

## Faculty Disciplinary Procedures for the Berkeley Campus

1. **General.** These Procedures are adopted by the Chancellor in consultation with the Berkeley Division of the Academic Senate pursuant to authority granted by the Academic Personnel Manual (APM) Section 016. These Procedures incorporate the provisions of [APM Section 015](#) (the Faculty Code of Conduct), [APM Section 016](#), and [Academic Senate Bylaws 334–337](#).
2. **Applicability.**
  - (a) Along with APM-015 and APM-016, the following procedures shall govern the discipline of members of the faculty for alleged violations *other than those associated with allegation of violation of the [University of California Sexual Violence and Sexual Harassment \(“SVSH”\) Policy](#)*, as incorporated in APM-015. Except as herein otherwise provided, no discipline of any type shall be imposed on a member of the faculty except in accordance with these procedures.
  - (b) The procedures for disciplinary actions based on allegation of violation of the SVSH Policy may be found [here](#). Where allegations against a faculty member involve violations of both the SVSH policy and other non-SVSH-related provisions of the Faculty Code of Conduct, efforts should be made to coordinate actions under the applicable policies to the extent possible.
  - (c) Permissible disciplinary sanctions are set forth in the University Policy on Faculty Conduct and the Administration of Discipline (APM-016, Section II).
  - (d) Communications to faculty members by department chairs or comparable officers of administration, not authorized to impose disciplinary sanctions, shall not be subject to these procedures.
  - (e) These procedures are also inapplicable to communications by administrators at a level higher than department chairs that are not disciplinary sanctions; a faculty member who receives a communication from such an administrator that has not gone through these procedures shall not be regarded, for any purpose, as having been disciplined by such communication.
  - (f) Actions that do not constitute discipline—e.g., those described in subparagraphs

(d) and (e) above and failure to reappoint at the expiration of a term appointment—and that are therefore not subject to these procedures may nevertheless provide the occasion for a claim of violation of privilege and tenure under Senate Bylaw 337.

- (g) Allegations of faculty misconduct shall be lodged with the Vice Provost for the Faculty (VPF), and may be made by any member of the University community, including but not limited to faculty, staff, students, and administrators.

### 3. *Panel of Counselors*

- (a) The Berkeley Division shall maintain a Panel of Counselors, consisting of a chair and four to seven members of the faculty appointed by the Committee on Committees. The chair shall, if feasible, be a former member of the Committee on Privilege and Tenure (P&T).
- (b) Members of the Panel of Counselors shall serve as mediators in disciplinary cases as set forth in paragraph 10 below.
- (c) Members of the Panel of Counselors may also be requested by P&T to make preliminary investigations and reports, and to act as hearing officers in non-disciplinary cases under the provisions of Senate Bylaw 335.
- (d) Members of the Panel of Counselors may also be requested by P&T to assist a complainant in a grievance case or a defendant in a disciplinary case, when the Committee determines that there is an urgent need for such experienced assistance. A member who has served as a mediator or hearing officer in a case is disqualified from assisting a complainant or defendant in the same case. A member who has provided assistance to a complainant or defendant is disqualified from serving in other capacities in the same case.

**4. *Designation of an Investigative Officer.*** If the VPF determines that allegations of misconduct are sufficiently substantial to warrant further disciplinary proceedings, the VPF shall designate an Academic Senate faculty member (or a committee of up to four faculty members) as an Investigative Officer (or Investigative Committee) to investigate allegations, wherever originating, of faculty misconduct. The Investigative Officer/Committee shall determine whether the facts alleged, if true, would justify the imposition of discipline for a violation of the Faculty Code of Conduct. In a case where the facts alleged would justify discipline, the Investigative Officer/Committee shall investigate the allegations and determine whether sufficient credible evidence can be produced to support a finding of misconduct. A positive finding on both of these two elements justifies a determination that there is *probable cause* to believe that misconduct has occurred.

- (a) In cases involving allegations of research misconduct, the faculty Investigative Committee appointed by the Vice Chancellor for Research, pursuant to UC Berkeley policies (“[Research Misconduct: Policies, Definitions, and Procedures](#)” (6/3/2013) and Federal regulations, may substitute for the VPF-designated Investigative Officer/Committee.
- (b) In cases involving allegations of SVSH, the disciplinary procedures for SVSH apply instead, as stated in paragraph 1 above.

5. ***The Investigation.*** The investigation shall normally include examination of pertinent documents and interviews with those making allegations of misconduct and with the individual against whom the allegations are made. Where another campus investigative office has previously conducted an investigation of the allegations and issued findings, the Investigative Officer/Committee shall have discretion to rely on that prior investigation in making a determination of probable cause. Investigators shall create and maintain a record of their interviews either through recordings or written notes. The Investigative Officer/Committee shall report its findings in writing within 90 days from the date of appointment, unless the VPF determines that circumstances warrant a longer period. All individuals affected by the investigation shall be accorded confidential treatment with respect to the investigation to the maximum extent possible in an investigation, and consistent with University policy and applicable law.
6. ***Opportunity to reply to preliminary findings of Investigative Officer/Committee.*** Prior to reporting a final determination of probable cause of faculty misconduct to the VPF, the Investigative Officer/Committee shall notify the accused faculty member in writing of his/her/its intention to do so and the reasons therefore, and invite the faculty member to reply to the determination. Said notification will be delivered to the residence of the accused by registered mail. The faculty member may reply, either in writing or in a personal conference, or both. Such reply shall be within 14 days of the receipt of the notice. If there is a personal conference, the faculty member and the Investigative Officer/Committee shall each be entitled to bring a representative of their choice to the conference.
7. ***Report of the Investigative Officer/Committee.*** After the accused faculty member has had an opportunity to reply, the Investigative Officer/Committee shall submit his/her/its report to the VPF. If there is a probable cause finding of faculty misconduct, the Investigative Officer/Committee may make recommendations as to an appropriate disciplinary sanction. If the accused faculty member has provided a written reply to the preliminary findings, it shall become part of the formal record and shall be appended to the Investigative Officer’s/Committee’s report.

- 8. Notification of intent to file formal charges.** Within 14 days of the receipt of an investigative report which determines that there is probable cause to believe that misconduct has occurred, the VPF shall decide whether or not he or she intends to lodge a formal complaint against the accused faculty member with the Divisional Committee on Privilege and Tenure (P&T), and shall notify the accused faculty member of that decision.
- 9. Proposed Settlement.** Before filing formal charges with P&T, the VPF may offer a settlement involving a proposed sanction. If the settlement is accepted by the accused faculty member, a hearing before P&T shall not be necessary.
- 10. Mediation.** Following receipt of a notification of intent to file formal charges, either the accused faculty member or the administration may request the chair of the Panel of Counselors to appoint a counselor from among the Panel to aid in exploring the facts and the issues and resolving differences between the parties through informal mediation. If the chair determines that the other party concurs in the request, he or she shall make such an appointment.
- (a) In order to promote a free exchange of views, all aspects of the counselor's mediation shall be treated as strictly confidential to the maximum extent permitted by law. Without limiting the foregoing:
  - (b) The counselor shall not disclose to either party any statements made to him or her by the other party without that other party's explicit consent; shall not make known any observations, conclusions, or recommendations he or she may have concerning the case to any person except the parties; and shall not discuss any aspect of the case with the Chair or any member of the P&T Committee or testify before said Committee; and
  - (c) The parties and their representatives shall not directly or indirectly make known to any other person any observations, conclusions, or recommendations submitted to any of them by the counselor.
  - (d) Upon mutual agreement, the administration and accused faculty member may participate in alternative mediation procedures.
- 11. Subsequent Proceedings.** If discipline is to be imposed upon the accused faculty member pursuant to the settlement, as provided in paragraph 9, or if there is no settlement, but the faculty member has informed the VPF that he or she does not intend to contest the proposed discipline, the VPF may thereupon impose such discipline. If the matter is not thus resolved, the VPF shall then file a complaint with P&T, and designate an officer to represent the administration in the proceedings. Commencing with the filing of a complaint with P&T, proceedings in disciplinary

matters shall be governed by the rules set forth in Senate Bylaw 336, with the following supplemental procedures.

- (a) references in Senate Bylaw 336 to the Chancellor's designee shall be interpreted as referring to the VPF.
- (b) in every case where Senate Bylaw 336 calls for the VPF or the accused faculty member to deliver or submit a document to P&T, such reference shall be interpreted as calling for that document to be delivered or submitted to the opposing party as well.
- (c) in exercising its discretion to set time frames for the case pursuant to Senate Bylaw 336(B)(3), P&T shall use best efforts, consistent with the other goals of that provision, to schedule a hearing within 60 days after the receipt of an answer from the accused faculty member to the complaint filed with P&T or, if no answer is received, after the deadline for receipt of an answer. If no answer is filed within the 21-day time period for a response specified in Senate Bylaw 336(B)(3), or if at any later time the accused faculty member ceases to participate in the proceedings, P&T may take such steps as it deems reasonable in the circumstances to determine whether the failure to file an answer or other failure to participate was intentional or inadvertent. If P&T determines to its satisfaction that such failure was intentional, then it may report to the VPF its determination pursuant to APM-015 (Part III, A, Paragraph 4), that the failure is, in substance, an explicit waiver of the right to a hearing, in which case the VPF may proceed to impose the discipline proposed in the complaint. In cases where P&T is unable to establish to its satisfaction that the failure to file an answer is in substance a deliberate waiver of the right to a hearing, the P&T Committee shall proceed to a hearing in the normal course.
- (d) The accused faculty member may submit to the Chancellor, within fourteen days after receipt of the P&T findings, conclusions and recommendations pursuant to Senate Bylaw 336(D)(10), a written statement as to why the P&T Committee's findings, conclusions and/or recommendations should not be adopted. After such a request has been considered, or if there is no such request, after the expiration of such 14-day period, the Chancellor may reach a final determination and impose discipline.
- (e) In cases where the Chancellor disagrees with the findings and/or recommendations of the P&T Committee, before imposing discipline the Chancellor shall, in accord with APM-016 (Section I, page 2, Paragraph 4), inform the Committee Chair in writing of the disagreement and offer to meet with the Chair, or whole committee, prior to reaching a final decision. The Chancellor may request that the Committee reconsider the case, taking into account particular

reasons or objections to the Committee's determination.

- (f) In any reconsideration pursuant to Senate Bylaw 336(D)(12), the P&T Committee may entertain argument by the parties, either orally or in writing, on any issues not fully presented at the first hearing. The Committee shall submit its findings and conclusions on reconsideration, which will be distributed in the same manner as the original findings and conclusions. The Chancellor shall then make a final decision, taking into account the Committee's action on reconsideration. The Chancellor may conditionally waive or limit the imposition of disciplinary sanctions as set forth in APM-016, Section II, p. 5, Paragraphs 1 and 2.

12. ***Interim Measures.*** Notwithstanding the foregoing, the Chancellor can initiate involuntary leave with pay prior to the initiation of a disciplinary action if it is found that there is a strong risk that the accused faculty member's continued assignment to regular duties or presence on campus will cause immediate and serious harm to the University community or impede the investigation of his or her wrongdoing, or in situations where the faculty member's conduct represents a serious crime or felony that is the subject of investigation by a law enforcement agency. The procedures with respect to initiating such action are set forth in APM-016, Section II.6, Paragraph 4.