



# **Davis Division Academic Senate**

## **Request for Consultation Responses**

### **Review of Revisions to APM-UCD 015 and APM-UCD 016**

**April 28, 2017**

APM-UCD 015 and APM-UCD 016 have been revised for consistency and compliance with current APM policies and practices. Minor revisions were made to reflect recent changes to campus sexual harassment/sexual violence policies.

Clean and redline versions of both are included.

# **CAP Oversight Committee**

**April 20, 2017 6:13 PM**

The Committee on Academic Personnel (CAP) has reviewed the proposed changes to APM 015-016, and considers them appropriate and reasonable in explicitly identifying sexual violence and sexual harassment as violations of the Faculty Code of Conduct. CAP does not anticipate any significant implications of these changes for the faculty merit and promotion process. CAP has one comment concerning APM 015, Section IIIA, Article 3, which states that “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 violation.” The imperative nature of this statement may create the impression that the opportunity for disciplinary action might expire if, for any reason, there was a failure to deliver notice within the stipulated three-year period. While the likelihood of such an occurrence may be considered small, CAP believes that not addressing this contingency may contribute to the perception of a “statute of limitations” in the handling of disciplinary actions.

# **Faculty Welfare**

**May 1, 2017 8:42 AM**

*Response continued on next page.*

April 28, 2017

**RFC: Review of Revisions to APM-UCD 015 and APM-UCD 016**

The committee on Faculty Welfare has reviewed the revisions to APM-UCD 015 and APM-UCD 016. The committee agrees with most of the changes, but would like to point out concerns involving confidentiality from the perspective of the accused. On page 5, there is an additional section stating that accused faculty members have an obligation of confidentiality that puts them on the same plane as investigators and Senate committee members. The committee disagrees with this level of confidentiality. If someone is accused and believes the process is treating them unfairly, they should not be bound by confidentiality about the process, but should be able to voice their concerns.

The committee does feel there is a legitimate need to put the accused under limits of confidentiality about information they learn about other people through the process. Possibly that is what this is intended to say. But it doesn't actually say that.

One solution would be to state that an accused person has an obligation of confidentiality about anything the person learned about other individuals in the process, but not an obligation to keep the process itself confidential. Else, we could have a scenario where the accused complains about treatment, the administration fails to prove their case, and then accuses the accused of violating confidentiality, starting a second disciplinary procedure.

# **P&T Hearings**

**April 28, 2017 4:53 PM**

*Response continued on next 3 pages.*

**Committee on Privilege and Tenure – Hearing Subcommittee**  
**Request for Consultation Response: Proposed Revisions to APM UCD 015 and 016**

The Privilege and Tenure (P&T) – Hearings Subcommittee has reviewed the proposed revisions of APM UCD 015 and 016 and would like to make the following comments:

APM 015 Part I.B.2 currently specifies that “If disciplinary proceedings under UCD-016 are warranted subsequent to a finding of research misconduct, such proceedings shall begin within 14 days after the Chancellor or Deciding Official (as defined in PPM 220-05) notifies the accused faculty member of the findings of the investigation.” However, the Subcommittee is concerned that this could disadvantage Academic Senate faculty members, who are on sabbatical or travel during that time. The policy should be modified so that the 14 days after it has been confirmed that the accused faculty member has received official notification.

Under APM 015 Part I.C, an administrator or employee in a supervisor role is described as a program director, department chair, or dean. The Subcommittee recommends that clarification is added as to if this includes graduate program directors and graduate program chairs.

APM 015 Part III.G dictates the expectations of confidentiality for disciplinary proceedings. Currently, Academic Senate Bylaw 336 (Privilege and Tenure: Divisional Committees -- Disciplinary Cases) specifies that, “The findings, conclusions, recommendations, and record of the proceedings [hearings] shall be confidential to the extent allowed by law and UC policy.” These specifications should be included in APM 015.Part III.G.

Lastly, in APM 016 Part II.4.c., the Subcommittee recommends that the timeline for when a Privilege and Tenure Hearing prehearing conference and hearing needs to be scheduled reflect the changes made being made to Academic Senate Bylaw 336. Specifically, language should be added stating that a prehearing conference should be scheduled “(though not necessarily held)” within 30 calendar days and a hearing should be scheduled “(though not necessarily held)” within 90 calendar days of the appointment of a hearing committee.

The Subcommittee appreciates the opportunity to review and provide feedback on these proposed revisions.

# **P&T Investigative**

**April 27, 2017 12:18 PM**

*Response continued on next page.*

**Committee on Privilege and Tenure – Investigative Subcommittee**  
**Request for Consultation Response: Proposed Revisions to APM UCD 015 and 016**

The Privilege and Tenure (P&T) – Investigative Subcommittee has reviewed the proposed revisions of APM UCD 015 and 016 and would like to make the following comments:

APM 015-Part I.B.2 currently specifies that “If disciplinary proceedings under UCD-016 are warranted subsequent to a finding of research misconduct, such proceedings shall begin within 14 days after the Chancellor or Deciding Official (as defined in PPM 220-05) notifies the accused faculty member of the findings of the investigation.” However, the Subcommittee is concerned that this could disadvantage Academic Senate faculty members, who are on sabbatical or travel during that time. The policy should be modified accordingly: “...shall begin within 14 days after the accused faculty member has received official notification.”

As stated in the Subcommittee’s comments on the proposed changes to the systemwide APM 015 and 016, rather than adding a separate point that outlines how matters involving sexual violence and sexual harassment will be handled, the P&T Investigative Subcommittee recommends that this information be added to another already written section of the APM.

The Subcommittee is concerned regarding the lack of specification of APM UCD 015-Part III. Specifically, there is no condition that faculty member are ever told that an informal inquiry is being launched against them. They should be informed immediately of this inquiry.

The Subcommittee also firmly believes that results from an informal inquiry cannot be formalized. That is an informal warning should not be put into writing. Similarly, if a faculty member does not have the opportunity to submit a rebuttal to the allegations and it is an informal inquiry, a warning should not be put in writing.

In APM UCD 015 Part III.E.5, it is unclear how the third-party mediator will be chosen. It should be detailed that it will be by mutual agreement of both parties.

Likewise, in APM UCD 015 Part III.E.6.b, it should be stated that the investigator’s recommendation as to whether there is sufficient evidence to indicate that there has been a violation must also be provided to the accused faculty member.

In APM UCD 015 Part III.F.1b.2, probable cause should be defined as the “University has produced credible evidence to support the claim” not that the University “can” produce credible evidence.

In APM UCD 015 Part III.F.2, it should be stated that there needs to be an APM 015 violation in order to proceed to an APM 016 investigation. The language in this section does not make this clear.

In regards to APM UCD 016, in Part III.3, the Subcommittee agrees that term “indefinitely” should be clearly defined. If a letter is kept indefinitely, it should only be during your employment with the university. What constitutes the designated personnel file must also be clarified. Is this filed in the merit/promotion file or the Confidential File?

The Subcommittee appreciates the opportunity to review and provide feedback on these proposed revisions.