

**University of California**

**Report of the  
Joint Committee of  
the Administration  
and Academic Senate**

April 2016

**UNIVERSITY OF CALIFORNIA  
REPORT OF THE JOINT COMMITTEE OF THE ADMINISTRATION AND ACADEMIC SENATE**

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## **Introduction**

The Joint Committee of the Administration and Academic Senate was convened by President Napolitano in October 2015 to examine how the University of California manages disciplinary proceedings for faculty respondents in cases alleging sexual violence, sexual assault or sexual harassment (SVSH). President Napolitano's action, aligned with the University's efforts to examine all facets of the University's response to SVSH, challenged University leadership to evaluate whether current policy and practice are effective when addressing incidents of SVSH.

Following extensive efforts to gather data, review campus policies, practices, and comparable institutional practices, and obtain input during in-person meetings with faculty, postdoctoral scholars, students, both graduate and undergraduate, and academic administrators, the Joint Committee convened to deliberate, to form its recommendations, and to issue a draft Report. The Report was then circulated for systemwide review from February 18, 2016 to March 18, 2016. Substantive comments were received from the Academic Senate, senior academic administrators, Title IX officers, and the exclusive bargaining representative of postdoctoral scholars and graduate student instructors.

The Joint Committee finds it difficult to complete a major refinement of our original recommendations based on review of the comments, which do not reveal a consensus of thought, analysis, or resolution. In fact, review of the comments supports the conclusion that much more work must be done to create a culture of shared responsibility for improving the response to incidents of SVSH. High-profile cases of sexual harassment, disclosed near the end of the consultation period, continue to damage the University community. In light of the Joint Committee findings, disparate feedback received during the consultation period, and the recent troubling events, the Joint Committee concludes that further investigation is required to answer critical questions that were beyond the Committee's original charge and that emerged near the end of the Committee's work. Should there be a systemwide framework to integrate the Title IX investigation and reporting responsibilities with the disciplinary process? How can the University improve accountability and transparency of administrative procedures and responses that occur after receipt of a Title IX report and before charges are filed with Privilege and Tenure?

## **Timeline for the Joint Committee's Work**

October 15, 2015	President Napolitano announces formation of the Joint Committee
October 28, 2015	President Napolitano sends charge letter to Co-chairs Hare and Vacca and Joint Committee members
November 12, 2015	Co-chairs Hare and Vacca communicate details about charge to Joint Committee
November 18, 2015	Joint Committee Conference Call
November 15 - December 2015	Co-chairs Hare and Vacca collect data, policy, and procedures from campus and comparator institutions, conduct interviews with Title IX Officers and senior campus academic administrators
January 7, 2016	Joint Committee meets in person to develop outline of Report
January 13, 2016	Co-chairs Hare and Vacca meet with faculty, graduate students, and postdoctoral scholars in Irvine

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January 14, 2016	Co-chairs Hare and Vacca meet with faculty, graduate students, and postdoctoral scholars in Oakland
January 22, 2016	Joint Committee meets in person to confirm outline of Report
January 23, 2016	Report drafting begins
February 4, 2016	Joint Committee meets in person to confirm content for Report
February 15, 2016	Joint Committee reviews first draft of report
February 18, 2016	Report circulated for systemwide review
March 18, 2016	Systemwide review comment deadline
March 22, 2016	Analysis of comments; Report editing
April 4, 2016	Submission of Final Report to President Napolitano

## **I. Executive Summary**

Following the work of the Presidential Task Force on Preventing and Responding to Sexual Violence and Sexual Assault, issuance of the University of California Policy on Sexual Violence and Sexual Harassment, and issuance of the Adjudication Framework for undergraduate students, President Napolitano convened a Joint Administration-Academic Senate Committee on Faculty Discipline to examine how the University manages disciplinary proceedings for faculty<sup>1</sup> respondents in cases alleging sexual violence, sexual assault, or sexual harassment (SVSH). The Joint Committee closely followed the President's charge to the Committee.

The Joint Committee considered the disciplinary processes that apply to Senate and non-Senate faculty other than those covered by collective bargaining agreements. As requested by President Napolitano, the Joint Committee made findings and recommendations on all topics.

*A. Examine and provide a clear explanation of current policies and existing processes for investigation, adjudication, and discipline in cases involving faculty, including any particularities for cases involving sexual violence, sexual assault, or sexual harassment. This will include identifying possible variation in policies and processes among campuses.*

In general, the Joint Committee found that the systemwide and campus formal policies and procedures are fundamentally sound but that misunderstandings and misinformation sometimes impede full and optimal implementation of The Faculty Code of Conduct (APM - 015), the University Policy on Faculty Conduct and the Administration of Discipline (APM - 016), and Senate Bylaws; they allow appropriate discretion to deal with the complexity of individual cases involving faculty. The level of detail and timelines vary among the campuses, but the Joint Committee did not find such variation problematic in terms of implementing local formal procedures or in possibly leading to different outcomes at different campuses. The policies apply to all categories of violation of the Faculty Code of Conduct and are designed to regulate the University's interaction with the accused faculty member. They make the Administration responsible for initiating a disciplinary process and making a final decision regarding what sanction will be imposed, while providing due process for respondent (accused) faculty, who have

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<sup>1</sup> The "faculty" is defined per Academic Personnel Manual (APM) Section 110-4(15) as academic appointees with independent responsibility for conducting approved regular University courses for credit. See Appendix C for a list of faculty titles.

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a right to a hearing before an impartial body at which they may rebut evidence presented against them and present their own evidence in an adversarial proceeding. The disciplinary policies encourage early resolution when the Administration and the faculty respondent are able to agree on an appropriate outcome based on the seriousness of the alleged offense, the strength of the evidence, and the best interests of the University. However, the Joint Committee found that misunderstandings about the policies and procedures are widespread among different University groups. Timeframes and processes are not known by faculty and vary campus-to-campus.

In addition, some uncertainty and campus-by-campus variation in implementing the SVSH Policy surrounds the role and responsibilities of the Title IX Office in SVSH cases involving faculty, particularly the Title IX Officer responsibilities once an investigation is concluded and a report issued. Does the Title IX Officer determine whether a Faculty Code of Conduct policy violation has occurred? Does the Title IX Office recommend discipline? If so, to whom? What role does the Title IX Officer have after the Title IX report is issued and before a disciplinary hearing occurs? What is the interface between initial investigations of alleged SVSH by Title IX Officers and investigations that take place during subsequent disciplinary hearings? The Committee recommends that the Chancellors or designees, Title IX Officers, and Senate leaders answer these questions as part of an overall review of campus faculty and administrative procedures.

**Recommendations:**

- A.1. The Joint Committee recommends adding explicit language prohibiting sexual violence to APM- 015.
  - A.1.a. Suggested language to be added (additions in italics) to Section II.A, Teaching and Students Types of Unacceptable Conduct:

*“4. Sexual violence and sexual harassment, as defined by University policy, of a student.”*
  - A.1.b. Suggested language to be added to Section II.C, The University Types of Unacceptable Conduct:

*“6. Sexual violence and sexual harassment, as defined by University policy, of a University employee.”*
  - A.1.c. Suggested language to be added to Section II.D. Colleagues Types of Unacceptable Conduct:

*“3. Sexual violence or sexual harassment, as defined by University policy, of a colleague.”*
- A.2. Chancellors or designees, Title IX Officers, and Senate leaders should convene to perform an overall review of campus procedures to clarify roles and responsibilities in determining policy violations, recommendations for discipline, the roles of each office after an investigation has concluded, and how each office interacts after the Title IX investigation has concluded.
- A.3. Integrate Title IX investigations with other investigations that may need to occur to support discipline for faculty who are found to have engaged in prohibited conduct

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under the SVSH Policy, thus minimizing the need for multiple investigations based on the same nucleus of facts.

- A.3.a. Include Administrators, Title IX Officers, and Academic Senate leaders in planning discussions to amend existing or create new procedures to investigate other violations of the Faculty Code of Conduct that may have occurred in connection with the alleged incident(s) of SVSH.
  - A.3.b. Include appropriately trained and skilled investigators for the Senate and or Senate faculty to augment teams at the time of the Title IX investigation to decrease the timeframe for investigations.
  - A.3.c. Provide training for Title IX Offices to understand the Privilege and Tenure process under Regents Standing Order 103.9 and Senate Bylaw 336.
  - A.3.d. Educate the Privilege and Tenure Committee and Charges Committee on the Title IX process.
  - A.4. Require Title IX Officers to inform the Chancellor or designee for faculty discipline whenever the Title IX Office begins an investigation of a faculty respondent.
  - A.5. At the beginning of a formal investigation, provide all parties with a clear written description of the Title IX and faculty discipline processes and notice of rights related to the process.
  - A.6. Require the Chancellor's designee for faculty discipline to provide the opportunity to the complainant to express the complainant's view of the case and what the complainant views as appropriate outcomes.
  - A.7. Require the Chancellor's designee and/or the Title IX Officer (per SVSH policy) to provide updates to the complainant and the respondent during the investigation and discipline processes.
- B. *Review whether there are clear procedures and mechanisms on each campus for students, faculty, and staff to report to relevant authorities when they believe incidents of sexual violence or sexual harassment are taking place. This will include identifying possible variation in procedures and mechanisms among campuses.*

The Joint Committee found that all campuses have established reporting procedures and mechanisms but not all have promulgated them. Many faculty, other academic appointees, including postdoctoral scholars and graduate student employees (hereafter referred to as "academic appointees"), and graduate students do not know what these procedures are or where to report. It is not clear whether all "Responsible Employees" among faculty, academic appointees, and academic administrators (such as department chairs) are aware of their responsibility to report any allegations of which they become aware to the Title IX Office. Faculty and other academic appointees also report that available confidential resources are not well equipped to advise them; they expressed concern that the designation of all employees as Responsible Employees has deprived them of opportunities to consult their peers and mentors in confidence prior to filing a complaint that will initiate an investigative process. Based on feedback received from reviewers it is apparent that those commenting were not

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satisfied that ALL members of the community except those designated as confidential resources should be responsible employees for the reasons mentioned above.;

**Recommendations:**

- B.1. Reconsideration should be given to the designation of all employees as “Responsible Employees”, when the SVSH Policy is next reviewed, particularly whether postdoctoral scholars and graduate student employees should be designated “Responsible Employees.”
  - B.2. Conduct targeted educational outreach to ensure that all faculty, other academic appointees, and Administrators who are not formally designated as confidential resources are aware of their responsibility to report allegations of SVSH to the Title IX Office.
  - B.3. Increase outreach and education to faculty, other academic appointees, and graduate students about:
    - B.3.a. the SVSH Policy prohibition on retaliation for reporting or participating in an investigation of alleged SVSH, including how to report alleged retaliation, what remedies may be available for complainants, and what sanctions may be imposed on respondents who are found to have committed acts of retaliation; and,
    - B.3.b. reporting procedures, the rights of complainants, and available resources.
  - B.4. At each location, designate a confidential resource (or more than one if the campus feels it necessary) who is exempt from reporting and has appropriate insight into the unique demands, opportunities, and risks of mentorship relationships and academic careers who is available to advise faculty, other academic appointees, and graduate students who believe they have experienced SVSH or retaliation for reporting or participating in an investigation. Such confidential resources need not be a new position but may be one or more existing Administrator(s) or faculty with appropriate training and knowledge.
- C. *Review and provide a clear explanation of current policies governing the imposition of interim measures that can be put in place while the investigation of a claim is underway and implementation of those policies at each of the campuses. This will include identifying possible variations in policies and implementation among campuses.*

APM - 016 and APM - 150, Non-Senate Academic Appointees/Corrective Action and Dismissal, authorize academic Administrators to impose non-disciplinary measures on faculty respondents pending conclusion of an investigation, and anecdotal evidence indicates that they do so. No systematic information on the frequency of imposing administrative measures was available to the Joint Committee. APM - 016 and APM - 150 also authorize campus Administrators to place a faculty respondent on involuntary paid leave when it appears that the faculty member may pose a risk to campus safety or interfere with the investigation or when the Administrator learns that the faculty respondent has been accused of a serious crime that is being investigated by law enforcement.

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APM - 016 and APM - 150 permit the faculty respondent to grieve the involuntary leave. APM - 016 requires that Administrators who impose paid involuntary leave must file formal disciplinary charges within 10 days. The Joint Committee found that this timeline is unrealistic and impractical to complete the investigation process, assess the findings, and prepare and file disciplinary charges.

**Recommendations:**

- C.1. Conduct broad outreach and education to ensure Chancellors and designees are aware of their discretion to take interim administrative measures short of disciplinary action to protect complainants and the campus community pending the outcome of an investigation. See Appendix F for a list of interim administrative measures available to Chancellors or designees.
  - C.2. Clarify, as necessary in guidance, APM - 016 terms and the distinction between suspension without pay, which is a disciplinary sanction, and involuntary leave, with and without pay, which may be imposed outside of the discipline process during an investigation.
    - C.2.a. Amend APM - 016 to replace the 10-day deadline to file charges after placing a faculty respondent on involuntary paid leave with provisions that are reasonable and realistic.
      - C.2.a.i. Suggested language (revisions in italics):

*“However, within 5 working days after the imposition of involuntary leave, the Chancellor or designee must explain to the faculty member in writing (1) the reasons for the involuntary leave, including the allegations being investigated; (2) the anticipated date when charges will be brought, if substantiated; (3) a statement that the leave will end either when the allegations are resolved by investigation or when disciplinary proceedings are concluded and a decision has been made whether to impose disciplinary sanctions; and (4) the faculty respondent’s right to contest the involuntary leave in a grievance proceeding that will be handled on an expedited basis.”*
  - C.3. Ensure that Administrators, faculty, and the campus Committee on Privilege and Tenure, are aware of a faculty respondent’s right to grieve an involuntary leave, including the proposed or elapsed period of leave, and have the grievance handled per policy on an expedited basis.
- D. *Assess the legitimacy of known criticisms of current policies, processes, or mechanisms, e.g., statute of limitations, time required for a Privilege & Tenure (P&T) hearing, interim measures once a complaint has been lodged.*

Three common criticisms were considered. (1) The confidentiality of the discipline process, including measures agreed to in early or alternative resolution, fosters a perception that faculty respondents in cases of SVSH are not punished, a perception that both fosters a culture of impunity and discourages reporting. Campus administrators and faculty report that confidentiality also may result in a lack of central records that would enable them to identify faculty who are repeatedly cited as respondents. The Joint Committee notes that confidentiality is the norm for personnel processes and provides leverage in



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reaching early or alternative resolutions that focus on restorative justice and other approaches of that type in addition to correction and remediation rather than punishment. The revised SVSH Policy requires disclosure of the outcome of a SVSH investigation and the outcome of a disciplinary proceeding. However, the Joint Committee recommends disclosure to the complainant any sanction or agreement with a faculty respondent in an effort to increase transparency about the outcomes of resolution and discipline.

(2) Critics describe the length of time required for P&T hearings as discouraging complainants from reporting. The Joint Committee found that delays occur throughout the disciplinary process, including in administrative offices, for reasons beyond anyone's control. Timelines vary among campuses, but none seem to be justified in practicality or experience. Systemwide standard protocols with timelines documenting the procedures that administrative offices must follow after receipt of a Title IX report may alleviate reviewers' concern that there are unreasonable delays in the disciplinary process.

(3) Some critics believe that the "three-year rule" contained in APM - 015 and in Senate Bylaw 336 prevents investigation and discipline for offenses that occurred more than three years in the past. The Joint Committee found that this critique rests on misunderstandings and misinformation. The "three-year rule" does not apply to the amount of time that has elapsed since an offense occurred but is, instead, a time limit by which the Administration must initiate disciplinary action once it becomes aware of an allegation. The reporting requirements contained in the new SVSH Policy along with referral of all complaints of SVSH to Title IX Offices may eliminate confusion about when the Administration is considered to have learned of the allegation. Filing a complaint with the Title IX Office is only for cases involving allegations of SVSH, other forms of discrimination, harassment, or retaliation. For all other alleged violations of the Faculty Code of Conduct, the Joint Committee notes that more work is needed to ensure there are robust processes in place to notify the Chancellor of an allegation and charges are decided upon within the three-year limit.

**Recommendations:**

- D.1. Inform complainants of all Title IX, Administration, and Privilege and Tenure outcomes, including alternative resolutions, early resolutions, and disciplinary proceedings. Disclosure requirements would include the terms of any sanction or agreement with a faculty respondent.
- D.2. Train and educate faculty, other academic appointees, graduate and undergraduate students, and academic Administrators about what the "three-year rule" is and is not.
  - D.2.a. It is not a "statute of limitations" that restricts reporting, investigation, or imposition of discipline for offenses.
  - D.2.b. It is not a time limit from the reporting of an allegation to the conclusion of a formal hearing.
  - D.2.c. It is a time period for the Administration to inform the faculty respondent of charges within three years of receiving a report of an allegation that the Code of Conduct has been violated.
  - D.2.d. The three-year period begins when:

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- D.2.d.i. A department chair or other administrator receives the allegation.
- D.2.d.ii. A complaint is first reported to the Title IX Officer.
- D.2.e. Department chairs and other administrators must report any allegation of SVSH to the Title IX Officer immediately upon receiving it.
- D.2.f. The Chancellor or designee must be informed immediately of reports of any type of faculty misconduct, including SVSH, by his/her designee or the Title IX Officer in SVSH cases.
  - D.2.f.i. The Chancellor must be briefed by his/her designee for faculty discipline at least once a quarter or semester on alleged misconduct cases and their disposition.
- D.2.g. The Administration has up to three years from receiving a complaint to deliver formal disciplinary charges to the faculty respondent.
- D.3. Amend APM - 015 and Senate Bylaw 336 to align their descriptions of the start of the three-year period.
  - D.3.a. The committee recommends bringing the language of APM - 015<sup>2</sup> and Senate Bylaw 336.B.4<sup>3</sup> into complete alignment with the other. This could entail amendments to both documents to clarify when the Administration should be deemed to know about the allegation. The Joint Committee suggests the following language:

“No disciplinary action may commence if more than three years have passed between the time when the Chancellor knew or should have known about the alleged violation of the Faculty Code of Conduct and the delivery of the notice of proposed disciplinary action. The Chancellor is deemed to know about the alleged violation when it is reported to any academic administrator at the level of department chair or above or additionally, for an allegation of sexual violence, sexual assault, or sexual harassment, when the allegation is first reported to the campus Title IX Officer.”

E. *To the extent possible, compile data on the existing processes, including, for example, data on the number of allegations, elapsed time at various stages of the process, efforts of informal resolution, formal P&T hearings, findings and recommended discipline, and final resolutions.*

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<sup>2</sup> Current language: “No disciplinary action may commence if more than three years have passed between the time when the Chancellor knew or should have known about the alleged violation of the Faculty Code of Conduct and the delivery of the notice of proposed disciplinary action.”

<sup>3</sup> Current language: “No disciplinary action may commence if more than three years have passed between the time when the Chancellor or Chancellor’s designee, who is authorized to initiate proceedings in accordance with SBL 336.B.1 and divisional disciplinary procedures, knew or should have known about the alleged violation of the Code of Conduct, and the delivery of the notice of proposed disciplinary action. For purposes of this section, if an administrator or employee in a supervisory role (e.g., program director, department chair, dean) has actual knowledge about an alleged violation, then it will be conclusively presumed that the Chancellor or Chancellor’s designee should have known about the alleged violation.”

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Academic Personnel offices have not historically been expected to maintain central records of disciplinary and corrective actions, which are protected by State law and other University policy governing the right to privacy and confidentiality; thus, the Joint Committee was not able to obtain information regarding the details of cases or precise data in response to the Joint Committee's inquiry. Title IX Officers from eight campuses were able to provide partial data for handling of allegations related to SVSH in the period 2012-2015 in which Senate faculty were respondents. During this period, 141 allegations were filed with the Title IX offices. Of those 141 allegations, 107 (76%) were unsubstantiated or closed by alternative resolution in the Title IX context or early resolution in the discipline context without a formal investigation. Approximately 34 (24%) of the total cases were investigated and, of these 34 cases, 11 were substantiated. Of these 11 cases, 10 (90%) of the faculty respondents accepted a disciplinary sanction or left the University without being formally charged. Only one case went to hearing, and discipline was both recommended by the hearing committee and imposed by the Chancellor. The Joint Committee and reviewers believe that the lack of data and information about SVSH cases is unacceptable going forward.

**Recommendations:**

- E.1. Develop a standard format for reporting data in Title IX and Academic Personnel/Academic Affairs Offices. Provide this data to UCOP regularly, as requested, but no less than annually.
  - E.1.a. At a minimum, while excluding information that would identify the parties or third party complainants, data fields should include the nature of the complaint; classification of the complainant as undergraduate or graduate student, faculty, other academic appointee, postdoctoral scholar, graduate student employee, or staff; classification of the respondent as undergraduate or graduate student, faculty, other academic appointee, postdoctoral scholar, graduate student employee, or staff; whether the Title IX Office undertook a formal investigation; Title IX findings, if any; interim measures and alternative resolution steps taken, if any; whether the matter was referred to discipline; disciplinary sanction or early resolution, if any; and whether the case is still in process or has been completed.
  - E.1.b. Establish a periodic reporting cycle for the data.
  - E.1.c. Post aggregated annual data on a UCOP website.
- E.2. Instruct Academic Personnel/Academic Affairs Offices to retain records of discipline imposed on faculty and early resolution agreements for an indefinite timeframe.
  - E.2.a. Records should be maintained in a manner that protects the confidentiality of the complainants and respondents to whom they pertain while also enabling academic Administrators considering disciplinary charges against a faculty respondent to determine whether the respondent has previously been disciplined or agreed to an early resolution as a respondent in a case of SVSH.
- F. *Recommend policies, processes, and mechanisms for handling future cases of sexual violence or sexual harassment, including as related to reporting; investigation, adjudication, and sanctions; and*

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*imposition of interim measures. The recommendations should address whether revisions of existing policies, processes, and mechanisms are necessary and whether standardization in these different areas may be appropriate across different campuses.*

The Joint Committee has developed specific recommendations in the context of each of the five preceding sections of this report, each of which corresponds with one of the six charges with which it was convened. Those recommendations reflect the Joint Committee's conclusion that existing policies and procedures are fundamentally sound but that misunderstandings and misinformation sometimes impede full and optimal implementation. Accordingly, many of the recommendations stress education, training, and outreach to ensure that all members of the University community fully understand the responsibilities and authority assigned to the various roles in the faculty discipline process. These roles include Title IX officers, academic Administrators, and Committees on Privilege and Tenure. Their responsibilities and authority include conducting investigations; determining when alternative resolution or formal discipline is appropriate; conducting negotiations to reach alternative resolution when appropriate; filing charges when discipline proceedings are appropriate; imposing non-disciplinary interim measures on faculty respondents when necessary to protect complainants or the integrity of an investigation pending final resolution; participating in adversarial hearings; and imposing disciplinary sanctions.

In contrast to the scope of its recommendations for education and outreach, most of the Joint Committee's recommendations for changes in systemwide policies, procedures, and mechanisms involve precise modifications of specific items. Thus, the Joint Committee recommends changes in APM - 015, APM - 016, and Senate Bylaw 336 to make the prohibitions on sexual violence, sexual assault, and sexual harassment explicit, to align and clarify timelines when assessing whether the Faculty Code of Conduct has been violated and commencing the disciplinary process, and to replace the 10-day deadline for filing disciplinary charges after placing a faculty respondent on involuntary leave with more realistic and practical procedures. In addition to these policy revisions, the Joint Committee recommends that the President direct Council Chair Hare and Provost Dorr to consider the issue of faculty misconduct and how misconduct might factor in review of merit and promotion cases.

A single individual in the Chancellor's Office should be designated to provide complainants and respondents with updates on the progress of disciplinary cases against faculty and the outcomes. A confidential resource (or multiple resources if the campus chooses this option) on every campus who possesses the knowledge, insight, and training to advise faculty, other academic appointees, and graduate students should be designated to advise how to file complaints and what the consequences may be after filing complaints. Record keeping and regular transmittal of data to UCOP should be standardized. Faculty discipline records should be maintained in a manner that enables Administrators to determine whether a faculty respondent has previously been disciplined or agreed to an alternative resolution in relation to allegations of SVSH. Faculty discipline files should be kept indefinitely.

The Joint Committee believes that these recommendations, together with changes in procedure mandated by the SVSH Policy, such as referring all reports of SVSH to the Title IX Office, will provide clarity and consistency in the areas identified by the Committee as confusing. Systemwide standard protocols with timelines documenting the procedures that administrative offices must follow after receipt of a Title IX report may alleviate reviewers' concern that there are unreasonable delays in the disciplinary process. In addition, the Joint Committee recommends further investigation into the processes that lead to Alternative Resolution in the Title IX process and Early Resolution in the Administrative offices.

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Additionally, the Joint Committee believes that informing complainants of the outcomes of alternative resolution in the Title IX context, early resolution in the APM and Senate Bylaw context, and disciplinary proceedings will address criticisms about how SVSH disciplinary matters are currently managed and perceived.

## **II. Overview**

President Napolitano has tasked the UC community to strengthen and improve prevention of and response to reports of sexual violence, sexual assault, or sexual harassment cases. The President's Task Force on Preventing and Responding to Sexual Violence and Sexual Assault has, over the past year, in addition to implementing several recommendations endorsed by the President and the Regents, developed and implemented a systemwide framework for investigating, adjudicating, and sanctioning of sexual violence/sexual harassment cases involving undergraduate students (see Appendix A for more information about the Task Force and other contextual information). To continue the extensive work already accomplished by the Task Force, the President announced in her October 15, 2015 letter to the Regents and Chancellors formation of a Joint Committee of the University of California Administration and the Academic Senate (Joint Committee) to review the disciplinary framework for cases involving faculty respondents. The Joint Committee, co-chaired by Academic Council Chair Hare and Senior Vice President and Chief Compliance and Audit Officer Vacca, was charged with assisting the University to:

- A. Examine and provide a clear explanation of current policies and existing processes for investigation, adjudication, and discipline in cases involving faculty, including any particularities for cases involving sexual violence, sexual assault, or sexual harassment. This will include identifying possible variation in policies and processes among campuses.
- B. Review whether there are clear procedures and mechanisms on each campus for students, faculty, and staff to report to relevant authorities when they believe incidents of sexual assault, sexual violence, or sexual harassment are taking place. This will include identifying possible variation in procedures and mechanisms among campuses.
- C. Review and provide a clear explanation of current policies governing the imposition of interim measures that can be put in place while the investigation of a claim is underway and implementation of those policies at each of the campuses. This will include identifying possible variations in policies and implementation among campuses.
- D. Assess the legitimacy of known criticisms of current policies, processes, or mechanisms, e.g., statute of limitations, time required for a Privilege and Tenure (P&T) hearing, interim measures once a complaint has been lodged.
- E. To the extent possible, compile data on the existing processes, including, for example, data on the number of allegations, elapsed time at various stages of the process, efforts of informal resolution, formal P&T hearings, findings and recommended discipline, and final resolutions.
- F. Recommend policies, processes, and mechanisms for handling future cases of sexual violence, sexual assault, or sexual harassment, including as related to reporting; investigation, adjudication, and sanctions; and imposition of interim measures. The

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recommendations should address whether revisions of existing policies, processes, and mechanisms are necessary and whether standardization in these different areas may be appropriate across different campuses.

The Joint Committee membership represents considerable expertise in relevant policy and procedure, including Academic Senate Bylaws, academic personnel policy contained in the Academic Personnel Manual (APM), the University of California Sexual Violence and Sexual Harassment Policy, Title IX compliance requirements, and graduate and undergraduate student concerns. The Joint Committee members are as follows:

**Academic Council Chair Dan Hare (Co-chair)**

*Professor Hare is the elected systemwide leader of the Academic Senate, a Professor of Entomology at UC Riverside, former Chair of the UCR Committee on Privilege and Tenure and a former member of the University Committee on Privilege and Tenure*

**Senior Vice President and Chief Compliance and Audit Officer Sheryl Vacca (Co-chair)**

*SVP Vacca is the Task Force Lead for the President's Task Force on Preventing and Responding to Sexual Violence and Sexual Assault and is the executive responsible for compliance with the University's Sexual Violence and Sexual Harassment Policy.*

**Provost and Executive Vice President for Academic Affairs Aimée Dorr (UCOP)**

*Provost Dorr is the University's senior academic officer. She is a former Academic Council Chair and member of the faculty at UCLA, where she was first a Senate leader and later Dean for 13 years of UCLA's Graduate School of Education and Information Studies.*

**Chancellor George Blumenthal (UCSC)**

*Chancellor Blumenthal has been Chancellor at UC Santa Cruz since 2007 and was previously Acting Chancellor. He is also a former Academic Council Chair, former Chair of the University Committee on Privilege and Tenure and the Santa Cruz Division Committee on Privilege and Tenure, and a Chair of the Department of Astronomy and Astrophysics. He led an overhaul of the Senate Bylaws governing the Privilege and Tenure process and of the Faculty Code of Conduct in 2001.*

**Professor and Chair Maria Pantelia (UCI)**

*Professor Pantelia is a Professor of Classics at UC Irvine, a member and former Chair of the Irvine Committee on Privilege and Tenure and a former member of the University Committee on Privilege and Tenure.*

**Professor Thomas Rice (UCLA)**

*Professor Rice is a Distinguished Professor of Public Health and Health Policy and Management and former Vice Chancellor for Academic Personnel at UCLA.*

**Professor Jonathan Simon (UCB)**

*Professor Simon is a Professor of Law at Berkeley, Chair of the Berkeley Committee on Privilege and Tenure, and Vice Chair of the University Committee on Privilege and Tenure.*

**Title IX Officer Wendi Delmendo (UCD)**

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*Ms. Delmendo is the Title IX Officer and Chief Compliance Officer at UC Davis and a member of the President's Task Force on Preventing and Responding to Sexual Violence and Sexual Assault.*

**Graduate Student Kayleigh Anderson (UCR)**

*Ms. Anderson, a student of Higher Education Administration and Policy, is a member of the President's Task Force on Preventing and Responding to Sexual Violence and Sexual Assault.*

**Undergraduate Student Chrissy Keenan (UCLA)**

*Ms. Keenan, a student of Human Biology and Society with minor in Anthropology, is a member of the President's Task Force on Preventing and Responding to Sexual Violence and Sexual Assault.*

The Joint Committee is staffed by personnel from the Office of Ethics, Compliance, and Audit Services, the systemwide Academic Senate Office, the Office of General Counsel, and the Office of Academic Personnel and Programs. Joint Committee members met on five separate occasions, from November through February, in person and by telephone. In addition, the Joint Committee hosted meetings held at UC Irvine and the UC Office of the President for faculty, postdoctoral scholars, and undergraduate and graduate students to share insight and feedback on faculty discipline involving allegations of SVSH. Additionally, the Joint Committee Co-chairs attended various meetings convened by function to discuss the Joint Committee's process. These include Executive Vice Chancellors/Provosts, Vice Chancellors responsible for Diversity, Title IX Officers, Academic Senate Division Directors, Chief Human Resource Officers, Chancellors, Vice Chancellors for Student Affairs, and Academic Council.

This report focuses on SVSH cases involving faculty as respondents; however, section B also addresses faculty as complainants. "Faculty" is a term that is used generally to denote a group of individuals with teaching, research, and service responsibilities carried out to fulfill the University's mission. Understandably, the term "faculty" has many different definitions. To some, "faculty" means ladder-rank, tenured faculty, or those who are eligible for tenure. To others, the "faculty" means those individuals who are members of the Academic Senate. In fact, UC has 20 faculty title series with distinct definitions, duties, privileges, and rights, within which there are multiple ranks and steps depending on level of experience, qualifications, and scholarly achievement to which individuals are appointed as faculty. For the purpose of this report, the Joint Committee used the Academic Personnel Manual (APM) definition<sup>4</sup> which states that "...a member of the faculty of the University of California is an academic appointee in a school, college, division, department, or program of instruction and research that has independent responsibility for conducting approved regular University courses for campus credit." Generally, Joint Committee deliberations and recommendations grouped faculty according to the titles conferring Academic Senate membership and faculty titles that do not carry Academic Senate membership. See Appendix B for additional detail on faculty titles.

### **III. Joint Committee Deliberations, Findings, and Recommendations**

#### **According to Charge**

- A. *Examine and provide a clear explanation of current policies and existing processes for investigation, adjudication, and discipline in cases involving faculty, including any particularities for cases involving sexual violence, sexual assault, or sexual harassment. This will include identifying possible variation in policies and processes among campuses.*

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<sup>4</sup> [APM - 110-4\(15\)](#)

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The Joint Committee examined the systemwide SVSH Policy and the systemwide policies governing faculty conduct and the discipline process. These are as follows:

- University of California Sexual Violence and Sexual Harassment Policy
- Regents Policy 7401, Policy on Faculty Conduct and the Administration of Discipline
- APM - 015, the Faculty Code of Conduct
- APM - 016, the University Policy on Faculty Conduct and the Administration of Discipline
- APM - 150, Non-Senate Academic Appointees/Corrective Action and Dismissal
- Senate Bylaw 336, Privilege and Tenure: Divisional Committees – Disciplinary Cases.

In addition, Joint Committee staff gathered local written policies and procedures from the Vice Provosts/Vice Chancellors for Academic Personnel/Academic Affairs and the divisional bylaws from Divisions of the Academic Senate at nine campuses. Joint Committee staff also conducted phone interviews with the Vice Provosts/Vice Chancellors for Academic Personnel/Academic Affairs, Title IX Officers and relevant staff at all campuses. Through these interviews, staff gathered information related to campus disciplinary processes for faculty, data on the number of sexual violence, sexual assault, or sexual harassment allegations involving Academic Senate faculty, the number of formal charges filed, and the number of hearings held before a Committee on Privilege and Tenure. Joint Committee staff collected and compiled policies on faculty discipline from UC and 14 other institutions for review by the Joint Committee.

In general, the written systemwide and campus policies are reasonable and adequately describe the key steps involved in the investigation and discipline process and consistent with the Faculty Code of Conduct (APM - 015), the University Policy on Faculty Conduct and the Administration of Discipline (APM - 016), and Senate Bylaws. The level of detail and timelines vary among the campuses, but the Joint Committee did not find such variation problematic in terms of implementing local formal procedures or in possibly leading to different outcomes at different campuses. They allow discretion to deal with the complexities of individual cases in which a faculty member is subject to possible discipline based on allegations involving any of the full spectrum of offenses that violate the Faculty Code of Conduct. The policies give the Administration the authority and responsibility to investigate any allegations of misconduct, including SVSH, and to impose discipline, while providing that the accused faculty member has the right to a hearing prior to the imposition of a disciplinary sanction. The policies also specify the forms of sanction that may be imposed through the formal discipline process, leaving broad discretion to implement other administrative measures to remediate or mitigate a situation without implicating the faculty disciplinary process. This broad discretion does result in variation of administrative judgement as to the resolution being proportionate to the violation. In addition, policies provide for administrative action and remedies by way of the Title IX alternative resolution provision and the early resolution provision contained in APM - 016 and Senate Bylaw 336. Students, in particular, view the lack of explicit language prohibiting sexual violence in APM - 015 as a policy gap, although this prohibition is implicitly subsumed under existing policy language and is understood by faculty and administrators to be a form of Unacceptable Conduct. However, the joint committee ultimately agreed to recommend adding language specific to SVSH into APM and Senate Bylaws, where applicable.

The Joint Committee and those who commented on the draft report identified uncertainty surrounding the role and responsibilities of the Title IX Office in SVSH cases involving faculty. Several procedural questions arose during deliberations. Does the Title IX Officer determine whether a Faculty Code of Conduct policy violation has occurred? Does the Title IX Office recommend discipline? If so, to whom?



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What role does the Title IX Officer have after the Title IX report is issued and before a disciplinary hearing occurs? What is the interface between initial investigations of alleged SVSH by Title IX Officers and investigations that take place during subsequent disciplinary hearings? The Committee recommends below that the Chancellors or designees, Title IX Officers, and Senate leaders consider answering these questions as part of an overall review of campus procedures.

The faculty disciplinary system policies, which are written for all violations of policies and Faculty Code of Conduct, are designed to regulate the University's interaction with the accused individual and the accuser. They are written with care that disciplinary actions are taken only after the standard of proof has been met, that the respondent is fully informed of the basis of the charges and has the opportunity to present opposing evidence, and that the evidence presented by both sides in contested cases is adjudicated fairly and impartially, including by allowing each side to cross-examine the witnesses called by the other. This process was not developed for one type of violation such as SVSH cases but for all violations involving faculty. The Joint Committee acknowledges that, in disciplinary hearings involving SVSH, the adversarial hearing process can be difficult for a complainant. *Accommodations within the existing process to reduce the stress/trauma for the complainant should be considered.*

Issuance of the revised Sexual Violence and Sexual Harassment Policy (SVSH Policy) In January, 2016 centralizes initial response to complaints alleging sexual violence, sexual assault, and sexual harassment (SVSH) in the Title IX Office and creates a number of new protections for complainants along with required remediation and investigatory processes as well as specifying various procedural protections for respondents. These protections apply regardless of whether the respondent is a student, member of the faculty, or staff. Complaints against faculty enter the discipline or corrective action process only after the Title IX Office has investigated the allegation and submitted a report to the administration indicating that the SVSH Policy has more likely than not been violated. At that point the Chancellor or designee determines, with input on some campuses from the Senate charges process, whether there is probable cause and adequate evidence to believe that the respondent has violated APM - 015, The Faculty Code of Conduct, which establishes conduct standards for both Senate and non-Senate faculty in all areas, not just SVSH .

The relevant policies governing discipline procedures are APM - 016, University Policy on Faculty Conduct and the Administration of Discipline and APM - 150, Non-Senate Academic Appointees/Corrective Action and Dismissal. Faculty who are members of the Academic Senate (Senate faculty) are subject to APM - 016. Faculty who are not members of the Academic Senate (non-Senate faculty) are subject to APM - 150, which also covers all other academic appointee titles. The majority of this report focuses on policy and process for Senate faculty which is a general process for all violations including SVSH cases. See Appendix B for more information on faculty titles and relevant policy. Appendix C lists various other academic appointee titles that *are not included* in the definition of faculty. See Appendix D for a simple explanation of the Senate faculty process and Appendix E for a simple explanation of the non-Senate faculty process.

As noted above and required by the SVSH Policy (and federal guidance), response to complaints, and, if necessary, the investigation of any allegation of SVSH are handled by the Title IX Officer. Federal law and the SVSH Policy require that those who conduct such investigations receive comprehensive, regular investigation training with a trauma-informed perspective. When the Title IX investigation concludes that a faculty respondent has violated the SVSH policy, the complaint is referred to the Chancellor or designee, who, on some campuses, may accompany the Title IX investigative team. The Chancellor or designee assesses the findings to determine if a violation of the Faculty Code of Conduct appears to

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have occurred, whether relevant policy other than APM - 015 and the SVSH Policy has been violated, whether the alleged conduct, if borne out by evidence, warrants formal discipline, and whether to initiate disciplinary proceedings. After referring a matter to the Chancellor or designee, the Title IX Officer has little or no formal involvement in the discipline process.

Due to differences in scope and the applicable evidence standards, uncertainty surrounds the interface between the Title IX Officer's investigation and submission of the Title IX report and subsequent Administrative review of the report and/or conduct of another investigation for the purpose of a disciplinary action. As required by the SVSH Policy and Federal guidance, the Title IX Officer's investigation is intended to determine whether the preponderance of the evidence (more likely than not) indicates that a respondent has committed one of the offenses proscribed by the SVSH Policy, thus requiring intervention to remedy the situation on behalf of the complainant. The faculty discipline authority and not the Title IX Officer must consider whether the alleged offense as identified by the Title IX investigation rises to a level of seriousness that justifies discipline, in addition to intervention and remedy, whether it may also implicate other provisions of the Faculty Code of Conduct, whether there is credible evidence to support related charges, and which sanction is appropriate (Appendix D). If the faculty respondent exercises the respondent's right to a hearing, the Administration has the burden of proving by clear and convincing evidence that the respondent's conduct was a violation. On some of the campuses, the Title IX investigation has included findings related to the SVSH policy based on both the preponderance of evidence and clear and convincing evidence standards to assist the Chancellor or designee in making disciplinary decisions and to limit the need for duplicative investigation processes. One campus teams a Title IX staff investigator with a faculty reviewer for purposes of combining the SVSH and Academic Senate Bylaw 336 investigations. On other campuses, a subsequent investigation may be conducted after the Title IX investigation for purposes of issuing disciplinary charges. Given these overlapping but not identical evidentiary standards, some campus administrations and faculty leaders are still working to determine the degree to which a disciplinary process should incorporate the Title IX Officer's report as-is and the degree to which further inquiry into the same or related facts is necessary in order for the disciplinary process to proceed. The Joint Committee acknowledges the importance of balancing a trauma-informed approach that minimizes the number of times parties and witnesses are questioned about the same set of factors with the requirement under law and existing policy that a respondent be allowed to rebut and challenge evidence.

Faculty respondents are entitled to challenge recommended disciplinary actions in a hearing and, when matters proceed to a hearing, additional evidence may be, and likely will be, introduced and evaluated. As described in Appendix D, the Standing Orders of the Regents and the APM provide for a right to a hearing for members of the Academic Senate before any disciplinary sanction may be imposed. Non-Senate faculty members have a more restricted right to a hearing in cases in which the proposed discipline is dismissal or early termination and may also request a hearing as part of a grievance process to contest a disciplinary sanction or corrective action. Disciplinary processes applicable to non-Senate faculty are detailed in Appendix E. In both the Senate and the non-Senate hearing processes, the hearing body receives the Administration's charges and proposed disciplinary sanction or corrective action, the accused faculty member's response, testimony from witnesses called by both sides, and any other materials it considers necessary. It makes findings of fact and recommends imposition (or not) of a specified disciplinary sanction to the Chancellor or designee, but it may not recommend a sanction more severe than what was originally proposed. The Administration has the final authority to determine what discipline, if any, will be imposed. Hearings are costly, difficult, and time consuming, but they ensure due process that is commensurate with the potential seriousness of the outcome. *In fact, only a very small proportion of the cases in which a Senate or non-Senate faculty member is formally charged with any*

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*violation of the Faculty Code of Conduct go to a hearing. The majority are settled through early resolution.*

Both the APM and the Senate Bylaws provide for and encourage early resolution of discipline cases through negotiations between the Administration and the accused faculty member to determine an appropriate outcome based on the seriousness of the alleged offense, the strength of the evidence, and the best interests of the University. Such resolutions may support trauma-informed interactions with complainants by minimizing the need to subject complainants to repeated questions about the same facts. In addition, they may involve a much broader array of administrative remediation/mitigation measures than are available as formal discipline.<sup>5</sup> Early resolution may come at any time in the process, from the first allegations until a formal hearing is underway, creating many points at which the Administrator responsible for discipline or the respondent may propose negotiations to reach an agreed-on resolution. Formal proceedings may be but are not necessarily placed on hold pending the outcome of such negotiations.

Procedural Justice, Hearings, and the Settlement Process in Faculty Discipline Cases

To some readers the fact that the vast majority of complaints against faculty members are settled early and informally may raise alarm; but it should not. Settlements do not necessarily indicate undue leniency and the perceptions associated with settlements can be addressed with a norm of communication. The frequency of settlements within the faculty discipline process is similar to the frequency of plea bargains within the criminal process, where more than 90% of all criminal charges are resolved without trial. Empirical research and the abundant evidence of a vast and overcrowded prison system in the United States despite historically low rates of crime demonstrates that criminal defendants typically agree upon charges or sentence reflecting what a jury would have imposed.

Whether a case goes to a trial or is resolved by negotiation, criminal justice experts increasingly agree that the crucial question is whether the process is not only fair and accurate, but one that treats people complaining of victimization and those accused of crimes with respect for their human dignity, including: an opportunity to be heard in the process, a sense that the decision maker actually listened (regardless of whether the information mattered), and that decision makers were genuinely fair and neutral in their decision making. A significant body of empirical research on “procedural justice” shows that when people engaged by the law feel that they have been treated with respect in these ways, they report significantly higher levels of personal satisfaction with the process regardless of the outcome of their case and feel a greater sense of obligation to comply with the law in the future.<sup>6</sup>

Unfortunately, whether it is in plea bargaining or in the few trials we do hold, our criminal justice system often fails to achieve procedural justice, leaving both victims and people convicted by the system with a sense of grievance and with less belief in the legitimacy of the legal system. When considering UC’s faculty discipline system, high levels of settlement or early resolution should not unduly concern us. At the Title IX level this may well reflect effective investigation and the success of intermediate measures to protect and satisfy complainants. At the discipline level this could reflect the weight of the evidence against responding faculty members, their own recognition of responsibility, and their desire to avoid the potential embarrassment of a quasi-public hearing. The research on procedural justice suggests that more could be done within our current process to increase the respect for the parties’ dignity. Thus, the Joint Committee recommends that discipline cases include an opportunity for complainants to meet

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<sup>5</sup> See Appendix D for a list of formal disciplinary sanctions. See Appendix F for a list of interim administrative measures.

<sup>6</sup> The germinal work was Tom Tyler, *Why People Obey the Law* (Princeton revised edition 2006)

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personally with the Chancellor or designee assigned to the case and express fully their complaint as well as their sense of what an appropriate resolution would be (presuming the settlement process in discipline already accords the respondent such an opportunity). It is also recommended that complainants be personally notified of settlement terms. Of course, hearings should also be conducted in ways that increase the potential for procedural justice (we have not been asked to review the hearing process), but even when done well they are likely to inflict emotional costs on trauma survivors (as well as on others) and, therefore, should not be undertaken when unnecessary to achieve the institution's goals.

Given the unique facts and contexts of each case, the possibility that alleged offenses may encompass violations of more than one policy, and the many decision points regarding next steps during the course of each case, it is not possible to standardize the parameters for negotiated early resolution. Thus, for example, an Administrator may wish to enter into negotiations early in the process if he or she discovers that a complainant does not have direct personal knowledge of the alleged offense; a faculty respondent may seek or agree to early negotiations if he or she recognizes that the allegation has some merit or is afraid that a protracted contest will seriously affect his or her teaching or research. A faculty member who believes the allegations have no basis in fact, on the other hand, may reject all negotiations in the hope of being exonerated, while an Administrator who believes the evidence is strong and the offense is serious may reject negotiations in the expectation of proving that the proposed discipline is appropriate. Examples of the kinds of results that may emerge from early resolutions include: the faculty member's acceptance of a disciplinary sanction; the faculty member's acceptance of a corrective or remedial measure that is not formally a disciplinary sanction; the Administrator's imposition and suspension of a specified sanction on condition that the faculty member performs specified remedial actions (such as paying monetary restitution or undergoing counseling, or other act to make whole injury caused by the faculty member's misconduct or to prevent future misconduct) coupled with the faculty member's agreement to accept the sanction without further process if he or she fails to perform the agreed-on action; or the faculty member's agreement to take an unpaid leave of absence or retire or resign from his or her position.

Although procedural changes are advised to coordinate the overarching policies and formal procedures on discipline with specific processes required by the SVSH Policy, the Joint Committee finds that current discipline policies and procedures, including the clear and convincing evidence standard and the opportunity for early resolution, should remain consistent across all categories of offenses rather than being segmented according to the category of offense in question.

As the Joint Committee was completing its work, it became aware of concerns about the proportionality of Early Resolution agreements negotiated by the Chancellor's Offices on two campuses. Such concerns could not be addressed in detail by the Joint Committee. *Therefore, we recommend that subsequent investigations be undertaken to determine if these were isolated events or if additional study of Early Resolution agreements may be needed to insure that an appropriate outcome was obtained.*

**Recommendations:**

- A.1. The Joint Committee recommends adding explicit language prohibiting sexual violence to APM- 015.
  - A.1.a. Suggested language to be added (additions in italics) to Section II.A, Teaching and Students Types of Unacceptable Conduct:

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*“4. Sexual violence and sexual harassment, as defined by University policy, of a student.”*

- A.1.b. Suggested language to be added to Section II.C, The University Types of Unacceptable Conduct:

*“6. Sexual violence and sexual harassment, as defined by University policy, of a University employee.”*

- A.1.c. Suggested language to be added to Section II.D. Colleagues Types of Unacceptable Conduct:

*“3. Sexual violence or sexual harassment, as defined by University policy, of a colleague.”*

- A.2. Chancellors or designees, Title IX Officers, and Senate leaders should convene to perform an overall review of campus procedures to clarify roles and responsibilities in determining policy violations, recommendations for discipline, the roles of each office after an investigation has concluded, and how each office interacts after the Title IX investigation has concluded.
- A.3. Integrate Title IX investigations with other investigations that may need to occur to support discipline for faculty who are found to have engaged in prohibited conduct under the SVSH Policy, thus minimizing the need for multiple investigations based on the same nucleus of facts.
- A.3.a. Include Administrators, Title IX Officers, and Academic Senate leaders in planning discussions to amend existing or create new procedures to investigate other violations of the Faculty Code of Conduct that may have occurred in connection with the alleged incident(s) of SVSH.
- A.3.b. Include appropriately trained and skilled investigators for the Senate and or Senate faculty to augment teams at the time of the Title IX investigation to decrease the timeframe for investigations.
- A.3.c. Provide training for Title IX Offices to understand the Privilege and Tenure process under Regents Standing Order 103.9 and Senate Bylaw 336.
- A.3.d. Educate the Privilege and Tenure Committee and Charges Committee on the Title IX process.
- A.4. Require Title IX Officers to inform the Chancellor or designee for faculty discipline whenever the Title IX Office begins an investigation of a faculty respondent.
- A.5. At the beginning of a formal investigation, provide all parties with a clear written description of the Title IX and faculty discipline processes and notice of rights related to the process.
- A.6. Require the Chancellor’s designee for faculty discipline to provide the opportunity to the complainant to express the complainant’s view of the case and what the complainant views as appropriate outcomes.

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A.7. Require the Chancellor's designee and/or the Title IX Officer (per SVSH policy) to provide updates to the complainant and the respondent during the investigation and discipline processes.

*B. Review whether there are clear procedures and mechanisms on each campus for students, faculty, and staff to report to relevant authorities when they believe incidents of sexual assault, sexual violence, or sexual harassment are taking place. This will include identifying possible variation in procedures and mechanisms among campuses.*

Since adoption of the SVSH Policy in February 2014 and subsequent revisions effective January 2016, every campus has publicly posted procedures for filing complaints through the Title IX office, and Administrators refer all SVSH complaints to the Title IX office for initial handling and investigation. However, anecdotal evidence offered by postdoctoral scholars and faculty during the listening sessions indicated that many in these roles are not familiar with the procedures for reporting and do not know to whom they should report. In particular, participants in the listening sessions reported that the confidential resources available to complainants through the CARE offices are oriented toward undergraduate students and were not intended or well equipped to assist faculty and postdoctoral scholars as complainants. Graduate students also provided feedback that these offices are predominantly serving the undergraduate population. When faculty, postdoctoral scholars, and graduate students are undecided about whether to make a complaint, they feel that they do not have support to help them decide. They were concerned that the designation of all employees as "Responsible Employees" for the purpose of reporting deprives them of the opportunity to discuss their experiences in confidence with trusted peers or mentors who understand all the circumstances of their position in the University and can help them decide how to proceed related to their complaint.

Prior to the issuance of the SVSH Policy, Senate Bylaw 336 included department chairs in a list of Administrators whose knowledge of an allegation of SVSH placed the University on notice, but it may be that at least some department chairs or other Administrators are not aware that the "three-year rule" clock would begin when they learned of a credible allegation. Since the designation of all faculty as Responsible Employees for reporting incidents of SVSH, it is not clear whether this responsibility is as significant as it once was. The implications of this requirement will be discussed more fully below in connection with the "three-year rule" for bringing disciplinary action.

**Recommendations:**

- B.1. Reconsideration should be given to the designation of all employees as "Responsible Employees", when the SVSH Policy is next reviewed, particularly whether postdoctoral scholars and graduate student employees should be designated "Responsible Employees."
- B.2. Conduct targeted educational outreach to ensure that all faculty, other academic appointees, and Administrators who are not formally designated as confidential resources are aware of their responsibility to report allegations of SVSH to the Title IX Office.

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- B.3. Increase outreach and education to faculty, other academic appointees, and graduate students about:
    - B.3.a. the SVSH Policy prohibition on retaliation for reporting or participating in an investigation of alleged SVSH, including how to report alleged retaliation, what remedies may be available for complainants, and what sanctions may be imposed on respondents who are found to have committed acts of retaliation; and,
    - B.3.b. reporting procedures, the rights of complainants, and available resources.
  - B.4. At each location, designate a confidential resource (or more than one if the campus feels it necessary) who is exempt from reporting and has appropriate insight into the unique demands, opportunities, and risks of mentorship relationships and academic careers who is available to advise faculty, other academic appointees, and graduate students who believe they have experienced SVSH or retaliation for reporting or participating in an investigation. Such confidential resources need not be a new position but may be one or more existing Administrator(s) or faculty with appropriate training and knowledge.
- C. *Review and provide a clear explanation of current policies governing the imposition of interim measures that can be put in place while the investigation of a claim is underway and implementation of those policies at each of the campuses. This will include identifying possible variations in policies and implementation among campuses.*

Under the SVSH Policy, Title IX Officers, in coordination with other responsible Administrators, have the authority to implement certain interim measures to protect complainants, particularly when respondents are students. The array of measures is most fully developed for undergraduate student complainants and respondents and includes interim measures such as no-contact orders, no-cost counseling and academic accommodations for complainants, and assistance to student complainants in changing their housing arrangements. When complainants or respondents are faculty, Title IX Officers refer the matter to academic Administrators, who have authority to impose such interim measures as no-contact orders, office relocation, or restriction of activity on campus to certain hours and/or locations (see Appendix F). On some campuses, Title IX Officers automatically work with Administrators to address interim measures for faculty complainants and respondents, but this is not the case on every campus. According to anecdotal evidence from multiple campuses, Administrators do impose non-disciplinary measures that restrict a faculty respondent's activity on campus, but the Joint Committee was unable to collect data beyond anecdotal reports on the frequency or nature of such measures.

APM - 016 and APM - 150 give campus Administrators explicit authority to place a Senate or non-Senate faculty member, respectively, on involuntary paid leave when the Administrator determines that the faculty member's presence on campus may pose a risk to campus safety or interfere with an investigation or when the Administrator learns that the faculty respondent has been accused of a serious crime that is being investigated by law enforcement. In an attempt to balance the demands of campus safety, the integrity of investigatory processes, and the critical need of most faculty members to come onto their campus in order to pursue their work, APM - 016 requires that the Administration decide whether to bring formal charges and inform the respondent Senate faculty member of those charges, if any, within ten days. This time limit has proven to be untenable, as a credible investigation

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cannot be completed in such a short time. The Joint Committee considered some ideas for alternatives that are practical, that can be applied consistently, and that are fair to the respondent. One suggestion was to establish separate and sequential time limits for issuing a notice of involuntary leave, providing notice of potential charges, and filing formal charges, with some upper limit on the total period of leave prior to formal charges being filed, and assurance that the respondent has the right to grieve the involuntary leave if the respondent believes it was not justified. In deciding whether to place a faculty respondent on involuntary leave, an Administrator must also consider who needs to be informed and what impact the respondent's absence will have on others, for example, if a substitute must be found to complete a respondent's teaching obligation. *The Joint Committee proposes revisions to APM - 016 to institute a new timeline.* This new timeline would impose a 5-working day deadline after the imposition of involuntary leave for the Chancellor or designee for faculty discipline to inform the faculty member of the reasons for the leave, the allegations being investigated, the anticipated date when charges will be brought, a statement concerning when the leave will end, and the faculty member's right to grieve the involuntary leave, to be handled by the Privilege and Tenure Committee on an expedited basis.

**Recommendations:**

- C.1. Conduct broad outreach and education to ensure Chancellors and designees are aware of their discretion to take interim administrative measures short of disciplinary action to protect complainants and the campus community pending the outcome of an investigation. See Appendix F for a list of interim administrative measures available to Chancellors or designees.
- C.2. Clarify, as necessary in guidance, APM - 016 terms and the distinction between suspension without pay, which is a disciplinary sanction, and involuntary leave, with and without pay, which may be imposed outside of the discipline process during an investigation.
  - C.2.a. Amend APM - 016 to replace the 10-day deadline to file charges after placing a faculty respondent on involuntary paid leave with provisions that are reasonable and realistic.
    - C.2.a.i. Suggested language (revisions in italics):

*“However, within 5 working days after the imposition of involuntary leave, the Chancellor or designee must explain to the faculty member in writing (1) the reasons for the involuntary leave, including the allegations being investigated; (2) the anticipated date when charges will be brought, if substantiated; (3) a statement that the leave will end either when the allegations are resolved by investigation or when disciplinary proceedings are concluded and a decision has been made whether to impose disciplinary sanctions; and (4) the faculty respondent's right to contest the involuntary leave in a grievance proceeding that will be handled on an expedited basis.”*
- C.3. Ensure that Administrators, faculty, and the campus Committee on Privilege and Tenure, are aware of a faculty respondent's right to grieve an involuntary leave, including the proposed or elapsed period of leave, and have the grievance handled per policy on an expedited basis.



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- D. *Assess the legitimacy of known criticisms of current policies, processes, or mechanisms, e.g., statute of limitations, time required for a Privilege & Tenure hearing, interim measures once a complaint has been lodged.*

The most commonly heard critiques of current policies and processes call out the confidentiality of disciplinary proceedings, the duration and daunting nature of disciplinary proceedings, and the “three-year rule.” The Joint Committee considered each of these, and this report will address them in order.

Confidentiality. Like other personnel processes, the disciplinary process for faculty has long been treated as confidential, with information about the fact of an investigation, the filing of charges, interim measures, negotiations, a hearing, if any, and the outcome restricted to those involved in the investigation, hearing, and discipline. Only the dismissal of a tenured faculty member by the Regents is announced publicly and only after the Regents have acted. Complainants have generally not been involved in or informed about these processes other than as witnesses providing evidence to support the charges, unless an interim measure is imposed on the respondent that involves the complainant, for example, a no-contact order or change in adviser. Critics assert that confidential sanctions and agreements create a perception that faculty offenders are not punished, which in turn discourages complainants from reporting and simultaneously appears to license faculty members to commit policy violations. Another critique of confidentiality holds that the lack of accessible records means that each case is handled in isolation, making it difficult both to identify serial offenders and to impose consistent sanctions in similar cases. Countering these views is the principle that handling personnel actions in confidence facilitates good outcomes for the institution by focusing on restorative justice and other approaches of that type in addition to correction and remediation (which may include dismissal when a respondent’s continued presence is deemed harmful) rather than trial and punishment. Administrators maintain that the promise of confidentiality gives them substantial leverage to work constructively with faculty respondents to reach agreements that may include corrective action or discipline up to and including resignation from the University. They are concerned that without the ability to reach confidential agreements, significantly more cases will go to a hearing, taking longer to resolve and requiring costly legal services. At the same time, they acknowledge that confidentiality has often been accompanied by scant documentation, making it difficult to recognize when the same person is repeatedly alleged to have violated policy over an extended period of time. In addition, issues surrounding confidentiality have become much more fraught in the new context of social media, where even limited disclosures may be widely disseminated almost instantaneously.

*The Joint Committee recommends that informing complainants of the outcomes of alternative resolution in the Title IX context, early resolution in the APM and Senate Bylaw context, and disciplinary proceedings, in an effort to increase transparency about the outcomes of resolution and discipline, within the limits of the law, will address criticisms in how disciplinary matters are currently managed and perceived.* If fully implemented, the Joint Committee believes the practice will raise the level of shared understanding throughout the University community of how the faculty disciplinary process interacts with efforts to protect and assist complainants and correct the behavior that gave rise, if substantiated, to the complaint.

Time required for the faculty discipline process. As noted above and in the Charge to the Joint Committee, critics also point to the substantial amount of time that may elapse before a discipline proceeding involving a faculty member is concluded. The critique frequently blames the Senate process and sometimes ascribes most delay to requests by the respondent faculty member. Neither of these assertions is accurate. Both the APM and the Senate Bylaws establish specific timelines for the stages of

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the formal discipline process, but there seems to be no justification for the length of the time lines based upon experience or practicality. Rather than attempt to follow what may be arbitrary timelines, it may be appropriate to develop more realistic timelines based upon analyses of recent experience across the campuses. Many critics of the time it takes to resolve a disciplinary case also object that the process is difficult, expensive, and emotionally grueling for all involved in the process. For cases that go to hearing, these characteristics are nearly unavoidable--as is true in the courts for cases that go to trial--since a hearing is a process in which the Administration is always represented by counsel and the faculty respondent is likely to be represented as well. Despite the best efforts of hearing panel chairs, attorneys frequently bring courtroom tactics into the hearing process, and to cope with such tactics, the Hearing Committee has its own attorney, provided by the Office of General Counsel. When the facts and their significance are in serious dispute, this process remains an effective way to achieve due process.

Systemwide standard protocols with timelines documenting the procedures that administrative offices must follow after receipt of a Title IX report may alleviate concerns that there are unreasonable delays in the disciplinary process.

“Three-year rule.” An often repeated critique of the Senate discipline process is that it includes a “statute of limitations” that prevents discipline for any offense that occurred more than three years in the past. This is completely untrue. The “three-year rule” establishes a timeline within which the Administration must begin a disciplinary process *after it learns of* an allegation that a faculty member has violated the Faculty Code of Conduct. It does not set any limit on the time within which a complainant may report an alleged offense.

As research has shown, victims of SVSH often delay reporting what has happened to them either because they fear the consequences of making an accusation against a more powerful figure or because it is emotionally too difficult for them to begin a formal process. Such delay in reporting does not jeopardize the faculty discipline process from occurring as some believe. Characterizations of the three-year rule as a statute of limitations appear to rest upon misunderstanding and misinformation about the “three-year rule” language contained in both APM - 015 and Senate Bylaw 336. APM - 015 directs: “No disciplinary action may commence if more than three years have passed *between the time when the Chancellor knew or should have known about the alleged violation* of the Faculty Code of Conduct and the delivery of the notice of proposed disciplinary action. (emphasis added)” (APM - 015) In an attempt to define when the Chancellor “knew or should have known” of the alleged violation, Senate Bylaw 336 specifies that the Chancellor is “conclusively presumed” to have knowledge of the alleged violation when “an administrator or employee in a supervisory role (e.g., program director, department chair, dean) has actual knowledge about an alleged violation, . . .” Anecdotal evidence from Administrators and faculty members who have participated in the discipline process indicate that this time limit is not well understood. The Joint Committee heard feedback from some who thought that three years was more than long enough for the Administration to decide to bring charges, and the three-year rule should be shortened. The Committee also heard from others, however, that the time interval should be either lengthened or eliminated. As noted above, the Administration is also considered to have knowledge of an allegation of SVSH, discrimination, harassment, or retaliation when it is reported to the Title IX Office. To ensure consistency in reporting practices among academic Administrators in addition to Title IX reporting, *the Joint Committee recommends the administrative level at which the Administration obtains knowledge of an allegation to be at a minimum, the department chair.* The revised SVSH policy naming all faculty as “Responsible Employees” for purposes of reporting allegations of SVSH may heighten awareness in general of reporting obligations. For all other alleged violations of the Faculty Code of Conduct, the Joint Committee notes that more work is needed to ensure that there are robust processes

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in place to notify the Chancellor of an allegation and to ensure that charges are decided within a three-year limit.

**Recommendations:**

- D.1. Inform complainants of all Title IX, Administration, and Privilege and Tenure outcomes, including alternative resolutions, early resolutions, and disciplinary proceedings. Disclosure requirements would include the terms of any sanction or agreement with a faculty respondent.
- D.2. Train and educate faculty, other academic appointees, graduate and undergraduate students, and academic Administrators about what the “three-year rule” is and is not.
  - D.2.a. It is not a “statute of limitations” that restricts reporting, investigation, or imposition of discipline for offenses.
  - D.2.b. It is not a time limit from the reporting of an allegation to the conclusion of a formal hearing.
  - D.2.c. It is a time period for the Administration to inform the faculty respondent of charges within three years of receiving a report of an allegation that the Code of Conduct has been violated.
  - D.2.d. The three-year period begins when:
    - D.2.d.i. A department chair or other administrator receives the allegation.
    - D.2.d.ii. A complaint is first reported to the Title IX Officer.
  - D.2.e. Department chairs and other administrators must report any allegation of SVSH to the Title IX Officer immediately upon receiving it.
  - D.2.f. The Chancellor or designee must be informed immediately of reports of any type of faculty misconduct, including SVSH, by his/her designee or the Title IX Officer in SVSH cases.
    - D.2.f.i. The Chancellor must be briefed by his/her designee for faculty discipline at least once a quarter or semester on alleged misconduct cases and their disposition.
  - D.2.g. The Administration has up to three years from receiving a complaint to deliver formal disciplinary charges to the faculty respondent.
- D.3. Amend APM - 015 and Senate Bylaw 336 to align their descriptions of the start of the three-year period.

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D.3.a. The committee recommends bringing the language of APM - 015<sup>7</sup> and Senate Bylaw 336.B.4<sup>8</sup> into complete alignment with the other. This could entail amendments to both documents to clarify when the Administration should be deemed to know about the allegation. The Joint Committee suggests the following language:

“No disciplinary action may commence if more than three years have passed between the time when the Chancellor knew or should have known about the alleged violation of the Faculty Code of Conduct and the delivery of the notice of proposed disciplinary action. The Chancellor is deemed to know about the alleged violation when it is reported to any academic administrator at the level of department chair or above or additionally, for an allegation of sexual violence, sexual assault, or sexual harassment, when the allegation is first reported to the campus Title IX Officer.”

E. *To the extent possible, compile data on the existing processes, including, for example, data on the number of allegations, elapsed time at various stages of the process, efforts of informal resolution, formal P&T hearings, findings and recommended discipline, and final resolutions.*

Joint Committee staff requested data on cases initiated, charges brought, early resolutions reached, hearings held, and discipline imposed on faculty for SVSH from campus Vice Provosts/Vice Chancellors for Academic Personnel/Academic Affairs and Title IX Officers. On all campuses, data were maintained by the Title IX office.

The mandate to collect data is fairly new, began in March 2015, and corresponds with revisions to the SVSH Policy and implementing milestones from the President’s Task Force on Preventing and Responding to Sexual Violence and Sexual Assault. Thus, it is not possible to be precise; the data provided is a snapshot of the data available before the Policy came into effect.

The Title IX Officers from eight campuses were able to provide partial data for handling of allegations related to SVSH in the period 2012-2015 in which Senate faculty were respondents. During this period, 141 allegations were filed with the Title IX offices. Of those 141 allegations, 107 (76%) were unsubstantiated or closed by alternative resolution in the Title IX context or early resolution in the discipline context without a formal investigation. Approximately 34 (24%) of the total cases were investigated and, of these 34 cases, 11 were substantiated. Of these 11 cases, 10 (90%) of the faculty respondents accepted a disciplinary sanction or left the University without being formally charged. Only one case went to hearing, and discipline was both recommended by the hearing committee and imposed by the Chancellor. The Joint Committee believes that the lack of data and information about cases is unacceptable going forward.

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<sup>7</sup> Current language: “No disciplinary action may commence if more than three years have passed between the time when the Chancellor knew or should have known about the alleged violation of the Faculty Code of Conduct and the delivery of the notice of proposed disciplinary action.”

<sup>8</sup> Current language: “No disciplinary action may commence if more than three years have passed between the time when the Chancellor or Chancellor’s designee, who is authorized to initiate proceedings in accordance with SBL 336.B.1 and divisional disciplinary procedures, knew or should have known about the alleged violation of the Code of Conduct, and the delivery of the notice of proposed disciplinary action. For purposes of this section, if an administrator or employee in a supervisory role (e.g., program director, department chair, dean) has actual knowledge about an alleged violation, then it will be conclusively presumed that the Chancellor or Chancellor’s designee should have known about the alleged violation.”

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Gathering this data was not straightforward, as data on early resolution cases have not historically been maintained within the Title IX offices. Individual records may have been kept by campus counsel, Title IX offices, or Academic Personnel/Academic Affairs offices depending on campus practice, in addition to becoming part of a faculty member's personnel file in cases that resulted in formal discipline after a hearing or by agreement. Campus Privilege and Tenure committees keep and report annually to the systemwide Senate office statistical data of the number of cases referred to them, the number resolved early, the number that goes to hearing, whether the charges were upheld, and whether the Chancellor agreed with their recommendation. These records contain no information about the substance of or persons involved in individual cases other than the section of the Faculty Code of Conduct alleged to have been violated. They clearly show that only a very small number of SVSH allegations are referred to Privilege and Tenure and an even smaller number go to hearing.

Beginning in 2015, campus offices for the prevention of discrimination have been directed to maintain records on all complaints alleging gender or racial/ethnic discrimination. This practice is still in development at most campuses and does not necessarily include records on SVSH.

**Recommendations:**

- E.1. Develop a standard format for reporting data in Title IX and Academic Personnel/Academic Affairs Offices. Provide this data to UCOP regularly, as requested, but no less than annually.
  - E.1.a. At a minimum, while excluding information that would identify the parties or third party complainants, data fields should include the nature of the complaint; classification of the complainant as undergraduate or graduate student, faculty, other academic appointee, postdoctoral scholar, graduate student employee, or staff; classification of the respondent as undergraduate or graduate student, faculty, other academic appointee, postdoctoral scholar, graduate student employee, or staff; whether the Title IX Office undertook a formal investigation; Title IX findings, if any; interim measures and alternative resolution steps taken, if any; whether the matter was referred to discipline; disciplinary sanction or early resolution, if any; and whether the case is still in process or has been completed.
  - E.1.b. Establish a periodic reporting cycle for the data.
  - E.1.c. Post aggregated annual data on a UCOP website.
- E.2. Instruct Academic Personnel/Academic Affairs Offices to retain records of discipline imposed on faculty and early resolution agreements for an indefinite timeframe.
  - E.2.a. Records should be maintained in a manner that protects the confidentiality of the complainants and respondents to whom they pertain while also enabling academic Administrators considering disciplinary charges against a faculty respondent to determine whether the respondent has previously been disciplined or agreed to an early resolution as a respondent in a case of SVSH.

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- F. *Recommend policies, processes, and mechanisms for handling future cases of sexual violence or sexual harassment, including as related to reporting; investigation, adjudication, and sanctions; and imposition of interim measures. The recommendations should address whether revisions of existing policies, processes, and mechanisms are necessary and whether standardization in these different areas may be appropriate across different campuses.*

The Joint Committee has developed specific recommendations in the context of each of the five preceding sections of this report, each of which corresponds with one of the six charges with which it was convened. Those recommendations reflect the Joint Committee's conclusion that existing formal policies and procedures are fundamentally sound but that misunderstandings and misinformation sometimes impede full and optimal implementation. Accordingly, many of the recommendations stress education, training, and outreach to ensure that all members of the University community fully understand the responsibilities and authority assigned to the various individuals in the faculty discipline process. These individuals include Title IX Officers, academic Administrators, and Committees on Privilege and Tenure. Their responsibilities and authority include conducting investigations; determining when alternative resolution, early resolution and/or formal discipline is appropriate; conducting negotiations to reach alternative or early resolution when appropriate; filing charges when discipline proceedings are appropriate; imposing non-disciplinary interim measures on faculty respondents when necessary to protect complainants or the integrity of an investigation pending final resolution; participating in adversarial hearings; and imposing disciplinary sanctions.

In contrast to the scope of its recommendations for education and outreach, most of the Joint Committee's recommendations for changes in policies, procedures, and mechanisms involve modifications of specific items. Thus, the Joint Committee recommends changes in APM - 015, APM - 016, and Senate Bylaw 336 to make the prohibitions on sexual violence, sexual assault, and sexual harassment explicit, to align and clarify timelines when assessing whether the Faculty Code of Conduct has been violated and when commencing the disciplinary process, and to replace the 10-day deadline for filing disciplinary charges after placing a faculty respondent on involuntary leave with more realistic and practical procedures. In addition to these policy revisions, the *Joint Committee recommends that the President direct Council Chair Hare and Provost Dorr to consider the issue of faculty misconduct and how misconduct might factor in review of merit and promotion cases.*

A single individual in the Chancellor's Office should be designated to provide complainants and respondents with updates on the progress of disciplinary cases against faculty and the outcomes of these cases. A confidential resource (or several if the campus chooses to have more) on every campus who possesses the knowledge, insight, and training to advise faculty, other academic appointees, and graduate students should be designated to advise how to file complaints and what the consequences may be after filing complaints. Record keeping and regular transmittal of data to UCOP should be standardized. Faculty discipline records should be maintained in a manner that enables Administrators to determine whether a faculty respondent has previously been disciplined or agreed to an alternative resolution in relation to allegations of SVSH.

The Joint Committee believes that these recommendations, together with changes in procedure mandated by the SVSH Policy, such as referring all reports of SVSH to the Title IX Office, will provide clarity and consistency in the areas identified by the Committee as confusing. Additionally, the Joint Committee believes that informing complainants of the outcomes of alternative resolution in the Title IX context, early resolution in the APM and Senate Bylaw context, and disciplinary proceedings, will address criticisms in how disciplinary matters are currently managed and perceived. If fully

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implemented, the Joint Committee believes they will raise the level of shared understanding throughout the University community of how the faculty disciplinary process interacts with efforts to protect and assist complainants and correct the behavior, if substantiated that gave rise to the complaint.

#### **IV. Next Steps and Conclusion**

The Joint Committee recognizes that its recommendations require subsequent Administration and Senate processes to undertake review of proposed amendments to the Academic Personnel Manual under Provost Dorr's direction, Senate Bylaws under Council Chair Hare's direction, and campus policy and procedure under the Chancellors' direction in coordination with divisional Senate leadership.

*The Committee suggests that the President designate an administrative group to review other areas that need to be further considered and implemented, such as potential changes to the SVSH Policy, education and training efforts, and Title IX data collection efforts, which might be addressed by the ongoing work of the President's Task Force on Preventing and Responding to Sexual Violence and Sexual Assault.*

The President has directed the Joint Committee to submit its report and recommendations to her on April 4, 2016. It will have been shared for comment broadly with the Academic Council, division Senate chairs, and systemwide Senate committees. In addition, the report will have been circulated for comment to the Chancellors, the Executive Vice Chancellors and Provosts, the Vice Provosts/Vice Chancellors of Academic Personnel/Academic Affairs, the Diversity and Affirmative Action/Equal Employment Opportunity Officers, and the Title IX Officers.

In light of the Joint Committee findings, disparate feedback received during the consultation period (see Appendix H), and the recent troubling events, the Joint Committee concludes that further investigation is required to answer critical questions that were beyond the Committee's original charge and that emerged near the end of the Committee's work. Should there be a systemwide framework to integrate the Title IX investigation and reporting responsibilities with the disciplinary process? How can the University improve accountability and transparency of administrative procedures and responses that occur after receipt of a Title IX report and before charges are filed with Privilege and Tenure?

#### **V. Appendices**

- A. Context for Report
- B. Faculty Titles and Disciplinary Policy
- C. Academic Appointee Titles and Disciplinary Policy
- D. Framework for Faculty Discipline – Academic Senate Titles
- E. Framework for Faculty Discipline – Non-Senate Academic Appointees
- F. Interim Administrative Measures Available to Chancellors or Their Designees
- G. Glossary of Terms
- H. Common Themes in Comments Received During Systemwide Review

## APPENDIX A CONTEXT OF THE REPORT

This narrative describes the background, climate, preliminary work, and history that helped frame the Joint Committee's deliberations, findings, and recommendations. These contextual elements are described below:

- President's Task Force on Preventing and Responding to Sexual Violence and Sexual Assault
- Presidential Policy on Sexual Violence and Sexual Harassment (January 1, 2016)
- Common questions about faculty discipline policies
- Collection of data and other information presented to the Joint Committee
- History of prior studies and reports

President's Task Force on Preventing and Responding to Sexual Violence and Sexual Assault. President Napolitano formed a Task Force in June 2014, charged to ensure that UC will be the national leader in preventing and combating sexual violence and sexual assault, to identify steps to improve UC's current processes that will make a difference in affecting cultural change in sexual violence and assault prevention, and to develop recommendations for strategies to support excellence in prevention, response, and reporting of sexual violence, harassment, and sexual assault based on evidence-informed solutions and approaches.

The Task Force, led by Senior Vice President and Chief Compliance and Audit Officer Sheryl Vacca, included functional representation from across the UC system, including Regents, survivors, survivor advocates, faculty, police, and other administrative staff. With the support of the President and Regents, the Task Force offered eight recommendations to make the comprehensive, consistent model a practical reality. They were:

1. Establish a consistent response team model at all campuses
2. Adopt systemwide, standard investigation and adjudication standards
3. Develop a comprehensive training and education plan
4. Implement a comprehensive communication strategy to educate the community and raise awareness about UC programs
5. Establish an independent, confidential advocacy office for sexual violence and sexual assault on each campus
6. Establish a comprehensive systemwide website with campus customization capabilities
7. Initiate/develop a systemwide standard data collection system to measure the effectiveness of University prevention and response programs
8. Provide equitable respondent support services to faculty accused of sexual violence or misconduct

A consistent response team model has been implemented at all campuses. A comprehensive training and education plan was initiated fall 2015 for undergraduate students; a new e-course is being developed for faculty and staff to be implemented in 2016. A comprehensive communication strategy is in place systemwide and on each campus for all populations. A confidential advocacy office was established on each campus effective July 2015. A comprehensive systemwide website and standard data collection system were launched July 2015. Respondent support services were instituted for undergraduate students in July 2015. Work continues, by way of the Joint Committee, on faculty investigations, adjudication, and sanctions, to be followed by the same approach for staff.

Presidential Policy on Sexual Violence and Sexual Harassment. The President issued a revised Policy on Sexual Violence and Sexual Harassment effective January 1, 2016. The revised policy includes the process for reporting and responding to complaints. It includes a new definition of "responsible employee" that requires every employee of the University (except for certain confidential resources) to notify the Title IX office when they receive information from any student about a prohibited act of sexual harassment or sexual violence. Further, all supervisors and faculty must notify the Title IX office when they receive information of alleged sexual misconduct from other faculty or staff. In addition, the outcome(s) of all investigations and disciplinary actions must be disclosed to complainants.



## APPENDIX A CONTEXT OF THE REPORT

Common questions about faculty discipline policies. Questions about faculty discipline policies have been asked by groups internal and external to UC, which several Joint Committee members addressed during the course of their interviews and meetings with the various faculty, postdoctoral, student, and administrator groups. The full text of the Report provides responses to some of the questions, and in other cases, recommendations for future work group efforts to provide clarity by way of education, training, and policy revision, under the standard Senate Bylaw and Academic Personnel Manual (APM) review processes.

UC faculty, other academic appointees, students, staff, and senior administrators have expressed the need for answers to the following questions:

1. What is the general process for imposing faculty discipline? Why does it take so long? Can the process be streamlined?
2. What is the 10-day deadline and when is it invoked? Is a 10-day deadline adequate time to file charges with the Privilege and Tenure Committee?
3. What is the three-year rule? When does the three-year clock start? What action starts the clock?
4. Is there a statute of limitations on submitting a report or a complaint?
5. What interim measures can be taken to protect a complainant?
6. What is the difference between the Title IX evidentiary standard (preponderance of evidence) and the Senate Bylaw 336 evidentiary standard (clear and convincing evidence)? Are the two standards incompatible?
7. Why are there so few disciplinary cases?

The full text of the Report provides responses to these questions.

Collection of data and other materials presented to the Joint Committee. Prior to Committee meetings and in preparation for Committee deliberations, staff within the Ethics, Compliance and Audit Services office at the UC Office of the President embarked on a comprehensive data collection effort. These efforts were:

1. Surveying analyzing responses from Association of American Universities (AAU) member institutions on policy, processes and timelines, interim measures, discipline and corrective action, and Title IX involvement for managing cases of sexual violence and sexual harassment
2. Collecting policies, procedures, interim measures, and mechanisms for handling faculty disciplinary cases requested from all 10 UC campuses
3. Collecting and summarizing data requested from all 10 UC campuses, including the number of allegations, elapsed time at various stages of the process, efforts of informal or early resolution, number of formal Privilege and Tenure Committee hearings, findings, recommended discipline, and final resolutions of cases
4. Interviewing, collectively and individually, the campus Vice Provosts/Vice Chancellors of Academic Personnel/Academic Affairs
5. Conducting listening sessions, at UC Irvine and UC Office of the President, for faculty, postdoctoral scholars, and undergraduate and graduate students

History of prior studies and reports. Joint Committee members considered prior studies and reports relevant to fulfilling its charge. These were the

1. 1995 Disciplinary Procedures Report submitted to former President Atkinson and former General Counsel Holst from Professor Simmons, Chair of the Task Force (the 1995 Report)
2. 2013 UC Campus Climate Study involving all 13 UC locations and more than 100,000 responses, conducted by Rankin & Associates Consulting (the Climate Study)
3. 2013 Senate-Administration Work Group on the Moreno Report - Report to the President, Academic Council and Chancellors submitted by Provost and Executive Vice President Dorr and former Academic Council Chair Jacob (the Moreno Report-Report)

## APPENDIX A CONTEXT OF THE REPORT

1. The 1995 Disciplinary Procedures Task Force reviewed disciplinary procedures on all campuses, reviewed relevant literature, and met with individuals who had participated in the disciplinary process as investigators, complaint resolution officers, and complainants. The 1995 Report contained three principal recommendations, that the disciplinary process be expedited through a single investigation to determine whether there was “proximate cause” to proceed with a recommendation to impose discipline, increased participation by the complainant in faculty disciplinary actions, and expansion of the range of disciplinary sanctions available to the chancellors in order to provide flexibility.

As a result of its work, the set of Senate Bylaws governing the operation of Privilege and Tenure Committees, Senate Bylaws 195 and 334-337, were revised in 2001; these Bylaws specify the duties of the systemwide and campus Privilege and Tenure Committees and govern the procedures involved with faculty discipline, grievance, and early termination cases.

The Faculty Code of Conduct (APM - 015) and University Policy on Faculty Conduct and the Administration of Discipline (APM - 016) were revised in 2002.<sup>9</sup> Revisions to APM - 015 strengthened the principle that faculty may be disciplined for conduct not enumerated in the Code if that conduct “... is inconsistent with the ethical principles and which significantly impairs the University’s central functions.” In Part III of APM - 015, recommended guidelines for the campuses were replaced with a set of mandatory guidelines and a second set of recommendations intended to make campus procedures consistent with Senate Bylaws.

Two new possible sanctions for faculty were added to APM - 016. The first new sanction was the denial or curtailment of emeritus status so that there would be a sanction applying to emeriti. The second new sanction allowed for a reduction in pay with or without a sanction of demotion, to allow disciplinary policies to conform to the existing merit system of faculty promotion.

2. The 2013 Climate Study was conducted as one part of UC’s efforts to foster a healthy and inclusive environment for all members of the University community.<sup>10</sup> The Study addressed the need for comprehensive data to provide climate metrics for students, faculty, postdoctoral scholars, and trainees across the system. Based on the findings, each UC campus, the Office of the President, the Lawrence Berkeley National Laboratory, and the Division of Agriculture and Natural Resources developed reports and action plans to improve overall campus climate. According to Rankin & Associates Consulting, who conducted the survey, the findings for UC were consistent with those found in higher education institutions across the country: 79% of all survey respondents were comfortable or very comfortable with the campus climate at UC, while 7% were uncomfortable or very uncomfortable. Most relevant to the Joint Committee’s work was that 3% of respondents believed they have experienced unwanted sexual contact while at a UC campus/location within the last five years. Higher percentages of undergraduate students experienced this type of conduct in the past five years compared to graduate students, staff, faculty, or postdoctoral scholars or trainees. Higher percentages of genderqueer, transgender, and women respondents experience this conduct, as compared to men respondents.

3. The 2013 Moreno Report-Report addressed the President’s charge to review current procedures for handling complaints of bias or discriminatory behavior involving faculty, an analysis of the Moreno Report recommendations, and recommendations to support diversity in all University endeavors. The Moreno Report-Report provided the Joint Committee with a framework for reviewing policy, procedure, and practice for handling complaints, particularly The Faculty Code of Conduct, and for developing recommendations for possible adoption by future work groups.

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<sup>9</sup> Per Regents Action Item 303, November 14, 2001

<sup>10</sup> <http://campusclimate.ucop.edu/index.html>

**APPENDIX B**  
**FACULTY TITLES COVERED UNDER SPECIFIC DISCIPLINARY POLICIES IN THE ACADEMIC PERSONNEL  
MANUAL (APM) AND COLLECTIVE BARGAINING AGREEMENTS**

Definition of Faculty in [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 that has independent responsibility for conducting approved regular courses for University credit. As an exception, students in a UC degree program who teach independently within their discipline are not considered faculty.

Members of the faculty<sup>11</sup> are individuals appointed to the following titles or series and include those recalled to active service.

Faculty titles with Academic Senate Membership<sup>12, 13</sup> that are covered under [APM - 016](#), University Policy on Faculty Conduct and the Administration of Discipline

Professorial series<sup>14</sup>

Professor In Residence series

Professor of Clinical X series

Acting Professors

Acting Associate Professors

Lecturers with Potential for Security of Employment (full-time)

Lecturers with Security of Employment (full-time)<sup>15</sup>

Senior Lecturers with Potential for Security of Employment (full-time)

Senior Lecturers with Security of Employment (full-time)

Faculty titles without Academic Senate Membership<sup>16</sup> that are covered under [APM - 150](#), Non-Senate Academic Appointees/Corrective Action and Dismissal

Acting Assistant Professor

Visiting titles in the Professor series

Adjunct Professor series

Health Sciences Clinical Professor series

Clinical Professor of Dentistry (50% or more time) series

Supervisor of Physical Education series

Lecturers with Security of Employment (part-time)

Senior Lecturers with Security of Employment (part-time)

Faculty titles without Academic Senate Membership that are covered under [Collective Bargaining](#)

Lecturer

Senior Lecturer

Lecturer in Summer Session

Lecturers with Potential for Security of Employment (part-time)

Senior Lecturers with Potential for Security of Employment (part-time)

Supervisor of Teacher Education

Coordinator of Field Work

Field Work Supervisor

Field Work Consultant

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<sup>11</sup> Under the governance of the Academic Senate, the term “membership in a Faculty” has a more limited definition. See [Academic Senate Bylaws, Section 45](#).

<sup>12</sup> [Regents’ Standing Order 105.1\(a\)](#) defines members of the Academic Senate.

<sup>13</sup> 12,459 headcount, CPS October 2015 snapshot file

<sup>14</sup> The Professorial series is the only series under which appointments are tenure-eligible or tenured (also known as ladder-rank or tenure-track titles).

<sup>15</sup> Security of Employment (SOE) is the status of a Lecturer SOE or Senior Lecturer SOE which is held on a continuous basis in accord with [Regents’ Standing Order 103.10](#).

<sup>16</sup> 8,714 headcount, CPS October 2015 snapshot file, all non-Senate faculty, e.g., non-represented and represented titles

**APPENDIX C**  
**ACADEMIC TITLES COVERED UNDER SPECIFIC DISCIPLINARY POLICIES IN THE**  
**ACADEMIC PERSONNEL MANUAL**  
**(APM) AND COLLECTIVE BARGAINING AGREEMENTS**

The following is a list of the principal academic appointee titles,<sup>17</sup> that are non-faculty, non-Senate titles subject to disciplinary policy under the Academic Personnel Manual ([APM - 150](#)), Non-Senate Academic Appointees/Corrective Action and Dismissal or collective bargaining agreements. Academic appointees with concurrent Senate faculty appointments are subject to [APM - 015](#), The Faculty Code of Conduct and [APM - 016](#), University Policy on Faculty Conduct and the Administration of Discipline.

Academic appointee titles (non-faculty, non-Senate) that are covered under [APM - 150](#), Non-Senate Academic Appointees/Corrective Action and Dismissal

Astronomers (without a concurrent faculty title)  
Agronomists (without a concurrent faculty title)  
Professional Research series (without a concurrent faculty title)  
Project Scientist series  
Specialist series  
Specialist in Cooperative Extension series (without a concurrent faculty title)  
Cooperative Extension Advisor series  
Continuing Educator  
Librarian series (non-represented)  
Associate and Assistant University Librarian  
Academic Administrator series  
Academic Coordinator series  
Faculty Consultant  
Independent Contractor

Academic appointee titles (non-faculty, non-Senate) that are covered under [Collective Bargaining](#)

Librarians  
Postdoctoral scholars  
Graduate Student Instructors  
Readers, Tutors

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<sup>17</sup> There are several dozen non-faculty, non-Senate academic appointee titles at UC. The titles listed here are the principal titles, used sometimes in combination with faculty titles, and modified according to level. There are 42,836 non-faculty, non-Senate academic appointees, of which 27,369 are student academic appointees. (CPS, October 2015 snapshot file)

## APPENDIX D FRAMEWORK FOR FACULTY DISCIPLINE – ACADEMIC SENATE FACULTY

This narrative describes a general procedural framework within which to understand the faculty discipline process. It simplifies the complexity that results from the many options and routes available to get from the beginning to the end of a faculty disciplinary case. Also, the narrative focuses on misconduct and discipline for those who are Academic Senate members who are or could be tenured; the framework applies to Academic Senate members who are ineligible for tenure, too.

There are well established policies and processes for adjudicating faculty misconduct. There are four that are specifically for faculty professional conduct, two of which are within the UC Academic Personnel Manual (APM) and two of which are part of the Bylaws of the UC Academic Senate. The two policies within the APM are The Faculty Code of Conduct ([APM - 015](#)) and University Policy on Faculty Conduct and the Administration of Discipline ([APM - 016](#)). The other two policies and processes are part of the Bylaws of the UC Academic Senate. One policy and process, Academic Senate [Bylaw III.334](#), establishes the jurisdiction of the campus Privilege and Tenure Committee. The other, Academic Senate [Bylaw III.336](#), establishes how the campus Privilege and Tenure Committee handles disciplinary cases.

The faculty discipline process always involves three elements:

1. A Publicly Available Set of Expectations for Faculty Conduct

Faculty are expected to obey local, state, and federal laws and UC and other relevant policy.

The Faculty Code of Conduct, which is a UC policy, establishes ethical principles and identifies types of unacceptable conduct in five areas: specifically, teaching and students, scholarship, the University, colleagues, and the community.

It also includes the following important assertion: “University discipline...should be reserved for faculty misconduct that is either serious in itself or is made serious through its repetition or its consequences.”

2. Allegation(s)

Someone must identify potential misconduct that involves a faculty member. That someone may be any member of the UC community or a person outside the University. He or she may make a complaint through a number of different channels.

3. Preliminary Assessment

Once the allegation is known by a responsible party, there will be a preliminary assessment as to whether the allegation rises to the severity of a violation of The Faculty Code of Conduct.

If the preliminary assessment establishes the probability that a violation of The Faculty Code of Conduct has occurred, then five other processes may come into play. These processes are contingent and interruptible. The first of the five processes is a:

1. Formal Investigation

There are several different ways in which this may occur and it may be done a second time by the Academic Senate Charges Committee, or the equivalent, if the first did not adequately involve the faculty.

An investigation could be led by the Academic Senate, by the Title IX office, by the research integrity office, or by either of these latter two offices with participation by the Academic Senate. The Faculty Code of Conduct, Part III, stipulates that “appropriate procedures should be developed to involve the faculty in participating in the investigation of allegations of misconduct and/or in making recommendations to appropriate administrative officers whether a disciplinary charge should be filed.”

**APPENDIX D**  
**FRAMEWORK FOR FACULTY DISCIPLINE – ACADEMIC SENATE FACULTY**

If the findings of this formal investigation support it, the investigation leads to a second process, which is a

2. Formal Decision by the Chancellor or designee to bring charges against the faculty member and recommend sanctions should the charges be substantiated. If the Chancellor or designee decides to file charges, then a letter shall be prepared for the Chair of the campus Privilege and Tenure Committee setting forth the charges and proposed disciplinary action and providing a full statement of the facts underlying the charges.

The filing of formal charges brings about a third process, which is a:

3. Formal Hearing by a faculty Hearing Committee that is established by the campus Academic Senate Privilege and Tenure Committee.

That committee concludes its work with the fourth process, which is a:

4. Formal Report of the Hearing Committee's findings and its recommended sanctions which are transmitted to the Chancellor. The Chancellor reviews the Report and determines what sanction(s) he or she believes are appropriate. Should the Chancellor disagree with the Committee's recommended sanctions, he or she will discuss them with the Hearing Committee to explain his or her reasoning.

Finally, the fifth process – if all are carried out – is the:

5. Formal imposition of one or more disciplinary sanctions by the Chancellor and/or recommendation of one or more disciplinary sanctions to the President.

An accused faculty member has multiple opportunities during and following these five processes to rebut testimony, explain evidence, grieve over improper process, and provide new evidence. In addition, at every stage, the process may be suspended or delayed by efforts to mediate or otherwise identify an early resolution, including in some cases, resignation or retirement.

Policy establishes six types of disciplinary sanctions that may be imposed singly or in combination:

1. Written censure
2. Reduction in salary with no change in rank or step
3. Demotion with a concomitant decrease in salary, used primarily in response to fraud on the part of the accused faculty member in the merit and promotion process
4. Suspension without salary
5. Denial or curtailment of emeritus status
6. Dismissal from the employ of the University.

The Chancellor always recommends the sanctions and the Chancellor imposes most of them. The most serious sanctions, however, require approval by the President or by The Regents. The Chancellor may independently impose the sanctions of written censure, reduction in salary, and suspension without pay. The Chancellor may independently impose demotion for any faculty member without tenure or security of employment and within rank for faculty with tenure. Other types of demotions either are not permissible or must be approved by the President. On the recommendation of the Chancellor, the President must approve denial or curtailment of current or future emeritus status. On the recommendation of the Chancellor and of the President, the Regents must approve dismissal of a faculty member who has tenure or security of employment. The Chancellor may independently dismiss faculty at the rank of Assistant.

Dismissal of any employee or student is a serious matter. For tenured faculty, it is very serious indeed due to the University's concern that dismissal be only for good cause and never for unpopular academic endeavors or beliefs. Consequently, according to [Regents Standing Order 101.1](#), only the Regents may dismiss a tenured professor.

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**FRAMEWORK FOR FACULTY DISCIPLINE – ACADEMIC SENATE FACULTY**

These are the sanctions that come after an investigation into allegations of misconduct. The Chancellor or designee may place a faculty member on involuntary leave with pay prior to a disciplinary action if it is found that there is a strong risk the accused faculty member's continued assignment to regular duties or presence on campus will cause immediate and serious harm to the University community or impede the investigation of his/her wrongdoing. The Chancellor may in rare and egregious cases be authorized by special action of The Regents to suspend the pay of a faculty member on involuntary leave pending a disciplinary action.

To summarize, should a faculty disciplinary case entail all major elements the framework, it would include the following:

1. Shared understandings
2. Allegation(s)
3. Preliminary assessment
4. Formal investigation(s)
5. Formal charges
6. Formal hearing
7. Formal report on the hearing findings and recommended sanction(s) and discussion with Hearing Committee should Chancellor recommend other sanctions, and finally
8. Formal imposition of one or more disciplinary sanction

## APPENDIX E

### FRAMEWORK FOR FACULTY DISCIPLINE – NON-SENATE ACADEMIC APPOINTEES

This narrative describes a general procedural framework within which to understand the corrective action and dismissal process for non-Senate faculty and other academic appointees.<sup>18</sup> The narrative focuses on corrective action and dismissal for the faculty who are not members of the Academic Senate. Some, but not all of the faculty titles covered in this document, are those appointed in the adjunct professor series, the health sciences clinical professor series, and those who are visiting appointees with titles in the professorial series.

There are well established policies and processes for adjudicating non-Senate faculty misconduct, which is within the UC Academic Personnel Manual (APM). The policies within the APM are The Faculty Code of Conduct ([APM - 015](#)) and Non-Senate Academic Appointees/Corrective Action and Dismissal ([APM - 150](#)). Each Chancellor establishes guidelines and procedures for instituting corrective action and dismissal of non-Senate academic appointees, which may be initiated and implemented by the department chair, unit head, supervisor, or other administrative authority in accordance with campus procedures.

Non-Senate faculty are subject to the standards set forth in The Faculty Code of Conduct involving three elements:

1. A Publicly Available Set of Expectations for Faculty Conduct

Faculty are expected to obey local, state, and federal laws and UC and other relevant policy.

The Faculty Code of Conduct, which is a UC policy, establishes ethical principles and identifies types of unacceptable conduct in five areas: specifically, teaching and students, scholarship, the University, colleagues, and the community.

It also includes the following important assertion: “University discipline...should be reserved for faculty misconduct that is either serious in itself or is made serious through its repetition or its consequences.”

2. Allegation(s)

Someone must identify potential misconduct that involves a faculty member. That someone may be any member of the UC community or a person outside the University. He or she may make a complaint through a number of different channels.

3. Preliminary Assessment

Once the allegation is known by a responsible party, there will be a preliminary assessment as to whether the allegation rises to the severity of a violation of The Faculty Code of Conduct. This may involve a formal investigation which could be led, in cases of discrimination and harassment, by the Title IX office.

Prior to instituting corrective action or dismissal, efforts to resolve the issue(s) informally may be attempted, only where appropriate, depending on the severity of the misconduct. Procedures for corrective action and dismissal involve the following elements:

4. Written Notice of Intent

Prior to initiating corrective action or dismissal, the University shall provide a written Notice of Intent to the appointee with the intended action, reasons, supporting documentation, and the appointee’s right to respond to the Notice of Intent, within a certain timeframe.

5. Written Notice of Action

Within thirty (30) days of issuing the written Notice of Intent, the University shall issue a written Notice of Action to the appointee of the corrective action or dismissal to be taken, its effective date, and the right to grieve the action.

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<sup>18</sup> APM - 150 also applies to all other academic titles, such as those appointed in the professional research series, specialist series, project scientist series, librarian series (non-represented), etc., except as otherwise provided in a Memorandum of Understanding for represented titles.



**APPENDIX E**  
**FRAMEWORK FOR FACULTY DISCIPLINE – NON-SENATE ACADEMIC APPOINTEES**

Policy establishes six types of disciplinary sanctions that may be imposed singly or in combination. They are:

1. Written warning, most often used in conjunction with performance expectations
2. Written censure, a formal expression of institutional rebuke
3. Suspension without pay
4. Reduction in salary
5. Demotion to a lower rank or step with a concomitant decrease in salary
6. Dismissal

Dismissal may be imposed for good cause, which includes misconduct, continued unsatisfactory work performance, dereliction of duty, or serious violation of University policy. According to [Regents Standing Order 103.9](#), prior to instituting dismissal of a non-Senate faculty member, the appointee shall be apprised of the opportunity for a hearing before an advisory committee of the Academic Senate, normally the campus Privilege and Tenure Committee, except as otherwise provided in a Memorandum of Understanding for non-Senate faculty members. A non-Senate faculty member is entitled to select only one grievance review mechanism, either [APM - 140](#) or an Academic Senate hearing as provided by [Regents Standing Order 103.9](#).

These are the sanctions that come after an investigation into allegations of misconduct. The Chancellor or designee may place the faculty member on immediate investigatory leave with pay prior to corrective action or dismissal to review or investigate misconduct which requires removing the appointee from University premises.

To summarize, a non-Senate faculty disciplinary case includes the following:

1. Shared understandings
2. Allegation(s)
3. Preliminary assessment
4. Formal investigation(s)
5. Formal Notice of Intent
6. Formal Notice of Action
7. Formal imposition of one or more corrective actions – or –
8. Dismissal

**APPENDIX F**  
**INTERIM ADMINISTRATIVE MEASURES AVAILABLE TO**  
**CHANCELLORS OR THEIR DESIGNEES**

This Appendix lists administrative measures, outside of the disciplinary process or in addition to the disciplinary process, Chancellors or their designees may impose on faculty respondents to protect complainants and the campus community. This is a non-exhaustive list compiled during interviews with the Vice Provosts/Vice Chancellors of Academic Personnel/Academic Affairs and the survey of AAU member institutions.

The Chancellors or their designees may:

1. Place a faculty member on involuntary leave with pay prior to a disciplinary action if it is found that there is a strong risk the accused faculty member' continued assignment to regular duties or presence on campus will cause immediate and serious harm to the University community or impede the investigation of his/her wrongdoing.
2. In rare and egregious cases be authorized by special action of The Regents to suspend the pay of a faculty member on involuntary leave pending a disciplinary action.
3. Impose a "no contact" order" to curtail contact and communications.
4. Change office location.
5. Limit access to the University or its resources or activities, including access to certain University facilities and to students and staff.
6. Change teaching assignments and office hours.
7. Require counseling, therapy, training, education, or medical services.

## APPENDIX G GLOSSARY OF TERMS

**Alternative resolution (Title IX process)** – A process undertaken by the Title IX Officer to remedy a complaint. Actions may include mediation (except in cases of sexual violence), separating the parties, providing for safety, referring the parties to counseling, referral for disciplinary action, a settlement agreement, conducting targeted educational and training programs, and conducting follow-up reviews. See the SVSH Policy for more details.

**Clear and convincing evidence** – the evidence presented is credible and substantially more probable to be true than not. Clear and convincing evidence requires more proof than a preponderance of the evidence but less than beyond and to the exclusion of reasonable doubt.

**Complainant** – any person who files a report of sexual violence or sexual harassment or other prohibited conduct or retaliation or any person who has been the alleged subject of prohibited conduct or retaliation.

**Early resolution (APM and Senate Bylaw 336 process)** - Intervention through negotiations between the Administration and the accused faculty member and sometimes the Senate Committee on Privilege and Tenure to determine an appropriate outcome based on the seriousness of the alleged offense, the strength of the evidence, and the best interests of the University. Such resolution may involve a negotiated settlement and/or an array of administrative remediation/mitigation measures. Early resolution may be engaged at any time in the process, from the first allegations until a formal hearing is underway. Formal proceedings may be but are not necessarily placed on hold pending the outcome of such negotiations.

**Preponderance of evidence** – a standard of proof that requires that a fact be found when its occurrence, based on evidence, is more likely than not.

**Probable cause** – reasonable grounds for bringing a charge.

**Respondent** – a person alleged to have engaged in prohibited conduct and about whom a report of sexual violence, sexual harassment, other prohibited behavior, or retaliation is made.

## APPENDIX H COMMON THEMES IN COMMENTS RECEIVED DURING SYSTEMWIDE REVIEW

In February 2016, the Joint Committee circulated a draft Report for systemwide review. Substantive comments were received from the Academic Senate, senior academic administrators, Title IX officers, graduate students, and postdoctoral scholars. The following is a summary of the common themes that emerged during systemwide review.

Education and training. Reviewers expressed support for additional education and training, particularly for department chairs and deans, about policy and procedures, when they receive allegations of SVSH involving faculty. Several reviewers expressed the need to increase education and training about the prohibition of retaliation and the need to strengthen remedies available when retaliation occurs to protect the privacy of the complainant and to allow the complainant to take leave.

Mandatory reporting. Multiple reviewers disagreed with the designation of all employees as “Responsible Employees”, specifically all faculty, graduate student employees, and postdoctoral scholars.

Standard of proof required for Title IX v. Privilege and Tenure. Title IX requires a “preponderance of evidence” to make a finding that SVSH occurred. Privilege and Tenure requires “clear and convincing evidence” to show that a violation of the Faculty Code of Conduct. Some reviewers believe these standards are in conflict. Some believe that the Report advocates for changing the Title IX evidentiary standard. The Joint Committee did not discuss changing evidentiary standards but it is noted that some feedback received did suggest this. The Joint Committee feels that clarification is needed about the intention of and use of different standards. The Joint Committee understands that a preponderance of the evidence is required to impel Title IX and the Administration to act on the complainant’s behalf, to stop the behavior of the respondent, prevent its reoccurrence, take action to insure the safety and well-being of the complainant, and remedy the situation on behalf of the complainant. Clear and convincing evidence is required to invoke formal discipline of the faculty respondent beyond invoking intervention and remediation

Title IX investigation and role. Reviewers submitted mixed responses to the recommendations to integrate the Title IX investigation with the Privilege and Tenure investigation or add a faculty member to the Title IX investigation team. Some reviewers support, and other reviewers reject, the recommendations. Some support only one investigation process. Others believe that the investigations should be kept independent to preserve the integrity and objectivity of both processes; they believe that the remedy process for the complainant and the discipline process for the respondent should be kept separate.

Timelines. Some reviewers expressed dissatisfaction with timelines for the Title IX office to receive and investigate allegations. Many reviewers commented on the length of time for the disciplinary process. One reviewer recommended adhering strictly to timelines that are already within policy and imposing a 60-day deadline for the Privilege and Tenure investigation conducted to lead to a probable cause finding. This reviewer did not suggest any consequences for missing the deadline, however.

Interim measures. Some reviewers expressed the need for more information and detail on interim administrative measures.

Confidential advisors. Reviewers expressed concern about designating confidential advisors from within the faculty when faculties are also mandated reporters (“Responsible Employees”).

**APPENDIX H**  
**COMMON THEMES IN COMMENTS RECEIVED DURING SYSTEMWIDE REVIEW**

Communications for and with complainants. Some reviewers disagreed with the recommendation that the complainant should be able to meet with the Chancellor's designee; they believe this is Title IX's responsibility.

Policy. Reviewers agree that explicit reference to SVSH be added to the Faculty Code of Conduct. Reviewers recommended that the new language should make the definition of SVSH subject to existing free expression and academic freedom protections. Most reviewers agreed with the proposed revisions to the 10-day deadline to file charges after placing a faculty respondent on involuntary leave. Some reviewers, however, think that it is unrealistic to be able to inform a respondent within five days that charges are being considered. Another group believes that the existing 10-day deadline should be lengthened instead of placing the faculty member on an undetermined length of involuntary leave.

Three-year rule. Reviewers expressed ongoing criticism of and confusion about the three-year rule. Some believe that the three-year tolling period should not begin with the complaint to Title IX or to any Responsible Employee. Others believe that the three-year rule prompts the department chair and other administrators to act sooner instead of later. Several reviewers believe that the three-year rule should be eliminated, claiming that it allows administrators and respondents to intentionally delay disciplinary proceedings.

Disciplinary procedures and outcomes. Some reviewers advocated for systemwide standardization of disciplinary procedures. Others expressed disagreement with current disclosure requirements and recommendations, stating that it inhibits early resolution and leads to prolonged disciplinary procedures. Reviewers commented that there is a need to balance transparency with due process rights for the accused and that procedural information is unclear as to how and when the complainant will be updated.

Data collection. Reviewers were unanimous that recordkeeping and detailed data collection in a standard format is critical.