To: Andrea Kasko, Chair, Academic Senate

From: Christopher Colwell, Chair, Council on Academic Personnel

Date: May 23, 2024

Re: (Systemwide Senate Review) Proposed Revisions to APM-016, University Policy on Faculty Conduct and the Administration of Discipline

At its meetings on May 14 and 21, 2024, the Council on Academic Personnel (CAP) discussed the proposed revisions to APM-016 on University policy on faculty conduct and the administration of discipline. The proposal provides the Chancellor (or their designee) with the discretionary authority to “impose a no-fault pause on any current or future academic personnel action (e.g., for merit, promotion, or advancement) where the faculty member is the subject a formal investigation.” While we recognize the legitimate interest in coordinating academic misconduct investigations and personnel actions, we believe the proposal undermines the norm of fundamental fairness reflected in the University’s bylaws and policies. Moreover, the proposal suffers from specific implementation flaws that compound the fairness concerns. The goal of aligning the personnel action process with misconduct investigations can be achieved through an alternative retrospective strategy: use of the existing disciplinary processes to “unwind” any personnel action affected by the misconduct.

The University disciplinary procedures incorporate well-recognized principles of procedural due process intended to protect the rights of faculty accused of misconduct. UC Regents Bylaw 40.3(b) states that a faculty member is entitled to “a hearing by the appropriate committee or committees of the Academic Senate on any matter relating to personal, departmental, or University welfare.” Under Systemwide Bylaw 336.F.8., at the hearing the Chancellor or Chancellor’s designee bears the burden of proving the faculty member’s misconduct by clear and convincing evidence.1

The proposal subverts these fundamental protections by allowing the imposition of what amounts to a sanction prior to a finding of misconduct after a hearing. Delay in consideration for merit increases, advancement and promotion can result in meaningful financial, professional, reputational, and emotional consequences for faculty. Clearly, such delays would affect the faculty member’s compensation and could also affect their ability to secure funding for their research or creative activities. A freeze on advancement and promotion would raise questions among colleagues and others, signaling to them that the faculty member may be the subject of investigation for unspecified misconduct. And the financial and reputational impacts of the freeze will exacerbate the stress and emotional turmoil that comes with being the subject of an investigation. All of this imposed without a hearing and in the sole discretion of the Administration.

1 In cases involving allegation of sexual harassment or sexual violence, the Chancellor’s burden of proof is the preponderance of the evidence.
The existing disciplinary processes already provide a vehicle for aligning misconduct investigations and personnel actions, one that respects the principles of fundamental fairness embedded in the bylaws and policies. Faculty members found to have engaged in misconduct after a full and fair hearing are subject to a range of disciplinary sanctions. These sanctions include reduction in salary and demotion (defined in the current APM-016 as “reduction to lower rank or step with corresponding reduction in salary.”) The Chancellor may use these two sanctions to unwind any personnel actions taken during the course of the disciplinary process. (Indeed, APM-016 states that “demotion is an appropriate sanction when the misconduct is relevant to the academic advancement process of the faculty member.”) While this retrospective process may be administratively more complex, it protects critically important norms of fairness.

Beyond concerns of fundamental fairness, the proposal also presents substantial implementation issues:

- The proposal fails to define the critical term “formal investigation.”

- The proposal lacks a clear standard for triggering a “no-fault pause.” As written, the Chancellor or their designee may pause the personnel action process when they find that “any of the alleged misconduct is relevant to the assessment criteria for academic personnel review action.” That standard is so ambiguous as to be no standard at all. Virtually any violation of the Code of Faculty Conduct could fall within its scope. This is particularly troubling given the substantial impact that a pause could have on the affected faculty member. In the rare case in which current APM-016 allows for sanctions prior to hearing (i.e., imposition of involuntary leave with pay), the policy establishes a stringent standard:
  
  [T]here 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.

- The proposal provides no requirement or means for mitigating the effects of the pause for faculty members ultimately cleared of alleged misconduct. At a minimum, financial impacts should give rise to a right of compensation. Other non-financial impacts will be more difficult, or even impossible, to address.

Thank you for the opportunity to review and comment. If you have any questions, please do not hesitate to contact me at CColwell@mednet.ucla.edu or via the Council’s analyst, Lori Ishimaru, at lishimaru@senate.ucla.edu.

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