the Charges Committee will conclude its work within 90 calendar days from receipt of the complaint, unless an extension is granted by the Campus Provost.

For other violations of University policies governing the professional conduct of faculty (e.g., policies applying to sexual harassment, whistleblower protections, and research integrity), the Campus Provost may determine that the fact-finding portion of the probable cause investigation should be assigned to the appropriate office/officer to best utilize existing subject-area expertise and to avoid duplication of fact-finding procedures.

113-5. Informal Resolution

As an alternative to formal disciplinary procedures, the respondent and the administration may explore informal resolutions at any point in the disciplinary process. Upon written agreement by both the Campus Provost and the respondent, the Campus Provost may agree to waive proposed disciplinary sanction(s) on the condition that the respondent performs some specified action(s) designed to address the violation and/or to prevent future harm or continued violation. Such actions may include, but are not limited to, monetary restitution, repayment of misappropriated resources, compliance with a commitment not to repeat the misconduct, or other act to remedy the harm caused by the respondent.

Respondents who are interested in pursuing an informal resolution may negotiate directly with the administration or may request the involvement of the Chair of Privilege and Tenure. Respondents should contact the Campus Provost and the Chair of Privilege and Tenure to discuss this option further or to propose an informal resolution.

If an informal resolution is reached with the administration at any point in the disciplinary process (with or without the involvement of the Chair of Privilege and Tenure), the Chancellor shall report to the entire Committee on Privilege and Tenure for informational purposes, and without using the respondent's name, a statement of the charges, and the negotiated resolution.

113-6. Disciplinary Sanctions

No disciplinary action may commence if more than three years have passed between the time when the Chancellor or Chancellor's designee knew or should

have known about the alleged violation of the Code and the delivery of the notice of proposed disciplinary action.

In any disciplinary proceeding, the Chancellor may not impose a type of discipline more severe than that which was set forth in the Campus Provost's written, proposed notice of intent to discipline. However, more than one disciplinary sanction may be imposed for a single act of misconduct (e.g., a letter of censure and a suspension).

Upon receipt of the Charges Committee's report, the Campus Provost will determine whether to dismiss the complaint or to suggest a specific disciplinary sanction or set of sanctions against the respondent. If the Campus Provost determines that there is probable cause for undertaking disciplinary action against a member of the Academic Senate, the findings of the Charges Committee shall be transmitted to the Chair of the Committee on Privilege and Tenure, together with a written, notice of intent to discipline statement by the Campus Provost. This notice sets out the reasons for undertaking the proposed action.

The following disciplinary sanctions are authorized in the University Policy on Faculty Conduct and the Administration of Discipline, and are listed in order of increasing severity: written censure, reduction in salary, demotion, suspension, denial or curtailment of emeritus status, and dismissal from the employ of the University. See APM 016, Section II for the complete description of each of these sanctions.

113-7. Involuntary Leave

The Campus Provost may initiate involuntary leave with pay prior to the initiation of disciplinary action if it is found that there is a strong risk that the respondent's continued assignment to regular duties or presence on campus will cause immediate and serious harm to the campus community or impede the investigation of his or her wrongdoing, or in situations where the respondent's conduct represents a serious crime or felony that is the subject of investigation by a law enforcement agency.

Such action does not represent the imposition of a disciplinary sanction; however, the respondent's return to University premises without written permission from the Campus Provost may create independent grounds for disciplinary action.

The Campus Provost must confirm such investigatory leave in writing, including the reasons for and the expected duration of the leave, to the respondent and initiate disciplinary procedures by bringing charges against the respondent within ten working days after the imposition of involuntary leave.

113-8. Informing the Respondent of the Intent to Discipline

If the Campus Provost decides to initiate disciplinary action, a letter of intent to discipline, along with a copy of the report of the Charges Committee, shall normally be presented to the respondent in person or, if this is not feasible, the letter and

report shall be sent to the respondent's campus address and last known home address using a proof of service form, with copies of the letter and report provided to the Chair of Privilege and Tenure at the same time.

At this stage, the name of the respondent, the nature of the charges, and the proposed discipline shall be confidential information, limited to the Chair of Privilege and Tenure, and not known to the other members of the Committee.

The letter of intent to discipline shall include a statement of the charges and the proposed disciplinary sanction. It shall also inform the respondent that he or she has 21 calendar days to respond to the letter in writing, either by informing the Campus Provost that he or she accepts the proposed sanction, or by informing the Chair of Privilege and Tenure that he or she waives the Senatorial right to a hearing. Absent any such written response, a formal hearing shall be conducted before the Committee on Privilege and Tenure as specified by Academic Senate Bylaw 336.

113-9. Respondent's Right to a Hearing before Disciplinary Action is Imposed

At the time the letter is personally delivered to the respondent, or within three working days if the letter is mailed, the Chair of the Privilege and Tenure Committee shall make known to the respondent the Senatorial right to a hearing pursuant to Academic Senate Bylaw 336 before disciplinary sanctions can be imposed. The chair shall also provide general information about the nature of Privilege and Tenure hearings. In addition, the chair shall provide general information about the options available to the respondent, including accepting the proposed discipline, negotiating an informal resolution directly with the administration, or negotiating an informal resolution with the involvement of the Chair.

Unless the respondent waives the right to a hearing by notifying the Chair of Privilege and Tenure in writing within 21 calendar days of receipt of the Campus Provost's letter of intent to discipline, a formal hearing shall be conducted before the Committee on Privilege and Tenure according to the procedures and timelines specified by Academic Senate Bylaw 336. A Senate member who is entitled to a hearing should not be permitted to delay the imposition of discipline by refusing to cooperate or being unavailable for a scheduled hearing. A Hearing shall not be postponed because the respondent is on leave or fails to appear.

The Committee on Privilege and Tenure (or properly constituted hearing panel sub-committee) will hear the case and will report the findings and recommendations to the Chancellor and Campus Provost. The University must prove its case against the respondent using as a standard of proof the basis of clear and convincing evidence. The clear and convincing evidence standard is a heavier burden than the probable cause standard used by the Committee on Charges during its investigation. See APM 015 and Academic Senate Bylaw 336 for more information on the conduct of disciplinary hearings before the Committee on Privilege and Tenure.

If the respondent waives the right to a hearing, then his or her name shall not be made known to the members of the Committee on Privilege and Tenure. Absent such a waiver, the respondent's name shall necessarily be made known to the Committee members.

114. POST-HEARING PROCEDURES

The Chancellor shall have final authority to determine which type(s) of disciplinary sanction to impose, if any, following review of the Committee on Privilege and Tenure's hearing report (which shall consist of findings, conclusions and recommendations). Normally, the Chancellor shall make her/his final decision within 30 days of receipt of the hearing report.

In cases where the Chancellor's tentative decision regarding the imposition of discipline on a Senate member disagrees with the recommendation of the hearing panel, the Chancellor shall inform the Chair in writing that he or she may disagree, and ask if the Chair and/or the whole hearing panel would like to meet with the Chancellor prior to a final decision.

115. COMPLAINT FILE

Upon final resolution of the formal complaint, the complaint file will be maintained in the Academic Personnel Office. The complaint file shall include the following: the original formal complaint and all accompanying documentation; the letter from the Campus Provost forwarding the complaint to the Charges Committee for its probable cause investigation; the Charges Committee's final report; the Campus Provost's written notice of intent to initiate disciplinary action, if any; a copy of the Committee on Privilege and Tenure's hearing report, if any; and a copy of the Chancellor's letter communicating his or her final decision.

In the event that the allegations against the respondent are not sustained, all materials related to the claim shall be destroyed after a period of three years. Other material shall be returned to the individual who provided it or be destroyed at the expiration of three years following the termination of the matter or the transmittal to the Committee on Privilege and Tenure.

116. GRIEVANCES IN REGARD TO THE DISCIPLINARY PROCESS

Any grievances resulting from the disciplinary process are filed with the Committee on Privilege and Tenure.

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