



OFFICE OF THE VICE PROVOST --
ACADEMIC PERSONNEL AND PROGRAMS

OFFICE OF THE PRESIDENT
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Oakland, California 94607-5200

September 21, 2016

CHANCELLORS
LABORATORY DIRECTOR WITHERELL
ACADEMIC COUNCIL CHAIR CHALFANT
ANR VICE PRESIDENT HUMISTON

**Re: Systemwide Review of Proposed Revised Academic Personnel Manual (APM)
Section 015, The Faculty Code of Conduct and
Section 016, University Policy on Faculty Conduct and The Administration of Discipline**

Dear Colleagues:

Enclosed for Systemwide Review are proposed revisions to Academic Personnel Manual (APM) Sections 015, The Faculty Code of Conduct, and 016, University Policy on Faculty Conduct and The Administration of Discipline. The proposed changes represent revisions to policy recommended by the Joint Committee of the Administration and Academic Senate, a committee convened by President Napolitano in October 2015 “to examine how the University of California manages disciplinary proceedings for faculty respondents in cases alleging sexual violence, sexual assault or sexual harassment (SVSH).”¹ The Committee provided recommendations to President Napolitano both in its initial Report (April 4, 2016) and its Supplemental Report (July 31, 2016), and she accepted all of the Committee’s recommendations, including proposed changes to the APM. Thus, we are now undertaking the systemwide consultation process required before adopting any changes to APM policy. As described below, the Academic Senate is also undertaking review of related changes to Senate Bylaw 336. The substantive issues and proposed policy revisions draw from the Joint Committee Report and Supplemental Report.

Proposed changes to APM - 015, The Faculty Code of Conduct

To fulfill the President’s charge, the Joint Committee examined the systemwide Sexual Violence and Sexual Harassment Policy (SVSH) and the systemwide policies governing faculty conduct and the discipline process, among them, APM - 015, The Faculty Code of Conduct, APM - 016, University Policy on Faculty Conduct and the Administration of Discipline, and Senate Bylaw 336 (Privilege and Tenure: Divisional Committees – Disciplinary Cases). The Joint Committee found that, “...in general, the policies are reasonable and adequately describe the key steps involved in the investigation and discipline process... They allow discretion to deal with complexities of individual cases in which a faculty member is subject to possible discipline based on allegations involving any of the full spectrum of offenses that violate The Faculty Code of Conduct. The policies give the Administration the authority and responsibility to investigate any allegations of misconduct, including SVSH, and to impose discipline while providing that the accused faculty member has the right to a hearing prior to the imposition of a disciplinary sanction. The policies also specify the forms of sanction that may be imposed through the

¹ Report of the Joint Committee of the Administration and Academic Senate, April 2016, p. 1.

formal discipline process, leaving broad discretion to implement other administrative measures to remediate or mitigate a situation without implicating the faculty disciplinary process” (p. 14). Two sets of changes to APM - 015 were proposed to clarify types of unacceptable behavior and to clarify processes related to the alleged violation of policy.

Section II.A, C, and D, Types of Unacceptable Conduct. The Committee recommended that explicit language be added to APM - 015 to clarify that sexual violence and sexual harassment are violations of The Faculty Code of Conduct. Given the organization of APM - 015, this entails the addition of such language in three different places.

Section III.A and B, Enforcement and Sanctions. As stated in the April 4, 2016 Joint Committee Report, “...an often repeated critique of the Senate discipline process is that it includes a ‘statute of limitations’ that prevents discipline for any offense that occurred more than three years in the past” (p. 24) . The Committee went on to add that it found this critique “completely untrue” (p. 24). To address these misunderstandings, the Joint Committee has recommended draft language to clarify what the “three year rule” is and is not. As stated in the July 31, 2016 Joint Committee Supplemental Report, these recommendations “...Following consultation with the University Committee on Privilege and Tenure, Joint Committee Co-chair Hare and Joint Committee members Blumenthal, Dorr, Pantelia, and Simon crafted language to meet multiple goals so that the provision clarifies: 1) when the Chancellor is deemed to know about an SVSH allegation; 2) when the Chancellor must initiate any related disciplinary action; 3) how the related disciplinary action is communicated to the respondent; and 4) that there is no time limit for reporting an alleged violation” (p.20).

The proposed draft also includes a technical correction to update “informal resolution” to “early resolution,” language that is contained within Section III.B.

Proposed changes to APM - 016, University Policy on Faculty Conduct and The Administration of Discipline

The Joint Committee also proposed changes to APM - 016. In its April 4, 2016 Report, the Joint Committee reviews the timeline for involuntary paid leave: “APM - 016...gives campus Administrators explicit authority to place a Senate or non-Senate faculty member...on involuntary paid leave when the Administrator determines that the faculty member’s presence on campus may pose a risk to campus safety or interfere with an investigation or when the Administrator learns that the faculty member has been accused of a serious crime that is being investigated by law enforcement. In an attempt to balance the demands of campus safety, the integrity of investigatory processes, and the critical need of most faculty members to come onto their campus in order to pursue their work, APM - 016 [currently] requires that the Administration decide whether to bring formal charges and inform the respondent Senate faculty member of those charges, if any, within ten days” (p. 21). The Joint Committee found that “...this time limit has proven to be untenable, as a credible investigation cannot [usually] be completed in such a short time” (pp. 21-22).

Section II, Types of Disciplinary Actions. Proposed revisions to APM - 016 recommended by the Joint Committee would institute a new timeline that is practical, that can be applied consistently, and that is fair to the respondent. “ This new timeline would impose a 5-working day deadline after the imposition of involuntary leave for the Chancellor... to inform the faculty member of the reasons for the leave, the allegations being investigated, the anticipated date when charges will be brought, a statement concerning when the leave will end, and the faculty member’s right to grieve the involuntary leave to be handled by the Privilege and Tenure Committee on an expedited basis” (p. 22). An additional proposed revision places authority with the President instead of the Regents to suspend the pay of a faculty member on involuntary leave pending a disciplinary action. These changes are in Section II, types of Disciplinary Actions.

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Senate Bylaw 336 (Privilege and Tenure: Divisional Committees -- Disciplinary Cases)

While the Senate and systemwide academic administrators are reviewing proposed revisions to APM - 015 and APM - 016, the Academic Senate, under the leadership of Academic Council Chair Chalfant, will undertake a concurrent Senate review of proposed revisions to Senate Bylaw 336.

Systemwide Review

Systemwide Review is a public review distributed to the Chancellors, the Director, Lawrence Berkeley National Laboratory, the Chair of the Academic Council, and the Vice President of Agriculture and Natural Resources requesting that they inform the general University community, affected employees, and union membership about 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 draft policy, available online at <http://www.ucop.edu/academic-personnel-programs/academic-personnel-policy/policies-under-review/index.html>. Attached is a Model Communication which may be used to inform non-exclusively represented employees about these proposals. The Labor Relations Office at the Office of the President is responsible for informing the bargaining units representing union membership about policy proposals.

We would appreciate receiving your comments no later than **December 21, 2016**. Please submit your comments to ADV-VPCARLSON-SA@ucop.edu. If you would like to request complete copies of the April 4, 2016 Joint Committee Report or the July 31, 2016 Joint Committee Supplemental Report, or if you have other questions, please contact Janet Lockwood at Janet.Lockwood@ucop.edu or (510) 987-9499.

Sincerely,



Susan Carlson
Vice Provost
Academic Personnel and Programs

Enclosures: Proposed revised APM - 015 (redline and clean copy)
Proposed revised APM - 016 (redline and clean copy)
Model Communication

cc: President Napolitano
Provost and Executive Vice President for Academic Affairs Dorr
Executive Vice Chancellors and Provosts
Joint Committee of the Administration and the Academic Senate Members
Executive Vice President Nava
Senior Vice President Vacca
Vice President Duckett
Vice President Ellis
Vice Provost Gullatt
Chief of Staff Grossman
Vice Provosts/Vice Chancellor of Academic Personnel/Academic Affairs
Academic Personnel Directors
Deputy General Counsel Woodall

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Deputy/UCOP Compliance Officer Lane

Executive Director Baxter

Interim Executive Director Lee

Director Chester

Director Henderson

Director Lockwood

Manager Donnelly

Manager Smith

Academic HR Manager Jordan

Human Resources Policy Analyst Bello

This policy is the Faculty Code of Conduct as approved by the Assembly of the Academic Senate on June 15, 1971, and amended by the Assembly on May 30, 1974, and with amendments approved by the Assembly on March 9, 1983, May 6, 1986, May 7, 1992, October 31, 2001, May 28, 2003, and June 12, 2013, and by The Regents on July 18, 1986, May 15, 1987, June 19, 1992, November 15, 2001, July 17, 2003 and July 18, 2013. In addition, technical changes were made September 1, 1988 and June 11, 2010.

Additional policies regarding the scope and application of the Faculty Code of Conduct and the University's policies on faculty conduct and the administration of discipline are set forth in APM - 016, the University Policy on Faculty Conduct and the Administration of Discipline.

**The Faculty Code of Conduct as Approved
by the Assembly of the Academic Senate**

(Code of Professional Rights,
Responsibilities, and Conduct of University
Faculty,
and University Disciplinary Procedures)

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**Part II – Professional Responsibilities, Ethical Principles,
and Unacceptable Faculty Conduct**

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1. Teaching and Students

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Types of unacceptable conduct:

1. Failure to meet the responsibilities of instruction, including:
 - (a) arbitrary denial of access to instruction;
 - (b) significant intrusion of material unrelated to the course;
 - (c) significant failure to adhere, without legitimate reason, to the rules of the faculty in the conduct of courses, to meet class, to keep office hours, or to hold examinations as scheduled;

(d) evaluation of student work by criteria not directly reflective of course performance;

(e) undue and unexcused delay in evaluating student work.

2. Discrimination, including harassment, against a student on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), or service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons.

3. Sexual violence and sexual harassment, as defined by University policy, of a student.

~~3.4.~~ Violation of the University policy, including the pertinent guidelines, applying to nondiscrimination against students on the basis of disability.

~~4.5.~~ Use of the position or powers of a faculty member to coerce the judgment or conscience of a student or to cause harm to a student for arbitrary or personal reasons.

~~5.6.~~ Participating in or deliberately abetting disruption, interference, or
intimidation in the classroom.

~~6.7.~~ Entering into a romantic or sexual relationship with any student for whom a
faculty member has, or should reasonably expect to have in the future¹,
academic responsibility (instructional, evaluative, or supervisory).

~~7.8.~~ Exercising academic responsibility (instructional, evaluative, or supervisory)
for any student with whom a faculty member has a romantic or sexual
relationship.

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C. The University

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Types of unacceptable conduct:

1. Intentional disruption of functions or activities sponsored or authorized by
the University.

2. Incitement of others to disobey University rules when such incitement constitutes a clear and present danger that violence or abuse against persons or property will occur or that the University's central functions will be significantly impaired.
3. Unauthorized use of University resources or facilities on a significant scale for personal, commercial, political, or religious purposes.
4. Forcible detention, threats of physical harm to, or harassment of another member of the University community, that interferes with that person's performance of University activities.
5. Discrimination, including harassment, against University employees on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), or service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons.

~~5.6.~~ Sexual violence and sexual harassment, as defined by University policy, of another member of the University community.

~~6.7.~~ Violation of the University policy, including the pertinent guidelines, applying to nondiscrimination against employees on the basis of disability.

~~7.8.~~ Serious violation of University policies governing the professional conduct of faculty, including but not limited to policies applying to research, outside professional activities, conflicts of commitment, clinical practices, violence in the workplace, and whistleblower protections.

D. **Colleagues**

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Types of unacceptable conduct:

1. Making evaluations of the professional competence of faculty members by criteria not directly reflective of professional performance.

2. Discrimination, including harassment, against faculty on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), or service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons.

~~2.3.~~ Sexual violence and sexual harassment, as defined by University policy, of another member of the University community.

~~3.4.~~ Violation of the University policy, including the pertinent guidelines, applying to nondiscrimination against faculty on the basis of disability.

~~4.5.~~ Breach of established rules governing confidentiality in personnel procedures.

Part III – Enforcement and Sanctions

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- A. In the development of disciplinary procedures, each Division must adhere to the following principles:
1. No disciplinary sanction for professional misconduct shall be imposed by the administration except in accordance with specified campus procedures adopted after appropriate consultation with agencies of the Academic Senate, as prescribed in the introduction to this part of the Code. Systemwide procedures for the conduct of disciplinary hearings are set forth in Academic Senate Bylaw 336.
 2. No disciplinary sanction shall be imposed until after the faculty member has had an opportunity for a hearing before the Divisional Committee on Privilege and Tenure, subsequent to a filing of a charge by the appropriate administrative officer, as described in Academic Senate Bylaw 336.
 3. The Chancellor is deemed to know about an alleged violation of the Faculty Code of Conduct when it is reported to any academic administrator at the level of department chair or above or additionally, for an allegation of sexual violence

or sexual harassment, when the allegation is first reported to the campus Title IX Officer. The Chancellor must initiate related disciplinary action by delivering notice of proposed action to the respondent no later than three years after the Chancellor is deemed to~~No disciplinary action may commence if more than three years have passed between the time when the Chancellor knew or should have known about the alleged violation. of the Faculty Code of Conduct and the delivery of the notice of proposed disciplinary action.~~There is no limit on the time within which a complainant may report an alleged violation.

4. The Chancellor may not initiate notice of proposed disciplinary action unless there has been a finding of *probable cause*. The *probable cause* standard means that the facts as alleged in the complaint, if true, justify the imposition of discipline for a violation of the Faculty Code of Conduct and that the Chancellor is satisfied that the University can produce credible evidence to support the claim. In cases where the Chancellor wants a disciplinary action to proceed, the Divisional hearing committee must hold a hearing and make findings on the evidence presented unless the accused faculty member settles the matter with the Chancellor prior to the hearing or explicitly waives his or her right to a hearing.

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- B. In the development of disciplinary procedures, it is recommended that each Division adhere to the following principles:

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4. There should be provision for ~~early~~informal disposition of allegations of faculty misconduct before formal disciplinary proceedings are instituted. Procedures should be developed for mediation of cases where mediation is viewed as acceptable by the Chancellor and the faculty member accused of misconduct. Mediators should be trained in mediation, be regarded as neutral third parties and have experience in the University environment. In cases where a settlement resolving disciplinary charges is entered into after a matter has been referred to an Academic Senate committee, the Chancellor is encouraged to consult with the Chair of the Divisional Committee on Privilege and Tenure prior to finalizing the settlement.

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**University Policy on Faculty Conduct and
The Administration of Discipline**

The University policy on faculty conduct and the administration of discipline is set forth in its entirety in this policy and in The Faculty Code of Conduct.

Section I -- Introduction and General Policy

This policy, as recommended by the President of the University and approved by The Regents on June 14, 1974, and November 15, 2001, supersedes the President's interim statement on the same subject, issued on January 15, 1971. The present policy is to be read in conjunction with The Faculty Code of Conduct.

The Faculty Code of Conduct is set forth in APM - 015. Part I of the Faculty Code of Conduct notes the responsibility of the administration to preserve conditions that protect and encourage the faculty in its central pursuits. Part II defines normative conditions for faculty conduct and sets forth types of unacceptable faculty conduct subject to University discipline.

Part III makes recommendations and proposes guidelines to assure the development of fair procedures for enforcing the Code.

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Authority for discipline derives from The Regents. The Regents have made the Chancellor of each campus responsible for discipline on the campus (Standing Order 100.6(a)), subject to certain procedures and safeguards involving the President and the Academic Senate (Standing Orders 100.4(c) and 103.9 and 103.10).

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Section II -- Types of Disciplinary Sanctions

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Prior to the imposition of any disciplinary sanction(s) as described above, the Chancellor may waive or limit any or all disciplinary sanction(s) on the condition that the accused faculty member performs some specified action(s) designed to address the harm and/or to prevent future harm. Such actions may include, but are not limited to, monetary restitution, repayment of misappropriated resources, compliance with a commitment not to repeat the

GENERAL UNIVERSITY POLICY
REGARDING ACADEMIC APPOINTEES
University Policy on Faculty Conduct and the Administration of Discipline

APM - 016
DRAFT

misconduct, or other act to make whole injury caused by the faculty member's professional misconduct or to prevent future misconduct.

If the imposition of a disciplinary sanction is waived, the subsequent failure to perform the required act or otherwise comply with the conditions of the waiver will immediately subject the faculty member to the implementation of the underlying sanction without an additional hearing. The authority to determine whether the faculty member has complied with the conditions of the waiver rests with the Chancellor. The Chancellor may designate a fixed time period for compliance with the terms of the waiver, after which the authority to impose discipline will lapse. If a faculty member disputes the Chancellor's determination, the faculty member may grieve under applicable faculty grievance procedures.

A Chancellor is authorized to 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. When such action is necessary, it must be possible to impose the involuntary leave swiftly, without resorting to normal disciplinary procedures. ~~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.—This is in addition to the Chancellor's power to suspend the pay~~

GENERAL UNIVERSITY POLICY
REGARDING ACADEMIC APPOINTEES

APM - 016
DRAFT

University Policy on Faculty Conduct and the Administration of Discipline

~~of a faculty member who is absent without authorization and fails to perform his or her duties for an extended period of time, pending the resolution of the faculty member's employment status with the University.~~ However, within five~~10~~ working days after the imposition of

involuntary leave, the Chancellor must explain to the faculty member in writing the reasons for

the involuntary leave including the allegations being investigated and the anticipated date

when charges will be brought, if substantiated. Every such document must include the

following two statements: (1) the leave will end either when the allegations are resolved by

investigation or when disciplinary proceedings are concluded and a decision has been made

whether to impose disciplinary sanctions; and (2) the faculty member has the right to contest

the involuntary leave in a grievance proceeding that will be handled on an expedited basis.

Thereafter, the faculty member may grieve the decision to place him or her on involuntary

leave pursuant to applicable faculty grievance procedures. The Divisional Committee on

Privilege and Tenure shall handle such grievances on an expedited basis and may recommend

reinstatement of pay and back pay in cases where pay status was suspended.

In rare and egregious cases, a Chancellor may be authorized by special action of the President to suspend the pay of a faculty member on involuntary leave pending a disciplinary action.

This is in addition to the Chancellor's power to suspend the pay of a faculty member who is

absent without authorization and fails to perform his or her duties for an extended period of

time, pending the resolution of the faculty member's employment status with the University.

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PROPOSED REVISIONS TO SYSTEMWIDE SENATE BYLAW 336

GOVERNING PRIVILEGE AND TENURE HEARINGS

Bylaw 336 prescribes the procedures and timelines for Privilege and Tenure proceedings in discipline cases. Proposed revisions derive from reports by the Administration-Senate Joint Committee on the Investigation and Adjudication Processes for Sexual Harassment and Sexual Violence cases involving faculty. (*Note: The Regents recodified their Bylaws, Standing Orders, and Policies in July 2016. Accordingly, all references to Regental authority will need to be updated to reflect the new numbering.*)

336. Privilege and Tenure: Divisional Committees -- Disciplinary Cases (En 23 May 01)

A. Right to a Hearing

In cases of disciplinary action commenced by the administration against a member of the Academic Senate, or against other faculty members in cases where the right to a hearing before a Senate committee is given by Section 103.9 or 103.10 of the Standing Orders of The Regents (Appendix I), proceedings shall be conducted before a Divisional Privilege and Tenure Committee (hereafter, the Committee). Under extraordinary circumstances and for good cause shown, on petition of any of the parties and with concurrence of the other parties, the University Privilege and Tenure Committee may constitute a Special Committee composed of Senate members from any Division to carry out the proceedings.

B. Prehearing Procedure in Disciplinary Cases

1. In cases of disciplinary action commenced by the administration against a member of the Academic Senate, or termination of appointment of a member of the faculty in a case where the right to a hearing before a Senate committee is given under Section 103.9 or 103.10 of the Standing Orders of The Regents, proceedings shall be initiated by the appropriate Chancellor or Chancellor's designee, once probable cause has been established. Procedures regarding the establishment of probable cause are determined by APM 015/016 and Divisional policies. The charges shall be in writing and shall contain notice of proposed disciplinary action and a full statement of the facts underlying the charges. Upon receipt of the charges, the Chair of the Divisional Privilege and Tenure Committee shall promptly deliver a copy to the accused faculty member or send it by registered mail to the accused's last known place of residence.

Comment [1]: Proposed amendments will align the bylaw with APM 015, including incorporating new language proposed for that section of the APM.

2. The accused shall have twenty-one calendar days from the date of the receipt in which to file an answer in writing with the Committee. The Committee shall immediately provide a copy of the answer to the Chancellor or Chancellor's designee. Upon receipt of a written application, the chair of the Committee, may grant a reasonable extension of time for filing of an answer and shall immediately notify the Chancellor or Designee of the extension.

Comment [2]: To keep all parties informed of schedule changes.

3. The Privilege and Tenure committee shall consider the matter within 21 calendar days after receipt of an answer or, if no answer is received, after the deadline for receipt of an answer. The Committee shall evaluate the case and establish time frames for all subsequent procedures. The committee may refer the case to mediation (SBL 336.C) or appoint a hearing committee (SBL 336.D). As a general guide, a prehearing conference (SBL 336.D.2) shall be scheduled within 30 calendar days and a hearing (SBL 336.D) shall be scheduled within 90 calendar days of the appointment of a hearing committee. Ideally, a hearing should be scheduled within 90 days of the date on which the accused faculty member was notified of the intent to initiate a disciplinary proceeding. The accused shall be given, either personally or by registered mail, at least ten calendar days' notice of the time and place of the hearing. The Chancellor, Chancellor's designee, or Chair of the Privilege and Tenure Committee may for good reason grant an extension of any of these time limits. However, all parties are expected to give priority to scheduling of the hearing. A hearing shall not be postponed because the faculty member is on leave or fails to appear.

Comment [3]: P&T committees do not have the authority to refer a case to mediation. Mediation may occur only when the Chancellor and accused agree. APM 015 III.A.4 requires the P&T committee to hold a hearing if the case has not been settled and the accused has not waived the hearing right.

Comment [4]: This aspirational language is in APM 015 III.B.7.

Comment [5]: Consistent with existing language in APM 015 III.B.7 and with the aim to eliminate unnecessary delays.

4. The Chancellor is deemed to know about an alleged violation of the Faculty Code of Conduct when it is reported to any academic administrator at the level of department chair or above or additionally, for an allegation of sexual violence or sexual harassment, when the allegation is first reported to the campus Title IX Officer. The Chancellor must initiate related disciplinary action by delivering notice of proposed action to the respondent no later than three years after the Chancellor is deemed to have known about the alleged violation.

There is no limit on the time within which a complainant may report an alleged violation.

Comment [6]: Developed from Joint Committee recommendation to align bylaw and APM 015 descriptions of the start of the “three-year rule” period.

~~No disciplinary action may commence if more than three years have passed between the time when the Chancellor or Chancellor's designee, who is authorized to initiate proceedings in accordance with SBL 336.B.1 and divisional disciplinary procedures, knew or should have known about the alleged violation of the Code of Conduct, and the delivery of the notice of proposed disciplinary action. For purposes of this section, if an administrator or employee in a supervisory role (e.g., program director, department chair, dean) has actual knowledge about an alleged violation, then it will be conclusively presumed that the Chancellor or Chancellor's designee should have known about the alleged violation. (Am 9 March 05)~~

C. Early Resolution

1. (a). The Chancellor or Chancellor's designee and the accused may attempt to resolve the disciplinary charges ~~informally~~ through negotiations. If such negotiation takes place after charges have been filed, timelines for completing the hearing process may be extended to accommodate such negotiations only if the Chancellor's designee, the Chair of the Committee on Privilege and Tenure, and the accused faculty member agree.

Comment [7]: This addition is responsive to the Joint Committee recommendation that discipline not be put on hold pending settlement negotiations.

(b). Such negotiations may proceed with the assistance of impartial third parties, including one or more members of the Committee.

(c). A negotiated resolution is permissible and appropriate at any stage of these disciplinary procedures. If a negotiated resolution is reached after written charges are filed, then the Chancellor is encouraged to consult with the Chair of the Committee on Privilege and Tenure prior to finalizing the settlement and should inform the Privilege and Tenure Committee should be given notice that if the matter has been resolved

Comment [8]: These changes align with existing language in APM 015 III.B.4.

2. The disciplinary charges may also be resolved through mediation in cases where such mediation is acceptable to the administration and the accused. With the consent of the administration and the accused, the Committee may assist in the selection of an appropriate mediator. Other relevant parties, including members of the Committee, may participate in the mediation.

3. Once charges have been filed with the Committee, the Chair of the Divisional Privilege and Tenure Committee should request that the Chancellor or Chancellor's designee consult with the Committee or its chair prior to the completion of any early resolution.

D. Hearing and Post-hearing Procedures

1. The Privilege and Tenure Committee shall appoint a Hearing Committee for each disciplinary case that is not resolved through a negotiated resolution or mediation. The Hearing Committee should consist of at least three Division members. At least two of the members shall be members of the Committee on Privilege and Tenure, one of whom shall chair the Hearing Committee. The Committee may not appoint a member of the department or equivalent administrative unit of any of the parties to the Hearing Committee. Hearing Committee members shall disclose to the Hearing Committee any circumstances that may interfere with their objective consideration of the case and recuse themselves as appropriate. A quorum for the conduct of the hearing shall consist of at least half but not less than three members of the Hearing Committee, including at least one member of the Committee on Privilege and Tenure.
2. Prior to the formal hearing, the chair of the Hearing Committee shall schedule a conference with the accused, the Chancellor or the Chancellor's designee, and/or their representatives. This conference should attempt to:
 - Determine the facts about which there is no dispute. At the hearing, these facts may be established by stipulation.
 - Define the issues to be decided by the Hearing Committee.
 - Set a time consistent with timelines laid out in 336.B.3 for both sides to exchange a list of witnesses and copies of exhibits to be presented at the hearing. The Hearing Committee has the discretion to limit each party to those witnesses whose names were disclosed to the other party prior to the hearing and to otherwise limit evidence to that which is relevant to the issues before the Hearing Committee.
 - Specify whether prehearing and post-hearing briefs will be submitted by the parties as well as the deadlines for those briefs.
 - Attain agreement about whether any person other than the Chancellor, the Chancellor's designee, the accused, and their representatives may be present during all or part of the hearing. In order to preserve the confidentiality of the

hearing, persons whose presence is not essential to a determination of the facts shall, as a general rule, be excluded from the hearing.

3. The Chancellor's designee, the accused, and/or their representatives shall be entitled to be present at all sessions of the Hearing Committee when evidence is being received. Each party shall have the right to be represented by counsel, to present its case by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts.
4. The hearing need not be conducted according to the technical legal rules relating to evidence and witnesses. The Hearing Committee may, upon an appropriate showing of need by any party or on its own initiative, request files and documents under the control of the administration. All confidential information introduced into evidence shall remain so within the Hearing Committee. The Hearing Committee may call witnesses or make evidentiary requests on its own volition. The Hearing Committee also has the discretion to require that all witnesses affirm the veracity of their testimony and to permit witnesses to testify by videoconferencing.
5. Prior discipline involving imposed on the same accused faculty member after a hearing or negotiation may be admitted into evidence if the prior conduct for which the faculty member was disciplined is relevant to the acts alleged in the current disciplinary matter. Under these conditions, prior hearing reports and records of negotiated settlements are always admissible.
6. No evidence other than that presented at the hearing shall be considered by the Hearing Committee or have weight in the proceedings, except that the Hearing Committee may take notice of any judicially noticeable facts that are commonly known. Parties present at the hearing shall be informed of matters thus noticed, and each party shall be given a reasonable opportunity to object to the Hearing Committee's notice of such matters.
7. The Divisional Committee on Privilege and Tenure may, at its discretion, request the appointment of a qualified person or persons, designated by the Chair of the University Committee on Privilege and Tenure, to provide legal advice and/or to assist in the organization and conduct of the hearing.
8. At the hearing, the Chancellor or Chancellor's designee has the burden of proving the allegations by clear and convincing evidence.

9. The Hearing Committee shall not have power to recommend the imposition of a sanction more severe than that proposed in the notice of proposed disciplinary action. In determining the appropriate sanction to recommend, the Hearing Committee may choose to consider previous charges against the accused if those charges led to prior sanctions either after a disciplinary hearing or pursuant to a negotiated or mediated resolution.
10. At the conclusion of the hearing, the Hearing Committee shall promptly make its findings of fact, conclusions supported by a statement of reasons based on the evidence, and recommendation, and forward these to the parties in the case, the Chancellor, the Chair of the Divisional Committee on Privilege and Tenure, and the Chair of the University Committee on Privilege and Tenure. The findings, conclusions, recommendations, and record of the proceedings shall be confidential to the extent allowed by law and UC policy. The Hearing Committee may, however, with the consent of the accused, authorize release of the findings, conclusions, and recommendations to other individuals or entities, to the extent allowed by law.
11. The hearing shall be recorded. The Hearing Committee has the discretion to use a certified court reporter (whose cost is borne by the administration) for this purpose, and the parties and their representatives shall have the right to a copy of the recording or transcript. The cost of the copy shall be assumed by the requesting party.
12. The Hearing Committee may 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.

E. Relation to Prior Grievance Cases

A disciplinary Hearing Committee shall not be bound by the recommendation of another hearing body, including the findings of the Divisional Committee on Privilege and Tenure in a grievance case involving the same set of incidents. However, the Hearing Committee may accept into evidence the findings of another hearing body or investigative agency. The weight to be accorded evidence of this nature is at the discretion of the Hearing Committee and should take account of the nature of the other forum. In any case, the accused faculty member must be given full opportunity to challenge the findings of the other body.