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## 2016: DISCIPLINE

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### GENERAL GUIDELINES

The following serves to implement the **University Policy on Faculty Conduct and the Administration of Discipline** at UC Merced. While the **Faculty Code of Conduct** applies to all faculty members, both Senate and non-Senate, these procedures apply exclusively to members of the Academic Senate (as identified in the **Standing Order of the Regents 105.1**). No disciplinary sanction for professional misconduct of a member of the Merced Division of the Academic Senate shall be imposed except pursuant to the procedures specified herein and consistent with **Academic Senate Bylaw 336**. No faculty member's right to a hearing before the **Committee on Privilege and Tenure** under Academic Senate Bylaws **335, 336, and 337**, or Standing Orders of the Regents **103.9 and 103.10**, shall be abridged in any way by these procedures.

With respect to the imposition of disciplinary sanctions, the Faculty Code deals only with professional conduct or misconduct. Faculty members, however, in common with all other members of the University community, are subject to the general rules and regulations of the University, such as those pertaining to parking, library privileges, health and safety, and use of University facilities. Faculty members are subject to appropriate sanctions for failure to comply with such rules and regulations. Senate faculty members holding administrative appointments may be subject to disciplinary action under the Faculty Code for professional misconduct that falls within the types of unacceptable conduct set forth in the Faculty Code. In addition, the Chancellor and Provost and Executive Vice Chancellor may take administrative actions (e.g., removal from the administrative position), which need not adhere to the disciplinary procedures outlined herein.

The authority to discipline faculty members derives from The Regents. The Regents have made the Chancellor of each campus responsible for administering discipline on that campus, and there is to be no re-delegation of the Chancellor's authority to impose disciplinary sanctions; however, in any case of discipline of a Senate faculty member, the Chancellor will normally delegate to the Provost/EVC the authority to initiate disciplinary action (i.e., to initiate and monitor the investigation of the complaint and the process to determine probable cause). In the event that the Provost/EVC recuses him- or herself from a disciplinary case at any stage, the Chancellor may delegate his or her authority to a person or persons whom the Chancellor judges to be appropriate. The Chancellor will discuss the selection of this person or persons with the Chair of the Academic Senate.

University procedures afford safeguards against arbitrary or unjust disciplinary actions, including provisions for hearings and appeal. Senate faculty members may accept the disciplinary sanctions as proposed by the Chancellor, or they may request a hearing before the **Committee on Privilege and Tenure of the Merced Division of the Academic Senate**. The role of this Committee is to take under consideration complaints against or by members of the Academic Senate. The Committee holds hearings and advises the administration. The Chancellor will not appoint any current member of the Committee on Privilege and Tenure as an investigator.

Discipline is defined to include the following actions: written censure; reduction in salary; demotion; suspension; denial or curtailment of emeritus status; and dismissal from the employ of the University (**APM 16 Section II**). More than one disciplinary sanction may be imposed for a single act of misconduct; e.g., a demotion and a suspension. Any disciplinary action must begin within three years of the time when the Chancellor knew or should have known about the alleged violation of the Faculty Code.

When a complaint has been made, all faculty members, campus officers and agencies shall treat the identities of the complainant and the faculty member against whom the complaint is made (herein referred to as "respondent") as a matter of utmost confidentiality.

## INITIATING THE COMPLAINT PROCESS

A complaint may be brought under these procedures by any student, staff member, or faculty member of the University of California. Systemwide policy statements clearly indicate that the investigation of faculty misconduct should be an administrative function, while holding hearings on such charges is an Academic Senate function to be carried out by the Committee on Privilege and Tenure.

### A. INFORMAL COMPLAINT

In some circumstances, informal means of resolution may be appropriate as a first resort. Such efforts may include discussion with the faculty member as well as the pursuit of all available administrative actions. Informal complaints may be heard by the relevant Unit Chair, Dean, Associate or Assistant Dean, Human Resources, Academic Personnel Office, the VPF, or the complainant's immediate supervisor. Informal complaints may also be referred to the Provost/EVC to assist in the informal resolution of the complaint.

Any recipient of an informal complaint may in all cases listen to the complaint without informing the accused faculty member of it. If the recipient of the complaint, or any campus officer or agency, begins to investigate the merits of the complaint, beyond what can be established by talking to the complainant, the accused faculty member shall at that stage have a right to notification. Should the complaint be resolved informally or not pursued further, all documents, notes, or other evidence shall be destroyed or returned to the complainant.

If the recipient of the informal complaint deems it to be appropriate, and if procedures for informal resolution are either unsuccessful, unacceptable to the complainant, or deemed inappropriate by the campus officer or agency involved, then that officer or agency shall refer the complainant to the Provost/EVC via the VPF. The VPF will keep the Chair of the Committee on Privilege and Tenure apprised of all such actions. At this stage of the process, the Provost/EVC's office is not required to notify the faculty member against whom the complaint has been made.

### B. FORMAL COMPLAINT

If the complainant wishes to file a formal complaint, the following procedures must be followed.

Allegations of violations of the **Faculty Code of Conduct** against a Senate faculty member shall be addressed to the Provost/EVC and shall normally be submitted in the form of a written, signed letter from the complainant. The complainant must include a written explanation of any attempts made to resolve the matter prior to the filing of the formal complaint. The complainant should, whenever possible, identify the section(s) of the Faculty Code of Conduct alleged to have been violated. It is important that the complainant submit supporting documentation sufficient to substantiate the allegations of misconduct.

The Provost/EVC shall review the complaint to ensure that it conforms to these requirements, and to a reasonable standard of conciseness and order. The Provost/EVC may also consult with the appropriate School Dean as necessary. The Provost/EVC may, at his or her discretion, reject any complaint that does not meet these requirements. In this event, the complaint will be returned to the complainant who shall have the opportunity to correct the stated deficiencies, and then return the complaint for consideration.

The Provost/EVC will conduct a preliminary inquiry to determine whether there are reasonable grounds to believe that a violation of the Faculty Code of Conduct may have occurred. The Provost/EVC may appoint additional internal or external faculty members or administrators to conduct the informal, preliminary inquiry. The respondent will be notified by the Provost/EVC that a formal complaint has been filed against him or her, and he or she will receive a copy of the complaint with all supporting documentation.

If there is apparent merit to the complaint, the Provost/EVC shall designate an Academic Senate faculty member (or a committee of up to four faculty members) as an Investigative Officer (or Investigative Committee) to investigate and provide a determination as to whether there is probable cause that a violation has occurred (**APM 15, Part III.A.4**).

**The Investigative Officer will advise the Provost/EVC:**

- Whether any of the allegations in the formal complaint, if true, would constitute a violation of the Faculty Code of Conduct;
- If so, whether there is probable cause to warrant the initiation of disciplinary action by the administration; and
- If there has been a finding of probable cause, what specific disciplinary sanction(s) are recommended by the Investigative Officer.

The Investigative Officer may discuss procedural and interpretive questions with the Provost/EVC at any stage of the investigation and may seek legal interpretation. In addition, the Investigative Officer has the Provost/EVC's authority to seek further information (normally in writing, but also in person as deemed appropriate) from individuals who may have relevant information. The Investigative Officer should advise individuals who have been consulted that the University will do all in its power to assure that information will be kept confidential to the extent allowable by law and University policy. Additionally, all parties involved will be instructed of the strict confidentiality of the review.

Following its investigation of the formal complaint, the Investigative Officer shall write a final report to the Provost/EVC. The report shall include the 'Officer's assessment of the evidence, a recommendation to dismiss the complaint or to initiate disciplinary action, and a recommendation of the type of disciplinary sanction(s) proposed, if any. It is expected that the Investigative Officer will conclude his or her work within 90 calendar days from receipt of the complaint, unless an extension is granted by the Provost/EVC.

## **INITIATING THE DISCIPLINE PROCESS**

### **A. INFORMAL RESOLUTION**

As an alternative to formal disciplinary procedures, the respondent and the administration may explore informal resolutions at any point in the disciplinary process. Upon written agreement by both the Provost/EVC and the respondent, the Provost/EVC may agree to waive the proposed disciplinary sanction(s) on the condition that the respondent performs some specified action(s) designed to address the violation and/or to prevent future harm or continued violation. Such actions may include, but are not limited to, monetary restitution, repayment of misappropriated resources, compliance with a commitment not to repeat the misconduct, or other action to remedy the harm caused by the respondent.

Respondents who are interested in pursuing an informal resolution may negotiate directly with the administration or may request the involvement of the Chair of the Committee on Privilege and Tenure. Respondents should contact the Provost/EVC and/or the Chair of Privilege and Tenure to discuss this option further or to propose an informal resolution.

If an informal resolution is reached with the administration at any point in the disciplinary process (with or without the Chair of the Committee on Privilege and Tenure), the Chancellor shall report to the entire Committee on Privilege and Tenure for informational purposes, and without using the respondent's name, a statement of the charges and the negotiated resolution.

### **B. INVOLUNTARY LEAVE**

The Provost/EVC may initiate involuntary leave with pay prior to the initiation of disciplinary action if it is determined that there is a strong risk that the respondent's continued assignment to regular duties or presence on campus will cause immediate and serious harm to the campus community or impede the investigation of his or her alleged wrongdoing, or in situations in which the respondent's conduct represents a serious crime or felony that is the subject of investigation by a law enforcement agency.

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Such action does not represent the imposition of a disciplinary sanction; however, the respondent's return to University premises without written permission from the Provost/EVC may create independent grounds for disciplinary action.

The Provost/EVC must mandate such investigatory leave in writing, including the reasons for and expected duration of the leave, to the respondent and must initiate disciplinary procedures by bringing charges against the respondent within ten working days after the imposition of involuntary leave.

**C. INFORMING THE RESPONDENT OF THE INTENT TO DISCIPLINE**

Upon receipt of the Investigative Officer's report, the Provost/EVC will determine whether there is probable cause for undertaking disciplinary action against the accused faculty member. If so, the findings of the Investigative Officer will be transmitted to the Chair of the Committee on Privilege and Tenure, together with a written notice of intent to discipline from the Provost/EVC describing the reasons for undertaking the proposed action and the type of sanction(s) that are recommended. The Chancellor may not impose a type of discipline more severe than that set forth in this notice.

At this stage, the name of the respondent, the nature of the charges, and the proposed discipline shall be confidential information, limited to the Chair of the Committee on Privilege and Tenure and not known to the other members of the Committee.

The notice of intent to discipline, along with a copy of the report of the Investigative Officer shall normally be presented to the respondent in person or, if not feasible, the notice and report shall be sent to the respondent's campus address and last known home address using a proof of service form.

**D. DISCIPLINARY HEARING**

At the time the notice is personally delivered to the respondent, or within three working days if the notice is mailed, the Chair of the Committee on Privilege and Tenure shall make known to the respondent his or her Senatorial right to a hearing pursuant to **Academic Senate Bylaw 336** before disciplinary sanctions can be imposed. The Chair shall also provide information about the nature of Privilege and Tenure hearings, as well as information about the options available to the respondent. These options include accepting the proposed discipline or negotiating an informal resolution directly with the administration.

The respondent shall have 21 calendar days from the date of receipt of the notice in which to file a written response with the Provost/EVC indicating that he or she accepts the findings and proposed sanctions, or to inform the Chair of the Committee on Privilege and Tenure that he or she waives the Senatorial right to a formal hearing before the Committee. Absent any such written response, a hearing shall be conducted as specified by Academic Senate Bylaw 336.

In connection with hearings before the Committee on Privilege and Tenure (or any properly constituted hearing panel subcommittee), a respondent will be entitled to all procedural privileges and protections specified in the Standing Orders of the Regents (**103.9** and **103.10**) and in the Academic Personnel Manual (**APM 15** and **APM 16**). All investigations and hearings will be treated as confidential and open only to those persons directly involved.

Every effort shall be made to conform to a reasonable time frame in the implementation of all procedures. Consistent with **Academic Senate Bylaw 336.B.3**, the Committee on Privilege and Tenure shall consider the matter within 21 calendar days after receipt of a response or after the deadline for receipt of a response if none is received. Pursuant to **APM 15 Section 3.B.7**, a hearing should commence within 90 days of the date on which the respondent was informed of the intention to initiate a disciplinary proceeding. A hearing shall not be postponed because the respondent is unavailable or unwilling to cooperate.

The Chancellor has final authority to determine and execute appropriate sanctions, except in those cases of dismissal or demotion in which final authority rests with the President or the Regents (**APM 16 Section II**). The Chancellor will inform the accused faculty member in writing of his or her final decision. The complainant shall

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be informed in writing by the Provost/EVC that the investigation has been concluded and that appropriate action has been taken, but the details of any action shall not be shared with the complainant.

**COMPLAINT FILE**

Upon final resolution of the formal complaint, the complaint file will be maintained only in the Academic Personnel Office. The complaint file shall include the following:

- The original formal complaint and all accompanying documentation;
- The letter from the Provost/EVC forwarding the complaint to the Investigative Officer for its probable cause investigation;
- The Investigative Officer's final report;
- The Provost/EVC's written notice of intent to initiate disciplinary action, if any;
- A copy of the Committee on Privilege and Tenure's hearing report, if any;
- A copy of the Chancellor's letter communicating his or her decision to the respondent; and
- A copy of the Provost/EVC's communication to the complainant notifying him or her of the closing of the investigation.

In the event that the allegations against the respondent are not sustained; all materials related to the claim shall be destroyed after a period of three years. All other files shall be maintained for ten years after separation of the respondent from UC Merced and then destroyed.