

# 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 Section 016 of the Academic Personnel Manual (APM). These Procedures incorporate the provisions of, and should be read in conjunction with, APM-016, APM-015 (the Faculty Code of Conduct), and Academic Senate Bylaw 336. These Procedures are intended to guide the implementation of faculty disciplinary cases on the Berkeley campus.

Herein, “faculty” refers to members of the Berkeley Division of the Academic Senate.

## 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 of the Faculty Code of Conduct *other than those associated with allegation of violation of the University of California Sexual Violence and Sexual Harassment (“SVSH”)*.
- (b) The procedures for disciplinary actions based on allegation of violation of the SVSH Policy may be found [on this University of California website](#). 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) Except as herein otherwise provided, no disciplinary sanctions shall be imposed on a member of the faculty except in accordance with these procedures.

## 3. Allegations

- (a) Allegations of faculty misconduct may be made by any member of the University community, including but not limited to faculty, staff, students, and administrators.
- (b) Allegations of SVSH misconduct shall be lodged with the Office for the Prevention of Harassment and Discrimination (OPHD).
- (c) Allegations of research misconduct, including conflicts of interest and conflicts of commitment, shall be reviewed and investigated by the Vice Chancellor for Research.
- (d) All other allegations of violations of the Faculty Code of Conduct shall be lodged with the Vice Provost for the Faculty (VPF).

## 4. Investigation

- (a) Allegations that would, if true, violate a university policy are investigated by the appropriate office responsible for that policy.

- (b) The investigation shall normally include examination of pertinent documents and interviews with those making allegations of misconduct, any witnesses, and the responding individual against whom the allegations are made.
- (c) Investigators shall create and maintain a record of their interviews through written notes or any other agreed upon means.
- (d) The outcome of an investigation results in a determination as to whether or not there is probable cause to support a finding of a policy violation.
- (e) OPHD is responsible for investigations of allegations that, if true, would violate the UC SVSH Policy (see 2b). OPHD investigations conform to the UC Policy on SVSH and the procedures here. An OPHD finding of SVSH policy violation will constitute probable cause for moving forward with the disciplinary process in accordance with the Faculty Code of Conduct, and is conveyed to the VPF. The VPF then consults the Peer Review Committee, according to the SVSH investigation and adjudication framework.
- (f) The VCR is responsible for appointing one or more faculty members to investigate allegations that, if true, would constitute research misconduct (see “Research Misconduct: Policies, Definitions, and Procedures”). A VCR investigation which makes a determination that research misconduct has been committed will constitute probable cause for moving forward with the disciplinary process in accordance with the Faculty Code of Conduct, and is conveyed to the VPF. The VPF then consults the Academic Senate’s Committee on Charges (COC).
- (g) For all other allegations that, if true, would violate the Faculty Code of Conduct, the VPF is responsible for requesting that COC assign one or more of its members to conduct a fact-finding investigation. Faculty investigator(s) shall report their findings in writing within 90 calendar days from the date the COC receives the request, unless the investigators, in consultation with the VPF, determine that an extension(s) is warranted.
- (h) All individuals participating in an OPHD, VCR, or COC 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.

**5. Opportunity to reply to preliminary findings of investigation**

- (a) Prior to submitting the final investigation report to the VPF, the investigator(s) shall notify the accused faculty member (“respondent”) in writing of their intention to do so, and invite the respondent to reply to the preliminary report.
- (b) Said notification will be deemed to have been received when it has been sent to the respondent’s official University email account.
- (c) The faculty respondent may reply, either in writing or verbally during a personal conference, or both, at their discretion. Such reply shall be submitted in writing or conveyed verbally within 14 days of the receipt of the notice. If there is a personal conference, the faculty respondent and the faculty investigator(s) shall each be entitled to bring a representative of their choice to the conference. The faculty investigator is usually represented by the campus counsel’s office or by another attorney for The Regents.
- (d) After the faculty respondent has had an opportunity to reply, the faculty investigator(s) shall consider that information and submit their report to the VPF.

- (e) If the accused faculty respondent has provided a written reply to the preliminary findings, that reply shall be appended to the faculty investigator(s)' report.

## **6. Sanctioning recommendation**

- (a) If the investigative report includes a finding of faculty misconduct, the faculty investigator(s) shall make recommendations regarding appropriate disciplinary sanctions.

## **7. Probable cause and the initiation of the faculty discipline process**

- (a) In order to initiate the faculty discipline process, governed by APM-016 and Senate Bylaw 336, the VPF must have probable cause. Probable cause is established when an investigation by OPHD (4e), the VCR (4f), or COC (4g) has found credible evidence to support a finding that the Faculty Code of Conduct, or other university policy, has been violated.

## **8. Notification of intent to file formal charges**

- (a) Within 14 days of the receipt of an investigative report finding probable cause to believe that misconduct has occurred, the VPF shall decide whether to lodge a formal complaint against the faculty respondent with the Divisional Committee on Privilege and Tenure (P&T), and shall notify the respondent in writing of that decision.

## **9. Early Resolution (Negotiated Settlement)**

- (a) Before filing formal charges with P&T, the VPF may offer to negotiate a settlement involving a proposed sanction. If the settlement is accepted by the faculty respondent, the matter is concluded, and no hearing before P&T will take place.
- (b) A settlement may be reached at any point during the P&T process (addressed in section 10), in which case the P&T process is halted. However, once the P&T process has concluded, early resolution is no longer possible.
- (c) If the matter has not resolved via a negotiated settlement agreement, the VPF shall then initiate Privilege & Tenure proceedings.

## **10. Privilege & Tenure Proceedings**

- (a) The Privilege & Tenure process for faculty discipline matters is governed by APM-016 and the rules set forth in Senate Bylaw 336.
- (b) References in Senate Bylaw 336 to the Chancellor's designee shall be interpreted as referring to the VPF. Where Senate Bylaw 336 uses the term "the accused" or "the accused faculty member," the term "the respondent" is used herein.
- (c) The P&T Hearing Committee report shall be forwarded to the parties in the case, Chair of the Divisional Committee on Privilege and Tenure, the Chair of the University Committee on Privilege and Tenure, the Chancellor, and other key administrators with a need to know the information (typically including the faculty member's department chair and dean).
- (d) The faculty respondent may submit to the Chancellor, within fourteen calendar days after receipt of the P&T Hearing Committee report, a written response to that report. This response may include a statement as to why the findings, conclusions and/or recommendations should not be adopted. After such a response has been considered, or if there is no such response, after the

expiration of such 14-day period, the Chancellor shall reach a final determination and impose discipline (if any). Authority for the denial or curtailment of emeritus status of a faculty member rests with the President, on recommendation of the Chancellor. Authority for dismissal of a faculty member who has tenure or security of employment rests with The Regents, on recommendation of the President, following consultation with the Chancellor.

- (e) P&T cannot recommend, and the Chancellor cannot impose, discipline more severe than what was originally proposed by the VPF.
- (f) In cases where the Chancellor disagrees with the findings and/or recommendations of the P&T Hearing Committee, before imposing discipline the Chancellor shall, in accord with APM-016 (Section I, page 2, Paragraph 4), inform the Hearing Committee Chair in writing of the disagreement and offer to meet with the Hearing Committee Chair, or whole Hearing Committee, prior to reaching a final decision.
- (g) 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.

## **11. Request for reconsideration**

- (a) The P&T Hearing Committee may elect to reconsider a case if either party presents, within a reasonable time after the decision, newly discovered facts or circumstances that might significantly affect the previous decision and that were not reasonably discoverable at the time of the hearing (Senate Bylaw 336(F)(12)).
- (b) In any reconsideration pursuant to Senate Bylaw 336(F)(12), the P&T Hearing Committee may entertain argument by the parties, either orally or in writing, on any issues not fully presented at the original 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 regarding discipline, taking into account the Committee's action on reconsideration.

## **12. Involuntary leave**

- (a) As stated in APM-016, Section II.6, 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.
- (b) In rare and egregious cases, a Chancellor may be authorized by special action of The Regents to suspend the pay of a faculty member on involuntary leave pending a disciplinary action.