MEETING AGENDA
DIVISIONAL SENATE ASSEMBLY
ACADEMIC SENATE, IRVINE DIVISION
Thursday March 12, 2020, 3:30-5:00 p.m.
Senate Conference Room, 338 Aldrich Hall

<table>
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<th>STATUS</th>
<th>ITEM</th>
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<tbody>
<tr>
<td>INFORMATION</td>
<td>1. Announcements by Provost Lavernia (3:30-4:00)</td>
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<tr>
<td>ACTION</td>
<td>2. Roll Call</td>
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<td>ACTION</td>
<td>3. Minutes Approval of the Draft Minutes from the January 30, 2020 meeting</td>
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<td>ACTION</td>
<td>4. IA- Review of Proposed Changes to Appendix III with Stipulation to Make Changes Effective Immediately</td>
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<td>Issue: The Committee on Privilege and Tenure has proposed significant revisions to Appendix III: Policies on Faculty Conduct and the Administration of Discipline in an effort to provide clarity in the steps and stages of the disciplinary process and to better align with extensive changes made to the Presidential Policy on Sexual Violence and Sexual Harassment in 2016 and 2019.</td>
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<td>Proposed action: Assembly will vote to approve or reject the changes. Assembly will then vote on a stipulation to make these changes effective immediately.</td>
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<td>INFORMATION</td>
<td>5. Announcements by Chair James Steintrager</td>
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<td>INFORMATION</td>
<td>6. Announcements by Other Administrative Officers</td>
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<td>8. Reports of Standing Committees</td>
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<td>INFORMATION</td>
<td>9. Petitions of Students</td>
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<td>INFORMATION</td>
<td>10. Unfinished Business</td>
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* Agenda items deemed noncontroversial by the Chair of the Divisional Senate Assembly, in consultation with the Senate Cabinet, may be placed on a Consent Calendar under Special Orders. Approval of all business on the Consent Calendar requires a single unanimous vote. At the request of any Divisional Assembly member, any Consent Calendar item may be extracted for consideration under “New Business” later in the agenda. (from Bylaw 158[D])

N.B. All members of the Academic Senate and of the University community shall have the privilege of attendance and the privilege of the floor at meetings of the Divisional Senate Assembly, but only members of the Divisional Senate Assembly may make or second motions or vote. However, the Chair (or designated representative) of a standing or special committee of the Division may move or second action on reports of that committee.

Note: For Senate updates, visit our home page: www.senate.uci.edu.

Representatives to the Divisional Senate Assembly may access the agenda materials by logging into the Senate Document Management System (DMS) using their UCnetID: https://dms.senate.uci.edu/~councils.and.committees/?Assembly.
11. University and Faculty Welfare

12. Update on Admissions and Enrollment Management (4:30-5:00)
   Presented by: Patricia Morales, Associate Vice Chancellor, Enrollment Management

13. New Business
Meeting Materials

Draft Meeting Minutes (January 30, 2020 Meeting) ......................................................... 0-1
IA - Review of Proposed Revisions to Appendix III .............................................................. 1-2
---CFW Final Response - CFW Memo Re Appendix III .................................................... 1-2
---Cabinet Modifications to Appendix III ............................................................................. 1-4
---Cabinet Appendix III Updated ....................................................................................... 1-5
---Assembly Appendix III Clean Copy of Proposed Changes ............................................... 1-13
MEETING
A regular meeting of the Irvine Divisional Senate Assembly was called to order by Chair James Steintrager at 3:32 pm on Thursday, January 30, 2020 in the Academic Senate Conference Room in Aldrich Hall 338.

1. Roll Call
Quorum was met. Members of the Administration and the University community were present. No members of the press were present.

2. Minutes
The Assembly voted 30-0-4 to approve the minutes from the December 5, 2019 Assembly meeting as distributed.

3. IBL – Proposed Modifications to Bylaw 127. Scholarly Honors and Awards, Committee on
Action: The Assembly voted 28-5-2 to approve the modifications.

The modifications to Bylaw 127 allow SHA to, in consultation with the Senate Chair, modify award names and add new awards without needing to update its bylaws each time. The modifications also allow for the Vice Provost of Teaching and Learning to send a representative other than the Vice Provost themselves as an ex officio member to SHA meetings.

4. Announcements by Chair James Steintrager
Chair Steintrager shared the Academic Council statement regarding the University’s negotiations with Unit 18 Lecturers. While the Senate normally does not comment on such negotiations, the Academic Council felt it was important to express support for fair and equitable living wages for Unit 18 Lecturers while making clear they are not members of the Senate and do not enjoy the same privileges of shared governance.

Chair Steintrager noted that the Standardized Testing Task Force would soon be releasing its preliminary report concerning the usage of standardized tests (SAT, ACT) in UC admissions. Relevant Senate Councils, especially CUARS, will review and comment on the report. Members expressed concern about how UCI utilizes outside firms in admissions. CUARS Chair Cohen-Cory clarified that the firm creates an algorithm that enrollment management utilizes, but that all applications are read by two readers hired by UCI and no outside firm ever reviews individual applications. Chair Steintrager encouraged members to read the report upon its release.

Chair Steintrager also noted the public comment period for the report of the Working Group on Comprehensive Access is now open through February 21, 2020. The Working Group was chaired by Chancellor Gillman and was asked to make recommendations on whether or how
UC affiliates with health care providers that have ethical and religious directives. The group was not able to come to an agreement about recommendations.

5. UC Presidential Search
Chair Steintrager reminded members that the online comment period for the UC Presidential search closes at 5pm on January 31. The Division will compile unfiltered comments and share them with the Academic Advisory Committee.

6. Announcements by Other Administrative Officers
None

7. Reports of Special Committees
None

8. UCI Brilliant Future Campaign Update
Vice Chancellor of University Advancement and Alumni Relations Brian Hervey updated members on the progress of the UCI Brilliant Future Campaign. UCI is changing how it approaches fundraising in hopes of creating “donors for life” and more effectively engaging alumni. Among the campaign’s goals is for every faculty and staff member, student, donor, and community member to identify and see themselves in the campaign. The goal is to raise $2 billion in private support and engage 75,000 alumni. To date, the campaign has raised $800 million and meaningfully engaged 30,000 alumni. Vice Chancellor Hervey encouraged members to be advocates for the campaign by working with their schools’ development officers, and sharing their success stories (e.g. grant awards) with communication officers.

9. Graduate Education at UCI
Vice Provost of Graduate Education Gillian Hayes and Director of Graduate Admissions & Academic Affairs Ruth Quinnan shared goals and updates from UCI Graduate Division. Currently, UCI is shifting toward a more student-centered model of graduate education that rewards excellent faculty mentoring. Vice Provost Hayes highlighted the Division’s academic counselors as a resource for students who need extra support, and informed faculty that they can require graduate students to meet with academic counselors in certain circumstances. She also noted that, among other goals, the Graduate Division is looking to offer more robust writing tutoring, expand efforts to recruit undergraduates from UC campuses to graduate programs, and increase funding for Dreamers and graduate student housing. The Chair of the Engineering FEC raised concerns about SSGPDPs that were noted by Chair Steintrager for further discussion.

10. Reports of Standing Committees
None

11. Petitions of Students
None

12. Unfinished Business
None
13. University and Faculty Welfare
None

14. New Business
None

15. Adjournment: The meeting adjourned at 5:03 pm.

Minutes prepared by Brandon Haskey-Valerius
Attest: Jeff Barrett, Chair Elect-Secretary
Academic Senate, Irvine Division
JAMES STEINTRAGER, CHAIR
ACADEMIC SENATE – IRVINE DIVISION

Re: Review of Proposed Revisions to Appendix III: Policies on Faculty Conduct and the Administration of Discipline

At its meeting on October 8, 2019, the Council on Faculty Welfare, Diversity, and Academic Freedom (CFW) discussed the Review of Proposed Revisions to Appendix III: Policies on Faculty Conduct and the Administration of Discipline. The Committee on Privilege and Tenure proposed significant revisions to Appendix III in an effort to provide clarity in the steps and stages of the disciplinary process and to better align with extensive changes made to the Presidential Policy on Sexual Violence and Sexual Harassment in 2016 and 2019.

Members appreciate the opportunity to review and comment on this policy and applaud the work that it represents, including intensive, long-term negotiation between the Senate and campus administration. The document includes solid steps toward improving due process and transparency. At the same time, members also recognized that the document, of necessity, is a work in progress.

Two concerns were raised:

- Considering the potentially ruinous consequences of mistakes, the selected evidentiary standards may not be sufficiently rigorous.
- The constitution of investigating committees (ICs) can be more transparent.

Details:

1. **Evidentiary standards.** Members were pleased that the newly modified definitions of Preponderance, and of Clear & Convincing, are now more consistent with the definitions used in other UC disciplinary policies. Nonetheless, because of the potential for career-ending outcomes, members believed that the evidentiary standards presently incorporated in Appendix III are insufficient to effectively safeguard due process for faculty members who have been accused of misconduct.

The likelihood of error in a review is embodied by its evidentiary standard: the lower the standard, the higher the likelihood of error. American criminal proceedings use the standard of Beyond a Reasonable Doubt, not only because deprivation of liberty is at stake, but because the wrongfully accused will be stigmatized.
Although the investigation of faculty misconduct is not a criminal proceeding, it nonetheless implicates critical life issues for accused. Moreover, in most investigations, the accused will be put in the difficult position of trying to prove a negative, i.e., that something did not happen. These conditions support the use of a higher standard – akin to the Beyond a Reasonable Doubt standard used in criminal cases. Using a higher evidentiary standards will help safeguard Senate members against potentially devastating errors.

2. Constitution of investigating committees.

That the Chancellor’s Designee may constitute an IC, “depending on the nature and source of the complaint,” is ambiguous. Neither the circumstances for convening, nor the selection of an IC’s members is stipulated. Moreover, that ICs will comprise a majority of Senate members may, in principle, add to safeguards for Senate respondents, how well it works will depend in part on how the members are selected. Articulating the conditions under which ICs will be convened and populated will support transparency and adherence to due process.

Sincerely,

Kenneth Chew, Chair
Council on Faculty Welfare, Diversity, and Academic Freedom

C: Kate Brigman, Executive Director
Academic Senate
January 17, 2020

JAMES STEINTRAGER, CHAIR
ACADEMIC SENATE

RE: Modifications to Appendix III Faculty Code of Conduct

After review of the proposed modifications to Appendix III of the Irvine Senate Manual, CRJ members have expressed the following concerns:

1. In the final paragraph “F. Hearing with the Committee on Privilege and Tenure,” the second to last sentence refers to “The accused faculty member,” whereas the rest of the document has referred to this person as “The respondent.”

2. The final sentence of Section II C 3.b is concerning for its usage of “these cases,” as it implies there are other cases where conflicts of interest are allowed. CRJ suggests rephrasing this for clarity, such as “In cases where a Campus Official is designated, the Campus Official should have no conflict of interest.”

3. The final sentence of Section II B 2.d uses “they” without a clarifying antecedent as to who “they” is.

4. Section II B 2.c notes that “response to any extension request shall also be made by written response,” and it could be read as indicating there is another mode of response rather than as similar to request for extension itself.

5. In regards to the footnote 5 and Section II B 1.c, there is a lack of clarity on the makeup of the IC. The footnote and Section II C 3.d indicate there may not be an IC, and Section II B.1.c is unclear about what the term “administrative appointee” specifically means.

6. Section II C.1 notes “a member of the University community” may file a complaint, while Section II B 1.d notes “any member of the public,” which is a broader term.

The Committee on Rules and Jurisdiction appreciates the opportunity to comment.

Sincerely,

Nadine Abi-Jaoudeh, Chair
Committee on Rules and Jurisdiction

C: Gina Anzivino, Assistant Director, Academic Senate
Brandon Haskey-Valerius, CRJ Analyst
Appendix III: Policies on Faculty Conduct and the Administration of Discipline

Section I: University Policy on Faculty Conduct and the Administration of Discipline
(Am 7 Dec 2006) (Am Date)

The policies of the Irvine Division regarding Faculty Conduct and the Administration of Discipline are those adopted by the University Academic Senate, as set forth in the current version of the Academic Personnel Manual 015 and 016.

http://www.ucop.edu/academic-personnel-programs/_files/apm/apm-015.pdf
http://www.ucop.edu/academic-personnel-programs/_files/apm/apm-016.pdf

Section II: UCI Procedures for Hearing Allegations of Faculty Code Violations and Grievances by the Senate Committee on Privilege and Tenure (CPT)
(Am 3 Jun 04) (Am 7 Dec 2006) (Am Date)

Preamble
This policy, as agreed to by the Office of Academic Personnel, recommended by the Academic Senate Cabinet and approved by the Irvine Divisional Senate Assembly on __________, supersedes the previous version of this section that was adopted in 2006. The goal of this policy is to create an integrated system of rules to govern the review and disposition of allegations of faculty misconduct. Allegations made against a faculty member for a violation of the Faculty Code of Conduct (APM 015) may originate from any member of the campus community, including students, trainees, staff, Senate and non-Senate faculty and academics, and any member of the public. As reflected in Standing Orders of the Regents (SOR) 103.2, 103.9, 103.10 and Senate Bylaws 334-337, review and disposition of faculty misconduct are administrative functions, while holding hearings when disposition results in bringing formal charges is a function of the Irvine Divisional Senate Assembly to be carried out by the Senate Committee on Privilege and Tenure.

A. Overview

1. This Appendix describes UCI administrative procedures for the review and disposition of alleged violations of the Faculty Code of Conduct and their articulation with procedures of the Academic Senate for hearing of formal charges. The Academic Personnel Office is the responsible party for carrying out the administrative procedures as described below. Procedures for the formal hearing conducted by the Academic Senate are described in Senate Bylaws 334-337.

2. Alternative procedures have been established for review of complaints in four categories, a. through d., listed below. These procedures are used in lieu of the review procedures described in Section C of this Appendix. The specific outcome of these external review processes form the basis of the decision by the Chancellor’s Designee for the disposition of the complaint of a Faculty Code of Conduct violation per Section D of this Appendix.

Appendix III: Policies on Faculty Conduct and the Administration of Discipline

Section II: UCI Procedures for Faculty Code Violations
(Am 3 June 2004) (Am 7 Dec 2006) (Am Date)

Administrative Policy and Procedures Section 700-18: Guidelines for Reporting and Responding to Reports of Discrimination and Harassment
http://www.policies.uci.edu/policies/procs/700-18.php as well as UCI Sexual Harassment and Sex Offense Investigation and Adjudication Framework for Senate and Non-Senate Faculty

b. Research Misconduct - see Responding to Allegations of Research Misconduct


1. Roles and Definitions

a. Chancellor’s Designee – Vice Provost, Academic Personnel is the individual responsible for the administration of the faculty disciplinary process.

b. Campus Official(s) – individual(s) appointed by the Chancellor’s Designee to conduct the formal review of an alleged violation of the Faculty Code of Conduct (see Section C.2.a). This might be the department chair, program director, or dean of the respondent’s unit, and/or an administrator or expert in the matter raised in the complaint.

c. Investigative Committee (IC) - the Chancellor’s Designee, depending on the nature and source of the complaint, may appoint an ad hoc administrative committee instead of Campus Official(s), to conduct the formal review of an alleged violation of the Faculty Code of Conduct. In this case the committee will include at least one (1) administrative appointee and two (2) Senate faculty members appointed by the Chancellor’s Designee.

* These Senate faculty members are selected from a slate of nominations provided by the UCI Academic Senate Committee on Committees.
Appendix III: Policies on Faculty Conduct and the Administration of Discipline

Section II: UCI Procedures for Faculty Code Violations

(Am 3 June 2004) (Am 7 Dec 2006) (Am Date)

d. Complainant - the individual who files a complaint alleging that a faculty member has violated the Faculty Code of Conduct. The complainant may be any member of the campus community, including student, trainee, staff, Senate and non-Senate faculty and academic, and/or any member of the public.

e. Respondent - the faculty member who is the subject of the complaint.

f. Complaint - Written communication to Chancellor’s Designee alleging a violation of the Faculty Code of Conduct.

g. Review – the process of determining whether the respondent’s conduct constitutes a violation of the Faculty Code of Conduct.

h. Disposition - the determination, based on the review, to either dismiss the complaint or to seek formal disciplinary action against a faculty member, either by obtaining the faculty member’s agreement to accept the Chancellor Designee’s proposed discipline, or absent such agreement, by filing a formal charge with the Committee on Privilege and Tenure for a hearing.

i. University Working Days - All days, excluding weekends and administrative holidays.

j. Standards of Evidence:

   i. Reasonable Grounds: This means that facts exist that would lead a reasonable person to conclude that the alleged misconduct, if true, may violate the Faculty Code of Conduct. This standard is applied by the Chancellor’s Designee to determine if a review is appropriate.

   ii. Probable Cause: APM 015, Part III-A-4 states, “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.” This standard is applied to the Chancellor Designee’s determination concerning whether to seek formal disciplinary action against a faculty member, either by obtaining the faculty member’s agreement to accept the Chancellor’s proposed discipline, or absent such agreement, by filing a formal complaint with the Committee on Privilege and Tenure for a hearing on the proposed disciplinary action.

   iii. Preponderance of the Evidence: Sufficient, relevant, probable, and persuasive evidence that outweighs the contravening evidence. This standard is applied to most University investigations concerning whether there has been a violation of University policy, including the alternative investigative procedures described above in Section II.A.2.

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2 Adapted from American Bar Association Task Force on College Due Process Rights and Victim Protections report titled ABA Criminal Justice Section Task Force on College Due Process Rights and Victim Protections for Colleges & Universities in Resolving Allegations of Campus Sexual Misconduct (June 2017).
iv. Clear and Convincing: Evidence that is highly and substantially more likely to be true than untrue. This standard sets a higher threshold than the preponderance of the evidence standard, but does not rise to the widely recognized standard used in criminal cases known as “beyond a reasonable doubt.” Clear and convincing is the evidence standard applied in cases involving Whistleblower Retaliation claims. Academic Senate Bylaw 334-337 also requires the Chancellor (or his/her Designee) to meet this evidence standard during the Committee on Privilege and Tenure hearing (in Section V) to support the proposed discipline.


a. The Chancellor’s Designee must initiate disciplinary action by delivering notice of proposed action to the respondent no later than three years after the Chancellor’s Designee is deemed to have known about the alleged violation. There is no time limit by which a complainant may report an alleged violation.

b. The review process ends when: (a) the Chancellor’s Designee closes a case; (b) the Chancellor’s Designee notifies the respondent of the proposed sanctions (disposition), or (c) the time period of 1 year since the start of the review is exceeded and no request for an extension of time has been made and approved.

c. When a time period is prescribed in this Appendix, the reviewing party may request an extension of time. All requests for an extension of time must be: (1) made in writing, (2) supported by good cause, and (3) submitted to the Chancellor’s Designee prior to the applicable deadline. Response to any extension request shall also be made by written response to the requesting party with copies provided to all interested parties, including complainant(s) and respondent(s).

d. The Campus Official(s) and each member of the Investigative Committee shall disclose to the Chancellor’s Designee any circumstances that may interfere with his or her objective consideration of the case and recuse himself or herself as appropriate. The Chancellor’s Designee will take steps to assure that no individual is involved in a review in which he or she has an actual or perceived conflict of interest. If the Chancellor’s Designee has a conflict of interest involving a particular case, they will appoint an appropriate senior administrator to serve as the Chancellor’s Designee in the said case.

e. All proceedings are to be treated as confidential. No participant shall disclose the identity of the complainant, the respondent, witnesses, the nature of the allegation, the evidence, or the deliberations of any decision-maker, other than to individuals who have a legitimate need for such information in order to conduct the proceeding, perform their University job function, or as required by law.

f. The Academic Personnel Office is responsible for the retention of all relevant records of informal and formal resolutions and other matters related this policy.


4 "Good cause" includes, but is not limited to, unforeseen complexity of the matter being addressed; inability to obtain relevant documents in a timely manner despite due diligence; and lack of timely availability of key participants in the relevant step (e.g., witnesses, respondent, ad hoc committee members, etc.).
C. Complaint Review Process

1. Filing of Complaint
   A member of the University community may choose to file a complaint in writing against a faculty member for an alleged violation of the Faculty Code of Conduct. The written complaint should be submitted on the designated form to the Chancellor’s Designee.

2. Initial Assessment of Complaint
   The Chancellor’s Designee will conduct an initial assessment to determine whether there are reasonable grounds to support a complaint alleging a violation of the Faculty Code of Conduct.
   
   a. If there is no reasonable ground, the complaint will be dismissed and the matter is closed. The Chancellor’s Designee will inform the complainant and the respondent in writing of this decision to close the matter.
   
   b. If reasonable grounds are found, the complaint will be reviewed in accordance with Section C.3 below and/or there will be an attempt at informal resolution. Attempt to resolve the matter informally should generally not exceed 30 working days.

3. Formal Review
   a. As noted in Section II.A.2, alternative procedures that have been established for both initial assessment and formal review of certain types of complaints will be used in those cases in lieu of review procedures detailed here. The specific outcome of the alternative review process will form the basis of the decision by the Chancellor’s Designee for the disposition of the complaint against a respondent faculty member in Section D below.
   
   b. For complaints that are not under the purview of one of these alternative procedures and if reasonable grounds are found, the Chancellor’s Designee will refer the complaint for formal review to either Campus Official(s) or the IC. The decision of which to use for a particular case is at the discretion of the Chancellor’s Designee, taking into consideration the complexity and particular circumstances of the allegations. It is anticipated that Campus Official(s) will be designated for cases for which investigation does not require significant corroborating witness testimony. In these cases, the Campus Official(s) should have no potential conflicts of interest.
   
   c. The Chancellor’s Designee should inform the respondent and the complainant that a review by Campus Official(s) or IC will be conducted. Specifically, the Chancellor’s Designee will:
      
      i. Inform the respondent that a complaint has been lodged, provide a copy of the written complaint (redacted as appropriate to protect individual privacy rights) and describe any special context or circumstances involved in the complaint.
Appendix III: Policies on Faculty Conduct and the Administration of Discipline

Section II: UCI Procedures for Faculty Code Violations

(Am 3 June 2004) (Am 7 Dec 2006)(Am Date)

ii. Inform the complainant and the respondent that the complaint is accepted for formal review and has been assigned to a Campus Official or IC (as defined by Section B.3).

iii. Instruct the complainant and the respondent that the University will treat the proceedings as a confidential process.

d. Review Procedures5

i. The Campus Official(s) or the IC has the authority to define the scope of the review. They will interview the complainant and the respondent in order to gather factual background information and may interview additional witnesses, examine documents or seek other relevant evidence. To the extent allowed by University policy and the law, they shall have access to information needed to complete the review including Academic Personnel review documents if these are deemed relevant and necessary.

ii. The Campus Official(s) or the IC will communicate a reasonable timeframe to the respondent faculty member for the submission of evidence.

iii. The Campus Official or IC will make a finding as to whether a violation of the Faculty Code of Conduct has occurred using probable cause and report this finding to the Chancellor’s Designee.

iv. The review must be completed within sixty (60) working days of the appointment of the Campus Official(s) or the formation of the IC. The Chancellor’s Designee may approve an extension of this deadline if warranted by exceptional circumstances based on a written request from the Campus Official or the IC.

e. Investigation of complaints under any of the alternative procedures described in Section II.A.2 will also conclude with a written report to the Chancellor’s Designee similar in scope as described above. For example, complaints whose allegations are under the purview of the University Policy on Sexual Violence & Sexual Harassment (https://policy.ucop.edu/doc/4000385/SVSH) are conducted by the OEOD (Section A.2.a). The OEOD will convey a written report of its investigative findings and its determination of whether a violation of the SVSH policy has occurred to the Chancellor’s Designee.

D. Disposition of Review Outcome

1. The Chancellor’s Designee must inform the respondent of the outcome of the review completed by the Campus Official or the IC by providing a copy of any written findings (subject to applicable University policies concerning access, confidentiality, and redaction). The respondent has the right to reply in writing to the Chancellor’s Designee within ten (10) working days of receiving the written findings. The Chancellor’s Designee may extend the response deadlines if the circumstances warrant it.

5 The IC will be staffed by the Academic Personnel Office.
Appendix III: Policies on Faculty Conduct and the Administration of Discipline

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(Am 3 June 2004) (Am 7 Dec 2006) (Am Date)

2. Upon receipt of the respondent's written response, or if no written response from the respondent was received, the Chancellor's Designee has the following three (3) options:

a. Decide that no disciplinary sanctions are warranted and close the matter.

b. Discuss and reach an agreement with the respondent faculty member regarding a resolution of the matter. As part of the agreement, the respondent faculty member might accede to sanctions or penalties.

c. File disciplinary charges against the respondent faculty member with the Committee on Privilege and Tenure. Disciplinary charges shall be in writing and shall contain notice of proposed disciplinary action and a full statement of the facts underlying the charges. Filing of disciplinary charges should occur within two (2) calendar months (or 40 working days) of the Chancellor's Designee receiving a report (through the review process or any of the alternative review processes).

3. In cases involving substantiated findings of SVSH policy violations, the Chancellor's Designee will follow the process as described in Section D.2 above, only after receiving and in consideration of a recommendation from the campus Peer Review Committee (PRC). The PRC (https://ap.uci.edu/svshpeerreviewcommittee/) is charged by the UC SVSH policy and UCI Sexual Harassment and Sex Offense Investigation and Adjudication Framework for Senate Faculty to review all OEOD determinations involving faculty respondents and to recommend appropriate sanction and/or discipline to the Chancellor's Designee.

E. Interim Actions

The Chancellor's Designee and the respondent's department chair, program director and/or dean have the authority to take certain administrative actions, short of discipline, to ensure the safe and effective operation of the University (see APM 016, Section I), including temporary adjustment to the faculty member's duties. Such administrative action taken should be the least intrusive option necessary to ensure the safe and effective operation of the university. It is critical that any temporary adjustment be attentive to issues of confidentiality and the respondent's reputation.

The Chancellor’s Designee has the authority to implement an involuntary leave, with full pay, in cases where there is a strong risk that the respondent's continued assignment to regular duties will cause immediate and serious harm to the University community or impede the investigation of his or her alleged wrongdoing, or in situations where the respondent's conduct represents a serious crime or felony that is the subject of investigation by a law enforcement agency.

The respondent has the right, if he or she chooses, to have an expedited hearing before the Committee on Privilege and Tenure concerning the justification for any imposed interim actions. The Committee on Privilege and Tenure must initiate the hearing within ten (10) working days of

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- Deleted: During
- Deleted: disciplinary process, the administration must
- Deleted: on a faculty member
- Deleted: clear probability
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- Deleted: When such restrictions are imposed, the timeline
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The Chancellor's Designee will provide an annual summary to the Chair of the Committee on Privilege and Tenure of all agreements with respondent faculty members.
a request by the respondent for such a hearing, unless the respondent agrees in writing to an extension of this time period. The scope of this hearing shall be limited to the appropriateness of the interim actions.

In the event that an interim action has been imposed, the Chancellor’s Designee shall not hold the matter in abeyance following completion of the review without the respondent’s agreement. During the imposition of interim action, any anticipated delays in investigating the case and bringing it to formal hearing before the Committee on Privilege and Tenure, other than those agreed to by the respondent, must be submitted to the Committee on Privilege and Tenure for a recommendation to the Chancellor as to whether compelling need exists to support the delays.

F. Hearing with the Committee on Privilege and Tenure

If the Chancellor’s Designee’s decision is to file charges against the respondent based on the outcome of the review, the Committee on Privilege and Tenure conducts a formal hearing on the issues referred by the Chancellor’s Designee (Senate Bylaws 334-337). At the hearing, the Chancellor’s Designee has the burden of proving the allegations by the clear and convincing standard. The Hearing Committee appointed by the Committee on Privilege and Tenure may accept into evidence the findings of another hearing body or investigative agency and shall accord it weight at its discretion taking account of the nature of its source. However, the Hearing Committee is not bound by the recommendation of another hearing body. The accused faculty member will be given full opportunity to challenge the findings of the other body. Based on the facts found in the formal hearing, the Committee on Privilege and Tenure makes recommendations to the Chancellor regarding the appropriate disposition of the case.
Appendix III: Policies on Faculty Conduct and the Administration of Discipline

Section I: University Policy on Faculty Conduct and the Administration of Discipline
(Am 7 Dec 2006) (Am Date)

The policies of the Irvine Division regarding Faculty Conduct and the Administration of Discipline are those adopted by the University Academic Senate, as set forth in the current version of the Academic Personnel Manual 015 and 016.

http://www.ucop.edu/academic-personnel-programs/_files/apm/apm-015.pdf
http://www.ucop.edu/academic-personnel-programs/_files/apm/apm-016.pdf

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(Am 3 Jun 04) (Am 7 Dec 2006) (Am Date)

Preamble
This policy, as agreed to by the Office of Academic Personnel, recommended by the Academic Senate Cabinet and approved by the Irvine Divisional Senate Assembly on [date], supersedes the previous version of this section that was adopted in 2006. The goal of this policy is to create an integrated system of rules to govern the review and disposition of allegations of faculty misconduct. Allegations made against a faculty member for a violation of the Faculty Code of Conduct (APM 015) may originate from any member of the campus community, including students, trainees, staff, Senate and non-Senate faculty and academics, and any member of the public. As reflected in Standing Orders of the Regents (SOR) 103.2, 103.9, 103.10 and Senate Bylaws 334-337, review and disposition of faculty misconduct are administrative functions, while holding hearings when disposition results in bringing formal charges is a function of the Academic Senate to be carried out by the Senate Committee on Privilege and Tenure.

A. Overview
1. This Appendix describes UCI administrative procedures for the review and disposition of alleged violations of the Faculty Code of Conduct and their articulation with procedures of the Academic Senate for hearing of formal charges. The Academic Personnel Office is the responsible party for carrying out the administrative procedures as described below. Procedures for the formal hearing conducted by the Academic Senate are described in Senate Bylaws 334-337.

2. Alternative procedures have been established for review of complaints in four categories, a. through d., listed below. These procedures are used in lieu of the review procedures described in Section C of this Appendix. The specific outcome of these external review processes form the basis of the decision by the Chancellor’s Designee for the disposition of the complaint of a Faculty Code of Conduct violation per Section D of this Appendix.


1. Roles and Definitions

a. Chancellor’s Designee – Vice Provost, Academic Personnel is the individual responsible for the administration of the faculty disciplinary process.

b. Campus Official(s) – individual(s) appointed by the Chancellor’s Designee to conduct the formal review of an alleged violation of the Faculty Code of Conduct (see Section C.2.a). This might be the department chair, program director, or dean of the respondent’s unit, and/or an administrator or expert in the matter raised in the complaint.

c. Investigative Committee (IC) - the Chancellor’s Designee, depending on the nature and source of the complaint, may appoint an ad hoc administrative committee instead of Campus Official(s), to conduct the formal review of an alleged violation of the Faculty Code of Conduct. In this case the committee will include at least one (1) administrative appointee, such as a campus administrator, outside investigator, or other subject matter expert who is a non-faculty appointee and two (2) Senate faculty members¹, appointed by the Chancellor’s Designee.

¹These Senate faculty members are selected from a slate of nominations provided by the UCI Academic Senate Committee on Committees.
d. Complainant - the individual who files a complaint alleging that a faculty member has violated the Faculty Code of Conduct. The complainant may be any member of the campus community, including student, trainee, staff, Senate and non-Senate faculty and academic, and/or any member of the public.

e. Respondent - the faculty member who is the subject of the complaint.

f. Complaint - Written communication to Chancellor’s Designee alleging a violation of the Faculty Code of Conduct.

g. Review – the process of determining whether the respondent’s conduct constitutes a violation of the Faculty Code of Conduct.

h. Disposition - the determination, based on the review, to either dismiss the complaint or to seek formal disciplinary action against a faculty member, either by obtaining the faculty member’s agreement to accept the Chancellor Designee’s proposed discipline, or absent such agreement, by filing a formal charge with the Committee on Privilege and Tenure for a hearing.

i. University Working Days - All days, excluding weekends and administrative holidays.

j. Standards of Evidence:

   i. Reasonable Grounds: This means that facts exist that would lead a reasonable person to conclude that the alleged misconduct, if true, may violate the Faculty Code of Conduct. This standard is applied by the Chancellor’s Designee to determine if a review is appropriate.

   ii. Probable Cause: APM 015, Part III-A-4 states, “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.” This standard is applied to the Chancellor Designee’s determination concerning whether to seek formal disciplinary action against a faculty member, either by obtaining the faculty member’s agreement to accept the Chancellor’s proposed discipline, or absent such agreement, by filing a formal charge with the Committee on Privilege and Tenure for a hearing on the proposed disciplinary action.

   iii. Preponderance of the Evidence: Sufficient, relevant, probable, and persuasive evidence that outweighs the contravening evidence. This standard is applied to most University investigations concerning whether there has been a violation of University policy, including the alternative investigative procedures described above in Section II.A.2.

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2 Adapted from American Bar Association Task Force on College Due Process Rights and Victim Protections report titled ABA Criminal Justice Section Task Force on College Due Process Rights and Victim Protections for Colleges & Universities in Resolving Allegations of Campus Sexual Misconduct (June 2017).
iv. Clear and Convincing: Evidence that is highly and substantially more likely to be true than untrue\(^3\). This standard sets a higher threshold than the preponderance of the evidence standard, but does not rise to the widely recognized standard used in criminal cases known as “beyond a reasonable doubt.” Clear and convincing is the evidence standard applied in cases involving Whistleblower Retaliation claims. Academic Senate Bylaw 334-337 also requires the Chancellor (or his/her Designee) to meet this evidence standard during the Committee on Privilege and Tenure hearing (in Section V) to support the proposed discipline.

   a. The Chancellor’s Designee must initiate disciplinary action by delivering notice of proposed action to the respondent no later than three years after the Chancellor’s Designee is deemed to have known about the alleged violation. There is no time limit by which a complainant may report an alleged violation.

   b. The review process ends when: (a) the Chancellor’s Designee closes a case; (b) the Chancellor’s Designee notifies the respondent of the proposed sanctions (disposition), or (c) the time period of 1 year since the start of the review is exceeded and no request for an extension of time has been made and approved.

   c. When a time period is prescribed in this Appendix, the reviewing party may request an extension of time. All requests for an extension of time must be: (1) made in writing, (2) supported by good cause\(^4\), and (3) submitted to the Chancellor’s Designee prior to the applicable deadline. Response to any extension request shall also be made by written response to the requesting party with copies provided to all interested parties, including complainant(s) and respondent(s).

   d. The Campus Official(s) and each member of the Investigative Committee shall disclose to the Chancellor’s Designee any circumstances that may interfere with his or her objective consideration of the case and recuse himself or herself as appropriate. The Chancellor’s Designee will take steps to assure that no individual is involved in a review in which he or she has an actual or perceived conflict of interest. If the Chancellor’s Designee has a conflict of interest involving a particular case, the Chancellor’s Designee will appoint an appropriate senior administrator to serve as the Chancellor’s Designee in the said case.

   e. All proceedings are to be treated as confidential. No participant shall disclose the identity of the complainant, the respondent, witnesses, the nature of the allegation, the evidence, or the deliberations of any decision-maker, other than to individuals who have a legitimate need for such information in order to conduct the proceeding, perform their University job function, or as required by law.

   f. The Academic Personnel Office is responsible for the retention of all relevant records of informal and formal resolutions and other matters related this policy.

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\(^3\) US Supreme Court in CO vs. NM, 467 US 310 (1984).

\(^4\) “Good cause” includes, but is not limited to, unforeseen complexity of the matter being addressed; inability to obtain relevant documents in a timely manner despite due diligence; and lack of timely availability of key participants in the relevant step (e.g. witnesses, respondent, ad hoc committee members, etc.).
C. Complaint Review Process

1. Filing of Complaint
A complainant may choose to file a complaint in writing against a faculty member for an alleged violation of the Faculty Code of Conduct. The written complaint should be submitted on the designated form to the Chancellor’s Designee.

2. Initial Assessment of Complaint
The Chancellor’s Designee will conduct an initial assessment to determine whether there are reasonable grounds to support a complaint alleging a violation of the Faculty Code of Conduct.

   a. If there is no reasonable ground, the complaint will be dismissed and the matter is closed. The Chancellor’s Designee will inform the complainant and the respondent in writing of this decision to close the matter.

   b. If reasonable grounds are found, the complaint will be reviewed in accordance with Section C.3 below and/or there will be an attempt at informal resolution. Attempt to resolve the matter informally should generally not exceed 30 working days.

3. Formal Review
   a. As noted in Section II.A.2, alternative procedures that have been established for both initial assessment and formal review of certain types of complaints will be used in those cases in lieu of review procedures detailed here. The specific outcome of the alternative review process will form the basis of the decision by the Chancellor’s Designee for the disposition of the complaint against a respondent faculty member in Section D below.

   b. For complaints that are not under the purview of one of these alternative procedures and if reasonable grounds are found, the Chancellor’s Designee will refer the complaint for formal review to either Campus Official(s) or the IC. The decision of which to use for a particular case is at the discretion of the Chancellor’s Designee, taking into consideration the complexity and particular circumstances of the allegations. It is anticipated that Campus Official(s) will be designated for cases for which investigation does not require significant corroborating witness testimony. In cases where a Campus Official is designated, the Campus Official(s) should have no potential conflicts of interest.

   c. The Chancellor’s Designee should inform the respondent and the complainant that a review by Campus Official(s) or IC will be conducted. Specifically, the Chancellor’s Designee will:

      i. Inform the respondent that a complaint has been lodged, provide a copy of the written complaint (redacted as appropriate to protect individual privacy rights) and describe any special context or circumstances involved in the complaint.
Appendix III: Policies on Faculty Conduct and the Administration of Discipline

Section II: UCI Procedures for Faculty Code Violations

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ii. Inform the complainant and the respondent that the complaint is accepted for formal review and has been assigned to a Campus Official or IC (as defined by Section B.3).

iii. Instruct the complainant and the respondent that the University will treat the proceedings as a confidential process.

d. Review Procedures5

i. The Campus Official(s) or the IC has the authority to define the scope of the review. They will interview the complainant and the respondent in order to gather factual background information and may interview additional witnesses, examine documents or seek other relevant evidence. To the extent allowed by University policy and the law, they shall have access to information needed to complete the review including Academic Personnel review documents if these are deemed relevant and necessary.

ii. The Campus Official(s) or the IC will communicate a reasonable timeframe to the respondent faculty member for the submission of evidence.

iii. The Campus Official or IC will make a finding as to whether a violation of the Faculty Code of Conduct has occurred using probable cause and report this finding to the Chancellor’s Designee.

iv. The review must be completed within sixty (60) working days of the appointment of the Campus Official(s) or the formation of the IC. The Chancellor’s Designee may approve an extension of this deadline if warranted by exceptional circumstances based on a written request from the Campus Official or the IC.

e. Investigation of complaints under any of the alternative procedures described in Section II.A.2 will also conclude with a written report to the Chancellor’s Designee similar in scope as described above. For example, complaints whose allegations are under the purview of the University Policy on Sexual Violence & Sexual Harassment (https://policy.ucop.edu/doc/4000385/SVSH) are conducted by the OEOD (Section A.2.a). The OEOD will convey a written report of its investigative findings and its determination of whether a violation of the SVSH policy has occurred to the Chancellor’s Designee.

D. Disposition of Review Outcome

1. The Chancellor’s Designee must inform the respondent of the outcome of the review completed by the Campus Official or the IC by providing a copy of any written findings (subject to applicable University policies concerning access, confidentiality, and redaction). The respondent has the right to reply in writing to the Chancellor’s Designee within ten (10) working days of receiving the written findings. The Chancellor’s Designee may extend the response deadlines if the circumstances warrant it.

5 The IC will be selected by the Academic Personnel Office.
2. Upon receipt of the respondent’s written response, or if no written response from the respondent was received, the Chancellor’s Designee has the following three (3) options:

a. Decide that no disciplinary sanctions are warranted and close the matter.

b. Discuss and reach an agreement with the respondent faculty member regarding a resolution of the matter. As part of the agreement, the respondent faculty member might accede to sanctions or penalties.

c. File disciplinary charges against the respondent faculty member with the Committee on Privilege and Tenure. Disciplinary charges shall be in writing and shall contain notice of proposed disciplinary action and a full statement of the facts underlying the charges. Filing of disciplinary charges should occur within two (2) calendar months (or 40 working days) of the Chancellor’s Designee receiving a report (through the review process or any of the alternative review processes).

3. In cases involving substantiated findings of SVSH policy violations, the Chancellor’s Designee will follow the process as described in Section D.2 above, only after receiving and in consideration of a recommendation from the campus Peer Review Committee (PRC). The PRC is charged by the UC SVSH policy and UCI Sexual Harassment and Sex Offense Investigation and Adjudication Framework for Senate Faculty to review all OEOD determinations involving faculty respondents and to recommend appropriate sanction and/or discipline to the Chancellor’s Designee.

E. Interim Actions

The Chancellor’s Designee and the respondent’s department chair, program director and/or dean have the authority to take certain administrative actions, short of discipline, to ensure the safe and effective operation of the University (see APM 016, Section I), including temporary adjustment to the faculty member’s duties. Such administrative action taken should be the least intrusive option necessary to ensure the safe and effective operation of the university. It is critical that any temporary adjustment be attentive to issues of confidentiality and the respondent’s reputation.

The Chancellor’s Designee has the authority to implement an involuntary leave, with full pay, in cases where there is a strong risk that the respondent’s continued assignment to regular duties will cause immediate and serious harm to the University community or impede the investigation of his or her alleged wrongdoing, or in situations where the respondent’s conduct represents a serious crime or felony that is the subject of investigation by a law enforcement agency.

The respondent has the right, if he or she chooses, to have an expedited hearing before the Committee on Privilege and Tenure concerning the justification for any imposed interim actions. The Committee on Privilege and Tenure must initiate the hearing within ten (10) working days of

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6 The Chancellor’s Designee will provide an annual summary to the Chair of the Committee on Privilege and Tenure, of all agreements with respondent faculty members.
a request by the respondent for such a hearing, unless the respondent agrees in writing to an extension of this time period. The scope of this hearing shall be limited to the appropriateness of the interim actions.

In the event that an interim action has been imposed, the Chancellor’s Designee shall not hold the matter in abeyance following completion of the review without the respondent’s agreement. During the imposition of interim action, any anticipated delays in investigating the case and bringing it to formal hearing before the Committee on Privilege and Tenure, other than those agreed to by the respondent, must be submitted to the Committee on Privilege and Tenure for a recommendation to the Chancellor as to whether compelling need exists to support the delays.

**F. Hearing with the Committee on Privilege and Tenure**

If the Chancellor’s Designee’s decision is to file charges against the respondent based on the outcome of the review, the Committee on Privilege and Tenure conducts a formal hearing on the issues referred by the Chancellor’s Designee (Senate Bylaws 334-337). At the hearing, the Chancellor's Designee has the burden of proving the allegations by the clear and convincing standard. The Hearing Committee appointed by the Committee on Privilege and Tenure may accept into evidence the findings of another hearing body or investigative agency and shall accord it weight at its discretion taking account of the nature of its source. However, the Hearing Committee is not bound by the recommendation of another hearing body. The respondent will be given full opportunity to challenge the findings of the other body. Based on the facts found in the formal hearing, the Committee on Privilege and Tenure makes recommendations to the Chancellor regarding the appropriate disposition of the case.