Executive Board

SW Review: Proposed New Academic Personnel Manual, Section 011

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OFFICE OF THE VICE PROVOST --
ACADEMIC PERSONNEL

OFFICE OF THE PRESIDENT
1111 Franklin Street, 11th Floor
Oakland, California 94607-5200

April 1, 2019

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

Re: Systemwide Review of Proposed New Academic Personnel Manual (APM), Section 011, Academic Freedom, Protection of Professional Standards, and Responsibilities of Non-Faculty Academic Appointees (APM - 011)

Dear Colleagues:

Enclosed for systemwide review is proposed new Academic Personnel Manual Section 011 (APM - 011), Academic Freedom, Protection of Professional Standards, and Responsibilities of Non-Faculty Academic Appointees. Currently, APM - 010 (Academic Freedom) defines academic freedom as it pertains to faculty and defines the freedom of scholarly inquiry for students, as it derives from the faculty's academic freedom. APM - 015 (The Faculty Code of Conduct) defines the corresponding responsibilities as it pertains to faculty only. Although APM - 010 states that it is not intended to "diminish the rights and responsibilities enjoyed by other academic appointees," APM - 010 and APM - 015 do not address how these concepts apply or do not apply to non-faculty academic appointees. The proposed new policy is intended to address the academic privileges, rights, obligations, and responsibilities of non-faculty academic appointees.

Background

On December 18, 2018, after consultation with the President and the Chancellors, Provost Brown appointed Chancellor George Blumenthal, UC Santa Cruz, and Academic Council Chair Robert May to co-chair the Working Group on Privileges and Responsibilities of Non-Faculty Academic Appointees and their charge was to develop recommendations for draft policy that would address the academic privileges, protections, obligations, and responsibilities of non-faculty academic appointees, especially in relation to APM - 010 (Academic Freedom) and APM - 015 (The Faculty Code of Conduct). Provost Brown asked the Working Group to submit any policy recommendations to him by no later than June 1, 2019.

In developing recommendations for draft policy, the Working Group was asked to undertake the following:

- Review relevant policy from other peer universities, relevant APM policy history, and related research and scholarship.
- Consult, as needed, non-faculty academic appointees affected by the recommendations.

- Determine whether additional policy language is needed to ensure non-faculty academic appointees have appropriate academic privileges, protections, obligations, and responsibilities for their work at the University.
- Provide recommendations on additions to APM policy that address academic privileges, protections, obligations, and responsibilities of non-faculty academic appointees.
- Focus at least as much (if not more) on responsibilities and obligations than on privileges and protections, because those former circumscribe and determine the appropriateness of the exercise of the latter.

The Working Group was not asked to recommend changes to APM - 010, the policy on academic freedom for faculty and its appendix on the freedom of scholarly inquiry for students.

Chancellor Blumenthal and Academic Council Chair May appointed the members of the Working Group, who are listed in the attached letter, as well as advisors. The Working Group met four times starting in January, 2019. Aside from its internal deliberations, the Working Group reached out to a range of individuals and stakeholder groups for their input on the content of a policy on academic freedom for non-faculty academic appointees. Among those whom the Working Group consulted were the Council of University Librarians, Vice Chancellors for Research, Vice Provosts for Academic Personnel, Academic Personnel Directors, Librarians Association of the University of California, the ANR Academic Assembly Council Executive Board, the UC Davis Academic Federation, UC-AFT Librarians, UAW Postdoctoral Scholars and Academic Researchers, and other staff and faculty whom the Chancellors had recommended for Working Group membership.

On March 20, 2019, the Working Group submitted their recommendations to Provost Brown, including a cover letter; a draft policy; APM - 011 (Academic Freedom, Protection of Professional Standards, and Responsibilities of Non-Faculty Academic Appointees); and a set of accompanying FAQs (all attached).

Policy Principles

The Regents of the University of California have bestowed on the Academic Senate the responsibility to protect academic freedom at UC: "The Regents recognize that faculty participation in the shared governance of the University of California through the agency of the Academic Senate ensures the quality of instruction, research and public service at the University and protects academic freedom" (Bylaw 40.1). The policy on Academic Freedom is located in the Academic Personnel Manual, Section 010 (APM - 010), including its two appendices, one speaking to the 2003 revisions to policy, and one speaking to the Freedom of Scholarly Inquiry for students. This policy also emphasizes the roles of the Academic Senate in the realm of academic freedom:

> Academic freedom requires that the Academic Senate be given primary responsibility for applying academic standards, subject to appropriate review by the Administration, and that the Academic Senate exercise its responsibility in full compliance with applicable standards of professional care. (APM - 010)

In developing the draft policy APM - 011, the Working Group affirmed the position of APM - 010 (Academic Freedom), along with APM - 015 (Faculty Code of Conduct) as the cornerstones of the University of California's academic freedom policy. APM - 011 affirms that the protections and responsibilities under these policies extend to all academic appointees when they are engaged in teaching, research, scholarship, or the public dissemination of knowledge. APM - 011 additionally extends to non-faculty academic appointees protections for work not in these categories, but which nevertheless contributes to and supports the academic mission of the University. These protections, and the associated responsibilities, are founded on applicable, acknowledged, national, professional standards, as are the

protections otherwise afforded under APM - 010. Additionally, APM - 011 specifies procedures for the adjudication of grievances of alleged violations of the protections adumbrated by the policy.

Systemwide Review

Systemwide review is a public review distributed to the Chancellors, the Director of the 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, especially affected employees, about policy proposals. Systemwide review also includes a mandatory, 90-day full Senate review.

Employees should be afforded the opportunity to review and comment on the draft policy, available online at https://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 **July 1, 2019**. Please submit your comments to ADV-VPCARLSON-SA@ucop.edu. Please indicate "APM - 011" in the subject line. If you have any questions, please contact Kimberly Grant at Kimberly.Grant@ucop.edu or (510) 987-9499.

Sincerely,

Susan Carlson
Vice Provost
Academic Personnel and Programs

Enclosures:

1) Proposed New APM - 011, Academic Freedom, Protection of Professional Standards, and Responsibilities of Non-Faculty Academic Appointees
2) March 20, 2019 Working Group cover letter
3) APM - 011 FAQ Document
4) Model Communication

cc: President Napolitano
Provost and Executive Vice President Brown
Executive Vice Chancellors/Provosts
Executive Vice President and Chief Operating Officer and Chief of Staff Nava
Senior Vice President Bustamante
Vice President Duckett
Vice President Ellis
Vice Provosts/Vice Chancellors of Academic Affairs/Personnel
Council of University Librarians
Academic Personnel Directors
Working Group on Privileges and Responsibilities

Deputy General Counsel Woodall
Executive Director Baxter
Executive Director Chester
Executive Director Peterson
Chief of Staff and Director Henderson
Chief of Staff Levintov
Director Grant
Director Lee
Manager Donnelly
Manager Smith
HR Manager Crosson
Analyst Ha
Analyst Wilson

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March 20, 2019

PROVOST MICHAEL T. BROWN
EXECUTIVE VICE PRESIDENT FOR ACADEMIC AFFAIRS

Dear Michael,

On behalf of the Working Group on Privileges and Responsibilities of Non-Faculty Academic Appointees, we are submitting our final report. The report itself contains two parts, a proposed new section to the Academic Personnel Manual labeled APM-011 (Academic Freedom, Protection of Professional Standards, and Responsibilities of Non-Faculty Academic Appointees) and a set of accompanying FAQs. The Working Group is forwarding these documents to you with a single recommendation:

> *Recommendation*: That APM-011 (Academic Freedom, Protection of Professional Standards, and Responsibilities of Non-Faculty Academic Appointees) be adopted as University policy

The Working Group requests that the review process of the proposed new section of the APM, leading to the adoption of the Recommendation, commence immediately.

In way of background, the Working Group met four times starting in January, 2019. Aside from its internal deliberations, the Working Group reached out to a range of individuals and stakeholder groups for their input on the content of a policy on academic freedom for non-faculty academic appointees. Among those whom the Working Group consulted were the Council of University Librarians, Vice Chancellors for Research, Vice Provosts for Academic Personnel, Academic Personnel Directors, Librarians Association of the University of California, the ANR Academic Assembly Council Executive Board, the UC Davis Academic Federation, UC-AFT Librarians, UAW Postdoctoral Scholars and Academic Researchers, and the nominees from the Chancellors. The Working Group carefully weighed the views of those with whom we spoke, and endeavored to factor their concerns into the fashioning of the draft policy.

In developing the draft policy APM-011, the Working Group affirmed the position of APM-010 (Academic Freedom), along with APM-015 (Faculty Code of Conduct) as the cornerstones of the University of California's academic freedom policy. APM-011 affirms that the protections and responsibilities under these policies extend to all academic appointees when they are engaged in teaching, research, scholarship, or the public dissemination of knowledge. APM-011 additionally extends to non-faculty academic appointees protections for work not in these categories, but which nevertheless contributes to and supports the academic mission of the University. These protections, and the associated responsibilities, are founded on recognized professional standards, as are the protections otherwise afforded under APM-010. Additionally, APM-011 specifies procedures for the adjudication of grievances of alleged violations of the protections adumbrated by the policy.

In anticipation of questions that might arise regarding the intent and application of the proposed policy, the Working Group has developed a set of FAQs. The FAQs are intended to accompany the draft policy in the review process, with the potential to serve as the basis of a guidance document to stand alongside the policy when adopted.

The Working Group intends to reconvene once the review of the proposed policy has been completed to consider the comments received, and make any final proposed revisions to the policy that may be appropriate.

Thank you very much for your consideration.

Sincerely,

George R. Blumenthal, Chancellor
University of California, Santa Cruz

Robert C. May, Chair
Academic Council

Attachments

Working Group on Privileges and Responsibilities of Non-Faculty Academic Appointees

George Blumenthal, Chancellor, UC Santa Cruz, co-chair
Robert May, Chair, UC Academic Senate, co-chair
Gayle Binion, Past Chair, Academic Senate
Susan Carlson, Vice Provost, Academic Personnel and Programs
Gail Hershatter, Representative, University Committee on Academic Freedom
Eric Rauchway, Chair, University Committee on Academic Freedom
Roger Smith, President, Librarians Association of the University of California
Brian Soucek, Representative, University Committee on Academic Freedom
Katherine Soule, President, UCANR Academic Assembly Council

Working Group Advisors
Robert Post, Sterling Professor of Law, Yale University
Martha Kim, Senior Counsel, Office of General Counsel

Academic Freedom, Protection of Professional Standards, and Responsibilities of Non-Faculty Academic Appointees

The fundamental mission of the University is to advance knowledge, to disseminate knowledge to its students and to society at large, and to inculcate in its students a mature independence of mind. In pursuit of this mission, the University depends upon professional contributions not only by its faculty, but also by its non-faculty academic appointees. For this reason, whenever appointees with academic titles listed in APM - 112-4(b) are engaged in teaching, research, scholarship, or the public dissemination of knowledge, as defined in APM - 010, they are entitled to the protections of academic freedom established in APM - 010, and they are obligated by the responsibilities specified in Part II of APM - 015, the Faculty Code of Conduct. Based upon the By-Laws and Standing Orders of the Regents, the Academic Senate is responsible for interpreting and applying the professional standards that define academic freedom of teaching, research, scholarship, and the public dissemination of knowledge.

When non-faculty academic appointees with titles listed in APM - 112-4(b) perform work that contributes to or supports the fundamental mission of the University, but that is not teaching, research, scholarship, or the public dissemination of knowledge, they must be free to pursue this work according to applicable, acknowledged, national, professional standards, if such standards exist, and are obligated by the responsibilities established by these standards. Such professional standards may be set by recognized professional organizations external to the University, or by other suitable sources of professional norms. The University recognizes such professional standards where they exist and is responsible for ensuring that they are respected. The UC Systemwide Provost shall have final authority to determine the existence of applicable national professional standards.

The Academic Senate has authority to adjudicate violations of academic freedom as defined in APM - 010. Grievances concerning academic freedom shall be adjudicated according to the privilege and tenure procedures specified by Senate Bylaw 335.

Grievances concerning violation of the professional standards described in the second paragraph of this section shall be adjudicated under the formal grievance procedures specified in APM - 140-32. In such cases the review procedures specified in APM - 140-32 shall be modified to include as a reviewer at least one academic appointee in the same job title series and with similar professional responsibilities as the grievant. The choice of reviewer will reside with the UC Systemwide Provost or designee, and the review shall be included in any Formal Grievance Appeal under APM - 140-33.

If the Academic Senate determines that a grievance by a non-faculty academic appointee with a title listed in APM - 112-4(b) does not concern protections guaranteed under APM - 010, the grievant has thirty (30) days from the Academic Senate's final decision to file under APM - 140 a grievance alleging a violation of the applicable national professional standards described in the second paragraph of this section.

Requiring academic appointees to perform the duties and functions mandated as part of their employment at the University is not a violation of the provisions of APM - 011.

In addition to the protections, privileges and responsibilities specified herein, all academic appointees are entitled as University employees to the full protections of the Constitution of the United States and of the Constitution of the State of California.

APM - 011

Academic Freedom, Protection of Professional Standards, and Responsibilities of Non-Faculty Academic Appointees

FAQ

Question: *Why is the University proposing the issuance of a new APM policy related to academic freedom and the code of conduct for non-faculty academic appointees?*

Answer: Currently, APM - 010 (Academic Freedom) defines academic freedom as it pertains to faculty and defines the freedom of scholarly inquiry for students, as it derives from the faculty's academic freedom. APM - 015 (the Faculty Code of Conduct) defines the corresponding responsibilities of faculty. APM - 010 and APM - 015 do not address how these concepts apply to non-faculty academic appointees. UC recognizes the important role non-faculty academic appointees play in advancing UC's fundamental mission, and the need to define the appropriate academic privileges and responsibilities for all non-faculty academic appointees in relation to APM - 010 (Academic Freedom) and APM - 015 (the Faculty Code of Conduct). The proposed new APM policy—APM - 011—was developed by a working group, appointed by the UC Systemwide Provost, in consultation with administrators, faculty, and non-faculty academic appointees across the UC system.

Question: *What is the relationship between the proposed APM - 011 and APM - 010?*

Answer: APM - 010 establishes academic freedom protections for teaching, research, scholarship, and the public dissemination of knowledge. APM - 011 ensures that these protections apply to all academic appointees of the University, faculty and non-faculty alike (as defined in APM - 112-4(b)). APM - 011 goes beyond APM - 010 in establishing protections for non-faculty academic appointees when they are engaged in other academic activities that contribute to the mission of the University, subject to applicable acknowledged, national, professional standards.

Question: *Does APM - 011 change for UC faculty the protections and responsibilities set forth in APM - 010 and APM - 015?*

Answer: No. Protections afforded faculty under the UC policy on Academic Freedom, along with the attendant responsibilities of the Faculty Code of Conduct, are unaffected by APM - 011.

Question: *Who determines the definition of teaching, research, scholarship, or the public dissemination of knowledge?*

Answer: Based upon the By-Laws and Standing Orders of the Regents, the Academic Senate is responsible for interpreting and applying the professional standards that define academic freedom of teaching, research, scholarship, and the public dissemination of knowledge.

Question: *If there are privileges and responsibilities currently extended to certain non-faculty academic appointees, is APM - 011 intended to take those privileges and responsibilities away?*

Answer: No. APM - 011 does not affect any privileges or responsibilities that non-faculty academic appointees otherwise have. Rather, APM - 011 clarifies that the existing protections established under APM - 010 are applicable to non-faculty academic appointees, and that protections extend to certain academic pursuits not covered under APM - 010.

Question: *How does the University determine who is a "non-faculty academic appointee"?*

Answer: APM - 110 and APM - 112 define faculty as well as non-faculty academic appointees. Pursuant to APM - 110-4(15) (Academic Personnel Definitions), "a member of the faculty of the University is an academic appointee in a School, College, Division, Department, or Program of instruction and research who has independent responsibility for conducting approved regular University courses for campus credit. As an exception,

students in a UC degree program who teach independently within their discipline are not considered faculty." All academic appointees who have academic titles listed in APM - 112-4(b) but are not faculty as defined in APM - 110-4(15), are "non-faculty academic appointees."

Question: *If there is an allegation of a violation of academic freedom of teaching, research, scholarship, or the public dissemination of knowledge, as defined in APM - 010, or of the Code of Conduct, as defined in Part II of APM - 015, where should the grievance be filed?*

Answer: If the grievant has a campus affiliation, the grievance should be filed in accordance with the procedures of the divisional Academic Senate. If the appointee is not affiliated with a campus, the grievance should be submitted to the systemwide Academic Senate. In that case, the University Committee on Privilege and Tenure will appoint an ad hoc hearing committee for the grievance.

Question: *What if the Privilege and Tenure committee does not have expertise in the teaching, research, scholarship, or the public dissemination of knowledge at issue in the grievance?*

Answer: In order to insure fair determination of the grievance, the Privilege and Tenure Committee may appoint an individual or ad hoc committee with the requisite peer expertise to advise the hearing committee.

Question: *Outside of norms relevant to APM - 010, what if there is a dispute as to whether applicable, acknowledged, national, professional standards exist for the work performed by a non-faculty academic appointee?*

Answer: It is the responsibility of the UC Systemwide Provost to make the determination as to the existence of applicable, national, professional standards. These standards are uniformly applicable to all appointees in the same job title series with similar responsibilities, regardless of campus or location. If in a grievance proceeding there is a dispute regarding the applicable professional standards, a final determination of the standards

resides with the UC Systemwide Provost. At the UC Systemwide Provost's discretion, an ad hoc committee may be appointed to advise on the existence and applicability of national professional standards.

Question: *For a grievance under APM - 140-32, does anyone other than the UC Systemwide Provost have the authority to appoint a reviewer who has the same job title series with similar professional responsibilities as the grievant?*

Answer: No, this responsibility resides exclusively with the UC Systemwide Provost. However, the Systemwide Provost may delegate the authority to appoint a reviewer to the Provost of the campus of the appointee. If the grievant does not have a campus affiliation, the UC Systemwide Provost would appoint the reviewer with appropriate ad hoc consultation, or may delegate authority for the appointment to another individual at the grievant's work location.