

# **UCLA** Academic Senate

Committee on Privilege and Tenure

To: Andrea M. Kasko, Chair, Academic Senate

From: Diana Messadi, Chair, Committee on Privilege and Tenure

CC: Kathy Bawn, Vice Chair/Chair-Elect, Academic Senate  
Andrea M. Kasko, Immediate Past Chair, Academic Senate  
April de Stefano, Executive Director, Academic Senate  
Marian M. Olivas, Principal Policy Analyst, Academic Senate  
Members of the Privilege and Tenure Committee

Date: January 3, 2024

**Re: Redelegation of the Authority to impose Involuntary Leave with Pay**

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The Committee on Privilege & Tenure (P&T) thanks the Executive Board for the opportunity to comment on the discussion about redelegating the authority to impose involuntary leave with pay on faculty. Imposing involuntary leave with pay without a finding of a violation of the Faculty Code of Conduct is potentially a violation of faculty rights. Therefore, per systemwide policy APM-016, “Thereafter, the faculty member may grieve the decision to place the faculty member on involuntary leave pursuant to applicable faculty grievance procedures. The Divisional Committee on Privilege and Tenure shall handle such grievances on an expedited basis if so requested by the faculty member.”

At the time the P&T Committee received the review request, there was a pending formal hearing grieving imposition of involuntary leave on a Senate DGSOM member. Although the hearing was removed from the calendar after the leave was lifted, the Hearing Committee (consisting of three current P&T members) continued to have concerns about the process. The grievant offered to provide P&T with their perspective, but has not yet contacted P&T, so we determined to move forward with this review.

## **DEFINITION**

**General.** Involuntary leave with pay is the removal of a faculty member from regular duties and presence on campus. It is a precautionary action and, by policy, is not considered a discipline. “Suspension as a disciplinary action is to be distinguished from involuntary leave, which is a precautionary action.” Since it is not a discipline, the faculty is supposed to be paid. “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.” Other terms are used for the same action. “Interim suspension with pay” was the original term used in the 1971 Faculty Code of Conduct and is the term used in UCLA Appendix XII (which dates back to the same year). APM-150, “Non-Senate Academic Appointees/Corrective Action and Dismissal,” uses the term “investigatory leave,” which is the same term used for UC staff. In P&T’s

view, these all describe the same action. P&T agrees with CR&J that the references in Appendix XII should conform to the language in APM-016. (The documents include proposed revisions of Appendix XII. It was not clear who was proposing the changes, so for now P&T has not commented on those changes.)

**Standards.** APM-016 articulates the following standards as justifying the imposition of involuntary leave:

1. 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; and/or
2. [The accused faculty member's continued assignment to regular duties or presence on campus] will impede the investigation of wrongdoing;
3. The faculty member's conduct represents a serious crime or felony that is the subject of investigation by a law enforcement agency."

APM-150 (non-Senate faculty) simply states that it is up to "the judgment of the Chancellor" to determine whether allegations require placing the appointee on leave with pay pending investigation of the conduct.<sup>1</sup> APM-150 specifies that the standards of the Faculty Code of Conduct apply to non-Senate faculty.<sup>2</sup> Therefore, it seems reasonable to conclude that the "judgment of the Chancellor" is subject to the standards for involuntary leave with pay defined in APM-016. Because such a leave is imposed before a matter goes to a hearing (initiation of a "disciplinary action") or once a hearing starts, but before there are any findings of wrongdoing (at a hearing), in P&T's view by its nature the action violates faculty rights unless it meets the standards set by APM-016. The standards for placing non-Senate faculty on involuntary leave with pay should meet the same bar set for Academic Senate faculty in APM-016.

**Authority.** APM-016 (1974; 2001; 2017) states a "Chancellor is authorized to initiate involuntary leave with pay." APM-150 (1993) likewise cites the "judgment of the Chancellor."<sup>3</sup> UCLA Appendix XII was sent to the systemwide Academic Senate for review in January, 1974 and was adopted by the UCLA Legislative Assembly on October 7, 1974. While Appendix XII was clear that "there is to be no redelegation of the Chancellor's authority to impose disciplinary sanctions," the bylaw did assign the authority for imposing interim suspension with pay (involuntary leave with pay) to the "Vice Chancellor for Faculty Relations." P&T agrees with CR&J that discipline, including a disciplinary suspension, should never be redelegated. However, P&T believes that imposition of involuntary leave should continue under the authority of the role now called the Vice Chancellor of Academic Affairs and Personnel since that decision was approved with systemwide review and has been in place for over fifty years with no known issues.

Because involuntary leave with pay imposed improperly clearly violates faculty rights, from the point of view of P&T the important factor to consider in evaluating "further" redelegation of the authority is

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<sup>1</sup> "Investigatory Leave: An appointee may be placed on immediate investigatory leave with pay, without prior written notice, for the purpose of reviewing or investigating conduct which in the judgment of the Chancellor requires removing the appointee from University premises." (APM 150-32 b)

<sup>2</sup> Non-Senate faculty appointees are also subject to the standards set forth in the Faculty Code of Conduct. (See APM 150-0 b)

<sup>3</sup> "An appointee may be placed on immediate investigatory leave with pay, without prior written notice, for the purpose of reviewing or investigating conduct which in the judgment of the Chancellor requires removing the appointee from University premises."

whether redelegation of this critical authority will dilute or cause inconsistencies in the standards required and therefore will negatively impact faculty rights.

## DISCUSSION

An October 30, 2023, letter from Vice Chancellor Levine requests that the Academic Senate recognize that the “redelegation process is working effectively and is appropriate.” Based on the information (and lack thereof) in this letter and the information P&T has (and lacks), the members do not agree that the Academic Senate can affirm that the process is “working effectively” or that it is “appropriate.”

Vice Chancellor Levine’s October 30, 2023 letter asserts that “removing a medical staff member from the clinical space is very challenging due to the high bar for summary suspension.” The Medical Staff by-laws<sup>4</sup> have a separate process for a 14-day investigatory leave which is not mentioned. In addition, the relevant Moreno Report called for revision of the Medical Staff bylaws that could presumably cover some immediate needs to remove a faculty from the clinical space pending further assessment of the claims. It is not clear if efforts have been made to revise those bylaws to address the need for leave during an initial assessment. UCLA Health nonetheless asserts its need to use the standards for leave that fall under the general policies for faculty. This is partly understandable as faculty do have unique roles in the UC Health system. However, it necessitates consistency with policies that apply to all faculty. Faculty in DGSOM, including non-Senate faculty, are still part of the academic and research mission of the University.

**Lack of transparency.** The first step to shared governance and proper consultation is transparency. The process so far has not been transparent and has not, since the initial delegation, involved working with the Academic Senate or its committees that are directly involved with oversight of faculty rights. In November, 2020, the Chancellor redelegated the authority to place Health Science Faculty members with clinical duties on leave to the Vice Chancellor of Health Sciences with promises to the Academic Senate leadership to ensure oversight and that the authority would not be redelegated. The initial delegation, however, was revised to allow redelegation and then redelegated—both without consulting the Academic Senate. Only as P&T began seeing notices that indicated that Vice Dean Madrenas rather than Vice Chancellor Mazziotta was signing involuntary leaves did the committee find after making inquiries that in October, 2021, Chancellor Block expanded that redelegation to include a reference to APM-150 and also to add the following “This delegation may not be redelegated, except that with respect to APM-150 it may be redelegated to the Dean or Vice Dean for Faculty of the Geffen School of Medicine.” Then P&T found that a year later, in October, 2022, Vice Chancellor Mazziotta did just that, issuing a redelegation addressed to the Vice Dean of Faculty for the David Geffen School of Medicine: “to your position and within your area of responsibility, the authority to initiate involuntary leave with pay.” Both the redelegation to Vice Chancellor Mazziotta and the re-re-delegation to Vice Dean Madrenas have the following instruction “In exercising your authority under this delegation, I instruct you in all instances to consider first, patient safety, and second, a safe learning and workplace environment, as your top priorities.”

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<sup>4</sup> See: <https://www.uclahealth.org/programs/medical-staff/bylaws-rules-regulations/ronald-reagan-ucla-medical-center>

**Concerns of diluting the APM-016 standards for imposition of involuntary leave.** P&T agrees with the concern expressed by Chair Cattelino's query about this latter statement, which is not present in APM-016 or in any other policy regarding the standards for involuntary leave with pay. It is unnecessary to expand on the standards set by APM-016 and doing so risks diluting those standards. APM-016 already covers issues of safety, whether it be patient safety or a "safe environment." If a person poses an "immediate" or "serious" risk to safety of any kind, that would already meet the standard. Citing a "safe learning and workplace environment" could tend to invite an interpretation that would forgo the test of whether the circumstances met the necessarily high standard of APM-016. P&T recommends asking the Chancellor, as the individual with the clear responsibility to ensure that this standard is met, to remove or clarify this statement.

**Notification issues.** From its inception, UCLA bylaws for implementing the Faculty Code of Conduct have provided that "The Vice Chancellor shall promptly provide the faculty member with a written statement of the reason for such suspension, and shall promptly refer the matter to the Committee on Privilege and Tenure." APM-016 states that the involuntary leave must include the statement that "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."

The October 30, 2023 letter from Vice Chancellor Levine asserts that "Since 2022, UCLA Health has only placed approximately 24 faculty members on involuntary leave." It is not entirely clear what time period is cited here, but P&T has only received notices of 15 involuntary leaves imposed on DGSOM faculty members since the initial redelegation became effective (approximately January, 2021). Eight of those were Academic Senate faculty and seven were Non-Senate. Over the same time period, three Academic Senate faculty members and one non-Senate faculty member from campus have been placed on involuntary leave with pay. In at least three of the fifteen DGSOM cases, P&T did not receive a copy of the notice, but learned of it later by other means. When the notices have been sent to the Academic Senate, the method has varied from copying the P&T Analyst to sending them to the Assistant Vice Chancellor of Academic Affairs and Personnel who then forwards them to the P&T Analyst. The letters do not identify the P&T Chair or make it clear how faculty are to access the "expedited grievance" process. P&T considers including that information as critical to protecting faculty rights since faculty placed on involuntary leave with pay are also informed not to communicate with anyone on campus.

P&T finds that the apparently missing notifications and inconsistency in advising faculty of their rights to be likely and troubling result of redelegation of suspension authority, since an increase in the number of people with such authority increases the likelihood of inconsistent procedures.

**Whether the involuntary leave redelegation is working.** Asserting that a "small fraction" of faculty members have been put on leave by DGSOM since 2022 does *not* prove in any way that the redelegation is "working." Even with incomplete statistics, there are almost three times as many DGSOM Senate faculty placed on involuntary leave with pay than campus Senate faculty even though DGSOM has about half of the Senate faculty as the campus. If even a few are imposed improperly, the rights of all are at risk.

P&T, which should be receiving copies of all involuntary notices, should be uniquely positioned to assess whether the redelegations were working if they were receiving all of the notices. The Charges Chair, who receives copies of Notices of Investigations (NOI) and Notices of Outcomes (NOO) from Title IX and

DPO for Non-Senate faculty could presumably work with the P&T Chair to cross check leaves with outcomes. However, at this stage, the Charges Chair does not receive NOI or NOO for non-Senate faculty.

***Appropriateness of Leave.*** The following are examples from the notices received of the stated reasons for involuntary leave for DGSOM faculty. The action is being taken because the University has received:

- a serious allegation under the Sexual Violence and Sexual Harassment policy of the University of California
- allegations that you engaged in intimidation, aggressive and demeaning behavior, physical assault, and violation of gender and professional boundaries
- allegations that you had engaged in sexually harassing behavior, inappropriate comments, and inappropriate physical contact of a sexual nature, in violation of the UC Policy on Sexual Violence and Sexual Harassment
- allegations of inappropriate behavior with patients, including allegations of sexual assault with a medical instrument and inappropriate contact involving an intimate area of the body during a physical examination.
- reports that you did not comply with all the elements of the agreements. Specifically, a drug-screening test of your hair on [date] was positive for cocaine.
- allegations that you misused University resources and engaged in improper behavior, by communicating with an individual you presumed to be a minor and arranging to meet that individual for sexual activity.
- allegations that you engaged in demeaning and dismissive behavior and physical assault, and violation of professional boundaries

Three recent reports have been less specific, only citing:

- allegations about inappropriate conduct that have been reported to the Title IX Office for review

While a few reasons for leave offer specifics, most are general statements. When faculty have requested additional information involving allegations with references to possible Title IX allegations, the Chancellor's designee refers them to Title IX. Title IX does not give respondents information about allegations unless a matter moves past the initial review stage to a formal investigation.

Once a faculty member is placed on involuntary leave, it is not typically lifted until the investigation ends or the case goes to a disciplinary hearing and that concludes. Therefore, the time lapses to restore rights, should a faculty member not be found responsible for the alleged conduct, can be serious. In one instance that did come before P&T, a faculty member had been on leave for weeks. P&T had not received a copy of the notice, but the faculty member eventually discovered they could file a grievance with P&T. The faculty grieved the leave and requested a partial leave as a remedy, asking that their access to research be restored. The Hearing Committee and the Chancellor agreed, but the faculty lost over a year of access to research in the interim. In a recent case, a faculty member was placed on involuntary leave with pay, apparently based on patient complaints referred to Title IX. The faculty member, to P&T's knowledge, was never told the nature of the complaints. The Title IX Office proceeded to review these allegations but did not receive any response when it sought information from the complainants, so after being on leave for six weeks, the leave was lifted. One faculty's counsel claimed to P&T that he had a Senate client who was on involuntary leave for 16 months during a Title IX investigation and was found not responsible. He said due to loss of supplemental clinical income, the client lost considerable wages. If true, this indicates another concern about what involuntary leave "with pay"

means for health sciences faculty who rely on clinical and/or research income to supplement their base pay.

## RECOMMENDATIONS

P&T has a few recommendations for action that can be taken now:

- The Administration should work with the Academic Senate to ensure consistent and appropriate content in notices of involuntary leave.
  - o All notifications of involuntary leave should be copied to the current Chair of Privilege and Tenure as well as the P&T Analyst.
  - o All notifications of involuntary leave should specify the contacts allowed for pursuing an expedited grievance.
- The Office of the Vice Chancellor for Academic Affairs and Personnel should be the office of record for all involuntary leaves with pay—even those initiated by the Health Sciences. DGSOM is still a school under the authority of the University and no other school houses central personnel records.
- As stated in the delegations, the only circumstances that for expediency might require someone other than the Vice Chancellor for Academic Affairs and Personnel to impose the leave are those involving clinical care. In matters involving departments, research, and/or non-clinical teaching the authority appears to still sit with the Vice Chancellor for Academic Affairs and Personnel. UCLA Health should defer to the VCAAP.

To make a more informed assessment of whether the redelegation process is working effectively and is appropriate, the following information is needed:

- P&T needs more data. UCLA Health should give an accounting of all involuntary leaves imposed since the redelegation has been in place so that P&T might assess the claims and outcomes. This should include a list of all faculty cited so that P&T can get a copy of the notification of the leave and request information about the outcome.
- The Academic Senate should initiate a conversation with Title IX about its standards for leave as an “interim measure.” When should a Title IX complaint automatically trigger a leave?
- Can UCLA Health extend the clinical investigatory leave permitted in its Medical Staff bylaws beyond the current 14 days to allow sufficient time for an initial Title IX assessment?
- VC Levine and UCLA Health should clarify the following from the October 30, 2023 letter:
  - o Since the delegations are meant for faculty with clinical privileges, elucidate what is meant by “at a practical level Dr. Madrenas . . . has immediate substantive knowledge of the allegations and events at issue.”
  - o What is meant by “several layers of review before initiating involuntary leave?” What are these layers?
- To protect faculty rights, APM-016 sets a high bar for involuntary leave. A “summary suspension” also sets a high bar. Presumably the Business and Professions Code that defines the use of summary suspension is meant to protect patient safety. In what way does it fall short of what is needed?
- What is meant by the statement in the letter that UCLA Health provides “several layers of review before initiating involuntary leave.” Who is involved in these layers of review and how are they meant to have the authority to “protect our DGSOM faculty”? If there is time to consult with “several layers” at DGSOM, there should be time to consult with the Vice Chancellor for Academic Affairs and Personnel.

While it is disappointing these issues were not addressed before the redelegations were put in place, P&T looks forward to a more thorough shared governance review in the future.

If you have any questions for us, please do not hesitate to contact me at [dmessadi@dentistry.ucla.edu](mailto:dmessadi@dentistry.ucla.edu) or via the Committee's analyst, Marian Olivas, at [molivas@senate.ucla.edu](mailto:molivas@senate.ucla.edu)

Best regards,

A handwritten signature in blue ink, reading "D. Messadi", with a horizontal line underneath the name.

Diana Messadi, Chair  
Committee on Privilege & Tenure

cc: Kathleen (Kathy) Bawn, Vice Chair/Chair-Elect, Academic Senate  
Jessica Cattelino, Immediate Past Chair, Academic Senate  
April de Stefano, Executive Director, Academic Senate  
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