

Office of the President

TO THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:

DISCUSSION ITEM

For Meeting of January 25, 2024

FACULTY DISCIPLINE AND DISMISSAL POLICIES AND PROCESS

EXECUTIVE SUMMARY

The Regents have requested a discussion item on Faculty Discipline and Dismissal policies and process. Described herein is an overview of the relevant policies, procedures, and bylaws related to faculty discipline and dismissal, such as Academic Personnel Manual (APM) - 015, APM - 016, APM - 075, APM - 150, Regents Bylaws, and Academic Senate Bylaws. APM - 015 and APM - 016 are incorporated into Regents Policy 7401: The Faculty Code of Conduct and the University Policy on Faculty Conduct and the Administration of Discipline.¹

BACKGROUND

Role of the Regents – Preliminary Overview

As established within Regents Bylaws and Academic Personnel Manual Section 016 (APM - 016), University Policy on Faculty Conduct and the Administration of Discipline, the Regents of the University of California play a critical role in serving as the final decision maker for dismissal of faculty with tenure or security of employment.²

Authority for discipline derives from The Regents. The Regents have made the Chancellor of each campus responsible for discipline on the campus,³ subject to certain procedures and safeguards involving the President and the Academic Senate.⁴

¹ Because of their incorporation into Regents Policy 7401, regental action is required to change these APM policies.

² Regents Bylaw 22, Section 22.2(b) <https://regents.universityofcalifornia.edu/governance/bylaws/bl22.html> and Bylaw 40(e): “Dismissal of an academic appointee who holds tenure or security of employment shall be only for good cause and shall be voted by the Board upon recommendation of the President of the University, following consultation with the appropriate Chancellor. Prior to recommending dismissal, the Chancellor shall consult with the appropriate advisory committee(s) of the Division of the Academic Senate.”

³ Per Regents’ Bylaw 31 <https://regents.universityofcalifornia.edu/governance/bylaws/bl31.html>

⁴ per Regents’ Bylaws 30, 31, and 40 <https://regents.universityofcalifornia.edu/governance/bylaws/>

APM - 016: University Policy on Faculty Conduct and the Administration of Discipline

APM – 016, University Policy on Faculty Conduct and the Administration of Discipline, governs the discipline and dismissal actions available to the University administration for violations of APM - 015, The Faculty Code of Conduct.

Types of Disciplinary Actions

The types of discipline that may be imposed on a member of the faculty are as follows, in order of increasing severity:

- Written Censure
- Reduction in Salary (without reduction in rank or step)
- Demotion (reduction in rank or step)
- Suspension (without pay)
- Denial or Curtailment of Emeritus Status
- Dismissal

The severity and type of discipline selected for a particular offense must be appropriately related to the nature and circumstances of the case. More than one disciplinary sanction may be imposed for a single act of misconduct (e.g., a letter of censure and a suspension). The Chancellor may also impose additional appropriate remedial or corrective sanctions not set forth in the policy, but only with the consent of the accused faculty member. The Chancellor may remove or terminate a sanction, either automatically or by administrative discretion, in individual cases.

The authority for each discipline type is as follows:

Type of Disciplinary Action	Final Authority
Written Censure	Chancellor or Designee
Reduction in Salary	Chancellor
Demotion ⁵	Chancellor ⁶ (for demotions of step) President (for demotions of rank)
Suspension (without pay)	Chancellor
Denial or Curtailment of Emeritus Status	President
Dismissal	Chancellor (without tenure or security of employment) Regents (tenured or security of employment)

Alternative Actions

Prior to the imposition of a disciplinary action, the Chancellor may waive or limit any such actions on the condition that the accused faculty member performs some specified action(s) designed to

⁵ Faculty at a rank with tenure or security of employment cannot be demoted to a lower rank without tenure or security of employment.

⁶ The Chancellor has final authority for all demotions of faculty without tenure or security of employment.

address the harm and/or to prevent future harm, including but not limited to: monetary restitution, repayment of misappropriated resources, compliance with a commitment not to repeat the misconduct, or other act to make whole injury caused by the misconduct or to prevent future misconduct. Subsequent failure to comply with the conditions of the waiver will immediately subject the faculty member to the underlying sanction without an additional hearing.⁷ If a faculty member disputes the Chancellor's determination, the faculty member may grieve under applicable faculty grievance procedures.

Procedures for Imposition of Disciplinary Action (APM - 016, Senate Bylaw 336)

When an alleged violation of the Faculty Code of Conduct (APM - 015) is identified, the Chancellor or Chancellor's designee ("administration") can file disciplinary charges within three years of knowing about the misconduct.⁸

Involuntary Leave of Absence

Prior to the initiation of any disciplinary action, faculty members may be placed on "involuntary leave" with pay, under any of the following circumstances:

- 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 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.

Within five working days after the imposition of involuntary leave, the Chancellor or their designee 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.⁹

APM - 016 has provisions for involuntary leave without pay. In addition to meeting the reasons for involuntary leave with pay as stated above, involuntary leave without pay can only be

⁷ 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.

⁸ 336.B, Time Limitation for Filing Disciplinary Charges: "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 file disciplinary charges by delivering notice of proposed disciplinary 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."

⁹ Every such notice document must include the following statements: (1) the Chancellor has the discretion to end the leave at any time if circumstances merit; (2) the involuntary 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 (3) the faculty member has the right to contest the involuntary leave in a grievance proceeding that will be handled on an expedited basis, if so requested by the faculty member.

implemented for “rare and egregious cases,” and a Chancellor must receive prior authorization by special action of the Regents.¹⁰

The faculty member may grieve the decision to be placed on involuntary leave pursuant to Academic Senate faculty grievance procedures. The Academic Senate Committee on Privilege and Tenure would handle such grievances on an expedited basis (if requested by the faculty member).¹¹

Probable Cause

The Chancellor may not initiate a 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.

Generally, a charges committee from the Academic Senate will review the case and make a recommendation to the Chancellor on whether probable cause has been established. For each campus, this process is established by local Academic Senate divisional policies.

Early Resolution

The administration may attempt to resolve the disciplinary charges through negotiations with the faculty member, which can be done at any stage of the procedures. However, such negotiations may not extend any deadlines established in Senate Bylaws.

Senate Hearing Process

In cases where a faculty member is subject to a discipline or dismissal action, they have the right to request a hearing with the Academic Senate.¹² The Academic Senate Committee on Privilege and Tenure (P&T) shall receive the charges once probable cause is established, in accordance with local implementation procedures. The accused faculty member receives a copy of the disciplinary charges, as well as written notice of the deadline for submitting a response to the disciplinary charges and the deadline for commencing the hearing. The accused faculty member has 14 calendar days from the date of receipt to provide an answer in writing to the P&T Committee, who provides it to the administration.

¹⁰ Imposing an Involuntary Leave Without Pay is in addition to the Chancellor’s existing power to suspend the pay of a faculty member who is absent without authorization and fails to perform duties for an extended period of time, pending the resolution of the faculty member’s employment status with the University. (APM - 016: https://www.ucop.edu/academic-personnel-programs/_files/apm/apm-016.pdf)

¹¹ The Committee may recommend reinstatement of pay and back pay in cases where pay status was suspended.

¹² Regent’s Bylaw 40.3(c) Tenure: “All appointments to the positions of Professor and Associate Professor and to positions of equivalent rank are continuous in tenure until terminated by retirement, demotion, or dismissal. The termination of a continuous tenure appointment or the termination of the appointment of any other member of the faculty before the expiration of the appointee's contract shall be only for good cause, after the opportunity for a hearing before the properly constituted advisory committee of the Academic Senate, except as otherwise provided in a Memorandum of Understanding for faculty who are not members of the Academic Senate.”

Within five days thereafter, the P&T Committee will coordinate with all parties to schedule the hearing, which must occur no later than 60 calendar days from the date of disciplinary charges filed. Senate Bylaws require that all parties must give priority to the scheduling of a hearing and cooperate in good faith during the scheduling process. It further dictates that a hearing shall not be postponed because the accused faculty member is on leave or fails to appear. Extensions are permissible for good cause and must be approved by the Chair of the P&T Committee or assigned Hearing Committee Chair.

A Hearing Committee is assigned by the P&T Committee and generally consists of at least three members. Administrative procedures and preliminary matters are established with the parties ahead of the hearing, including the Committee's initial determination of issues to be decided at the hearing, identification of facts that are not in dispute, exchanges of witnesses and exhibits, prehearing or post-hearing briefs, and determination of attendance in the confidentiality of the hearing.

At the hearing, each party has the right to be represented by counsel, to present its case by oral and documentary evidence, to submit rebuttal evidence, and to conduct cross examination for a full and true disclosure of the facts.¹³ The administration has the burden of proving the allegations by clear and convincing evidence, except for allegations of a violation of the University's policy on Sexual Violence and Sexual Harassment, where the administration has the burden of proving the allegations by a preponderance of the evidence.

The Hearing Committee shall make its findings of fact, conclusions supported by a statement of reasons based on the evidence, and recommendation, which is then forwarded to the parties in the case, not more than 30 calendar days after the conclusion of the hearing.¹⁴ 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.

Chancellor's Recommendation

Upon receipt of the P&T Committee's report, the Chancellor makes a recommendation to either uphold the initial disciplinary charge or reduce to a less severe action (including no action at all).

¹³ For cases in which there was a hearing at the Title IX stage regarding violation of the University's policy on Sexual Violence and Sexual Harassment ("SVSH Policy"), the Hearing Committee shall accept into evidence the record and written determination from the Title IX process. Other evidence, including witness testimony, regarding whether there was a violation of the SVSH Policy will not be permitted unless the Hearing Committee determines before the hearing that the evidence pertains to newly discovered facts or circumstances that might significantly affect the determination of whether there was a violation of the Faculty Code of Conduct and that were not reasonably discoverable at the time of the Title IX process. The P&T Hearing Committee may carry out any investigation it deems appropriate for the determination of a potential violation of the Faculty Code of Conduct. Bylaw 336, Section F.3 <https://senate.universityofcalifornia.edu/bylaws-regulations/bylaws/blpart3.html#bl336>

¹⁴ The conclusion of the hearing shall be the date of the Committee's receipt of (a) the written transcript of the hearing; or (b) if post-hearing briefs are permitted, the post-hearing briefs from the parties in the case, whichever is later.

In cases where a Chancellor's tentative decision regarding the imposition of discipline on a faculty member disagrees with the recommendation of the P&T Committee, the Chancellor is to inform the Chair of the Committee in writing and ask if they would like a meeting prior to making a final decision or recommendation.

If the determination is to dismiss a faculty member with tenure or security of employment, the Chancellor forwards the recommendation to the Office of the President. For faculty without tenure or security of employment (e.g., assistant professors), the authority to dismiss lies with the Chancellor.

Presidential and Regental Steps

Once the Chancellor forwards the recommendation for dismissal for faculty with tenure or security of employment to the Office of the President, the systemwide Provost and Vice Provost of Academic Personnel and Programs review the case. Upon careful and deliberative review of the facts, documentation, and policies, the Provost makes a recommendation to the President on the decision to recommend dismissal. The President further reviews the case and makes the final recommendation to the Board of Regents.

The Board of Regents then schedules a meeting for a formal vote on a final decision. The faculty member has the right to attend the Regents' session where their case is heard and provide a statement in response ahead of time. Both parties, the administration and the faculty member, present their case and answer questions from the Regents. The Regents then vote on a decision to dismiss, and the parties are subsequently informed of the decision.

Procedures for Termination of Faculty with Tenure for Incompetent Performance

APM - 075, Termination for Incompetent Performance, sets forth the standards and procedures required to terminate a tenured faculty member who has demonstrated gross performance deficiencies.

Before recommending termination for incompetent performance under APM - 075, the Chancellor or their designee provides the faculty member with notice and an opportunity of not less than one year to improve their performance. If their performance remains deficient, then a multi-step academic review process occurs,¹⁵ and two committees of the Academic Senate—the Committee on Academic Personnel¹⁶ (CAP) and the Privilege and Tenure Committee (P&T)—provide recommendations to the Chancellor. Throughout the process, the faculty member has opportunities to respond, including participating in an evidentiary hearing before the P&T Committee to

¹⁵ Including peer review by department faculty and the Dean of the faculty member's school or college.

¹⁶ Pursuant to APM - 075, Section III.B.3, an Ad Hoc committee is formed before CAP review: "The Ad Hoc Committee shall evaluate the case using the same process used by Ad Hoc Committees in their review of promotions in personnel cases. After reviewing the Ad Hoc Committee report, CAP shall advise the Chancellor or designee whether the Request and the accompanying file provide a sufficient basis for termination of the Professor."

determine whether the University has demonstrated by clear and convincing evidence that termination for incompetent performance is justified.¹⁷

Once the Chancellor makes a recommendation for termination, as with dismissal for misconduct, the President reviews the case and makes a recommendation to the Board of Regents for its final decision.

Procedures for Discipline and Dismissal of Non-Senate Faculty (APM - 150)

APM - 150, Non-Senate Academic Appointees Corrective Action and Dismissal, sets forth the policy and procedures for Non-Senate academic appointees, including Non-Senate faculty, who are not covered under a collective bargaining unit.

Under APM - 150, the Chancellor has general authority over implementation of the policy, and corrective action (discipline) or dismissal may be implemented by the department chair, unit head, supervisor, or other appropriate administrative authority in accordance with campus procedures.

Such corrective actions established in APM - 150 include: Written Warning, Written Censure, Suspension Without Pay, Reduction in Salary, Demotion, or Dismissal. Corrective actions can be issued, with good cause, for misconduct, unsatisfactory work performance,¹⁸ dereliction of duty, or violation of University policy.

Pursuant to Regents Bylaw 40.3(c), termination of Non-Senate appointees covered under APM - 150 who are members of the faculty¹⁹ must be afforded the opportunity for a hearing before the Academic Senate. A Non-Senate faculty appointee is entitled to select only one grievance review mechanism, either APM – 140, Non-Senate Academic Appointee Grievance Procedure, or an Academic Senate hearing as provided by Regents' Bylaw 40.3(c).

Medical Separation (APM - 80)

APM - 80 establishes procedures for separation of an academic appointee who has a disability (or a medical condition that has become disabling) which cannot be reasonably accommodated without causing undue hardship.²⁰

Should the University determine the need to separate from a faculty member with tenure or security of employment under this policy, after they have been afforded the right to a hearing before the Academic Senate, the Chancellor makes a recommendation to the Office of the President. The

¹⁷ Senate Bylaw 337 applies for the procedures of such a hearing for incompetent performance and are materially similar to the procedures set forth in Senate Bylaw 336.

¹⁸ Non-Senate academic appointees who are subject to peer review for performance evaluation, demotion or dismissal for unsatisfactory work performance shall involve the regular peer review process. Such a peer review is advisory to the administrator authorized to institute the demotion or dismissal action.

¹⁹ As listed in APM – 110, Academic Personnel Definition, Section 110-4(15)

²⁰ The interactive process is first exhausted, which is when it has been determined that (a) no reasonable accommodation(s) can be provided that would enable the academic appointee to perform the essential assigned functions of the position without causing undue hardship and (b) there is no alternative vacant position on campus for which the employee is qualified and can perform the essential functions, with or without reasonable accommodation.

President reviews the case and makes a recommendation to the Board of Regents for their final decision. For faculty without tenure or security of employment, the Chancellor has the authority to approve medical separation. Approval for the medical separation of Non-Senate academic appointees may be redelegated by the Chancellor.