March 7, 2016

Leo Estrada
Chair, UCLA Academic Senate

Re: Report of the Joint Committee of the Administration and Academic Senate dated February 17, 2016 (“Report”)

Dear Chair Estrada,

You have requested that the Charges Committee review and comment on the Report given its role in resolving disciplinary cases arising out of charges of violations of the Faculty Code of Conduct (“FCC”).

The Charges Committee is very supportive of most of the Report’s administrative, training and data collection recommendations, and the basic thrust of much of the Report, which is to emphasize that Academic Senate involvement, peer review, and due process protections for respondents remain the hallmark of the disciplinary processes for Senate members.

We do have four sets of concerns with the Report’s recommendations:

1. Recommendation I.A.1 (amending the FCC to expressly prohibit “sexual violence and sexual harassment, as defined by University policy”): Sexual violence and sexual harassment, of course, are already violations of the FCC. Charges based on allegations of this kind of misconduct involving students, colleagues and University staff, have come before the Charges Committee regularly for many years. The introduction of the seemingly innocuous clause “as defined by University policy,” however, is new. Members of the Charges Committee, like many members of the UCLA community and the larger society, share the concern that the breadth of the language in the University’s new sexual violence and sexual harassment policy (“SVSH policy”) could potentially threaten longstanding and fundamental values of free expression and academic freedom. The SVSH policy now addresses these concerns by expressly making itself, including its expansive definition of sexual violence and sexual harassment subject to existing policies protecting free expression and academic freedom. In our view, the FCC need not be amended to expressly reference the definitions in the SVSH policy as proposed, but if it is, that amendment should also contain an express savings clause making the definition of sexual violence and sexual harassment subject to existing free expression and academic freedom protections. The FCC, which remains under the control of the Academic Senate, should not blindly defer to other (changeable) University policies under the control of the Administration for the protection of these central values.

2. Recommendation I.D.1 (disclosure of confidential settlement outcomes to title IX complainants). As the Report recognizes, the great majority of sexual violence and sexual
harassment complaints against Senate faculty have historically proven to be unsubstantiated. Report at 27 (noting 141 sexual misconduct charges systemwide in 2012-15 against Senate members, but only 11 of which were eventually substantiated). Public dissemination of the settlement terms of unsubstantiated allegations of sexual misconduct could have devastating consequences to an individual faculty member’s reputation both professionally and personally. Moreover, the system properly relies heavily on settlement in the disposition of these charges. Ibid. (noting that only one of the 141 systemwide sexual misconduct cases in 2012-15 against Senate members went to hearing and resulted in a finding that discipline was warranted). Releasing the terms of settlement of these cases may make it substantially more difficult to efficiently resolve both substantiated and unsubstantiated claims, and, particularly in the case of the large number of unsubstantiated claims, may be grossly unfair to the respondent Senate member. The Charges Committee believes this recommendation should be rejected outright, or if not rejected outright, then subject to enforceable strict contractual confidentiality limitations that preclude any further dissemination by the complainant.

3. Recommendation I.D.2 (three-year rule). The Charges Committee disagrees with the Report’s characterization of the scope and purposes of the three-year rule. The legislative history of the three-year rule and its amendments makes clear that the rule was intended to be, and should operate as, a kind of statute of limitations, albeit a “soft” one subject to equitable exceptions and tolling in appropriate circumstances. See Ltr. Dtd Mar. 15, 2005 from George Blumenthal to UC President Robert C. Dynes (“The intent of the statute of limitations in SBL 336.B.4 is to protect faculty from having to defend themselves against charges for events taking place in the distant past. Modeled on statutes of limitations in criminal and civil law, the provision avoids a situation where a faculty member is precluded from an adequate defense against charges because evidence has been lost, memories have faded, or key witnesses are no longer available. The full justification of the amendment can be found on pages 28-30 of the March 9, 2005 Assembly Agenda.”); see also Ltr dtd Aug. 6, 2004 from Carolyn Martin Shaw, Chair Committee on Privilege & Tenure, to Lawrence Pitts (“Senate Bylaw 336 governs the standards and procedures employed by divisional Privilege and Tenure committees for disciplinary cases. One important aspect of these standards and procedures is the statute of limitations for disciplinary cases, which protects faculty from having to defend themselves against charges for events taking place in the distant past when evidence, memories and witnesses may have long disappeared.”). The three-year rule has been properly applied in the past to require putative complainants (including the Administration) to bring their complaints to the attention of the Senate within three years of discovery of the factual basis of a claim absent some equitable basis for delay. It should continue to serve this salutary role in avoiding litigation over stale claims and the resulting unfairness to the respondent. Given the context of the Report (especially a relatively recent controversy resulting in the public dismissal of a UC Berkeley faculty member following allegations of a pattern of sexual misconduct), the Charges Committee suspects that the
Report’s proposed recharacterization of the three-year rule is driven by concerns that a three-year limitations period may not be appropriate in cases of sexual misconduct. Although we recognize that in the larger society there has been debate and concern over time-barred sexual misconduct claims, we do not believe that the existing “soft” three-year rule has operated unfairly even in the context of sexual misconduct claims. Nevertheless, if there is a consensus that the special exigencies of sexual misconduct claims require a different balance than the three-year rule, a special limitations rule for sexual misconduct claims should be fashioned (a four-year or five-year rule perhaps, or express equitable exceptions for delays tailored to these particular kinds of claims). It would be wrong to effectively gut all limitations periods for all claims because of special concerns about time-barring sexual misconduct claims. Only a small (albeit very important) share of the charges brought to our attention allege sexual misconduct, and in the great run of cases some limitations period is clearly necessary. The “soft” three-year rule has proved a workable balance providing fair access to the charges process for complainants while protecting both the system and respondents against stale claims for the wide range of matters that may result in charges.

4. The Charges Committee noted that the Report failed to address consequences for filing malicious, frivolous or bad faith charges in the disciplinary process. The enhanced systemwide training recommended by the Report should be expanded to include an appropriate module on the consequences of such misconduct, as well as training modules addressing the problems identified by the Report with respect to confusion over the time frames and processes for the disciplinary process and reporting procedures. This could be readily incorporated into the sexual harassment training already required of all faculty and staff.

Very truly yours,

Daniel J. Bussel, Chair, Charges Committee

On behalf of the members of the Charges Committee:
Roshan Bastani
Cameron Gundersen
Helen Lavretsky
Diana Messadi
Clyde Spillenger
Christopher Anderson
David Blank

cc: Academic Senate Executive Board
Linda Mohr, Academic Senate CAO
Chris Jados, Executive Assistant
March 8, 2016

To: Leobardo Estrada, Chair
   Academic Senate

From: Ioanna Kakoulli, Chair
   Graduate Council

Re: Response to Report from the Joint Committee of the Administration and Academic Senate on Disciplinary Processes for Faculty related to Sexual Violence, Sexual Assault, and Sexual Harassment

At its meeting on March 4, 2016, the Graduate Council reviewed and briefly discussed the Report from the Joint Committee of the Administration and Academic Senate on disciplinary processes for faculty related to sexual violence, sexual assault, and sexual harassment. Members found the report informative and appreciate efforts made to clearly identify and assess policies and procedures related to the handling of future cases of sexual violence, sexual assault, and sexual harassment. Members agree with recommendations made by the Joint Committee to increase transparency throughout the process including, but not limited to, reporting, investigation, adjudication, and discipline in cases involving faculty. Members echo the sentiment that proper and timely notice of sanctions will lead to greater transparency and trust in the disciplinary process.

Members are of the same opinion that an increase in targeted education for faculty and graduate students, specifically, regarding policies and procedures is crucial for encouraging the reporting of incidents of sexual violence and sexual harassment. Members question whether the “three-year rule” contained in APM - 015 and in Senate Bylaw 336 is too lengthy, but appreciate the clarification made that it is a time limit by which the Administration must initiate disciplinary action once it becomes aware of an allegation.

Thank you for the opportunity to review and comment.

cc: Estrella Arciba, Principal Committee Analyst, Graduate Council
    Linda Mohr, CAO, Academic Senate
March 5, 2016

To: Executive Board
UCLA Academic Senate

From: Kristina Bostrom, Chair
Privilege & Tenure Committee

Re: Report of the Joint Committee of the Administration and Academic Senate

The Privilege & Tenure Committee (P&T) has reviewed the report on faculty discipline issued on February 17, 2016 and appreciates the thorough consideration the Joint Committee has given to “examine how the University manages disciplinary proceedings for faculty respondents in cases alleging sexual violence, sexual assault, or sexual harassment.” The present examination is not only timely, it is in keeping with the admonition of the Faculty Code of Conduct to “periodically re-examine procedures dealing with the investigation of allegations of faculty misconduct and the conduct of disciplinary proceedings” (APM 015, “Part III—Enforcement and Sanction,” Introduction).

Most of the Joint Committee’s recommendations are helpful and require no further comment. P&T finds especially helpful the expanded explanation of interim remedies available during an investigation. It would be helpful, however, to recognize that not only can interim administrative measures be imposed during an investigation, but non-disciplinary administrative actions are allowed for violations under UC policies. The Joint Committee has thoroughly described possible disciplinary actions and the process in “Appendix E.” However, APM 016 also describes other, non-disciplinary, administrative actions.

No disciplinary sanctions described in this policy may be imposed on faculty members other than through the procedures pursuant to this policy and the Faculty Code of Conduct. In addition, faculty members may be subject to certain administrative actions which are outside the scope of faculty discipline. For example, like all other members of the University community, faculty members are subject to the general rules and regulations of the University such as those pertaining to parking, library privileges, health and safety, and use of University facilities. (APM 016, §I; emphasis added)

The “University of California Policy on Sexual Violence and Sexual Assault” is one such “rule and regulation of the University.” Faculty, like all other members of the University community,
are subject to any appropriate administrative actions for failure to comply with the policy. Use of
interim administrative measures is available during an investigation (as thoroughly described in
the Joint Committee’s report), but non-disciplinary administrative actions are also available directly upon
a finding of a violation of policy. Many of the “interim administrative measures” described in
Appendix F would also be available as administrative actions, allowing for timely remedial action as
soon as a policy violation is determined under the Title IX standard of preponderance of evidence.

Blending the discipline and remedy processes has ill-served all parties. Prompt use of
administrative actions as remedies also allows for the due process of a disciplinary hearing,
eliminating the need to rush to “plea bargain” a discipline that is meant to also serve as a remedy.
This also affords a fair hearing for the accused to review whether the evidence, under the clear and
convincing standard, merits one or more of the disciplinary sanctions. Disciplines have been
inadequate as remedies and, in some cases, lesser than would otherwise be imposed under a full
hearing.

By separating the discipline (not the investigation) into a separate process, the focus after a
finding a Title IX violation can be, as it is meant to be, on restoring the equal access to education for
the offended party while maintaining due process rights of the accused\(^1\). Where the complainant has
been someone other than a student (staff or other faculty), there is still a climate of educational
equality that should be restored to that department or unit.\(^2\) The timeline for faculty discipline would
then be:

1. Allegation of sexual harassment \(\rightarrow\) Interim administrative measures imposed as needed for
   protection OR for a proper investigation.
2. Finding of violation of policy by a preponderance of evidence \(\rightarrow\) Administrative actions as
   needed to restore access to education for the complainant(s) or members of the
   complainant’s department or unit.
3. \(\rightarrow\) Filing a disciplinary complaint and recommendation of a range of disciplinary actions by
   the Chancellor or designee.
4. \(\rightarrow\) Privilege and Tenure hearing using the Title IX investigation report while applying the
   clear and convincing evidence, resulting in a recommendation to the Chancellor (or
   designee) by P&T.
5. \(\rightarrow\) Final disciplinary action by the Chancellor (or designee).

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\(^1\) Office of Civil Rights, *Sexual Harassment Guidance*, “Procedures that ensure the Title IX rights of the complainant,
while at the same time according due process to both parties involved, will lead to sound, supportable decisions.”
March 2016)

\(^2\) Ibid, “... a hostile environment can occur even if the harassment is not targeted specifically at the individual
complainant.”
This process eliminates the need to change the Title IX investigation so that it reaches a conclusion based on “clear and convincing evidence” rather “preponderance of evidence” as recommended in A.2(c). “Preponderance of evidence” is the standard required for a legal violation of Title IX that requires remedy and cannot be changed to the higher “clear and convincing evidence” standard. Having an investigation potentially end with a recommendation of contradictory conclusions would be problematic. Further, Faculty have the right to a Senate recommendation that the evidence is “clear and convincing” before a discipline is recommended.

Following this flow would also address some of the concerns about transparency and delays. Immediately upon a finding of violation, the student’s (or unit’s) access to education could be addressed and remedies imposed. There would be no reason not to communicate to the complainant what those remedies were, while making it clear that a full disciplinary hearing would also follow.

P&T finds the expanded explanation of the three-year rule helpful. P&T would like to also point out that the Faculty Code of Conduct (APM 015) states:

... University discipline, as distinguished from other forms of reproval or administrative actions, should be reserved for faculty misconduct that is either serious in itself or is made serious through its repetition, or its consequences ... 

Sexual harassment often may be conduct that is “made serious through its repetition,” therefore the three-year “clock” begins at the moment the conduct has been repeated enough to be “made serious.” Previous conduct may go back any amount of time.

Section A, Recommendation 2 calls for the integration of Title IX investigations with other investigations. The Committee notes that this recommendation is consistent with the Faculty Code of Conduct’s call for “[p]rocedures ... which encourage a single formal investigation of the allegation leading to the proposed disciplinary action.” (APM 015, Part III§B.2). While it is likely not appropriate to have faculty participate in an independent Title IX investigation, UCLA’s Appendix XII, in part, perhaps provides a method by which faculty might have input.

“The Charges Committee, working through the Chair, may ... formulate issues that need to be explored, frame questions that it wishes to be asked. ...” (UCLA Bylaws, Appendix XII § 59[B])

It may be that faculty can work with Title IX Offices to help develop general investigative guidelines that cover concerns specific to the faculty-student relationship. While the relationship of faculty to student could render a student vulnerable due to the unequal power dynamics, it also can subject faculty to being falsely accused due to unhappiness with a grading or evaluation outcome.
Lastly, P&T is concerned that the policy does not adequately provide for restoration of Faculty rights for those accused and then found not responsible. All reasonable attempts should be made to restore the accused faculty member to their prior status in as timely a manner as possible.

cc: Privilege & Tenure Committee members: Charlene Villaseñor Black, Christopher Erickson, Alistair Cochran, Laura Gómez, Anahid Jewett, E. Richard Stiehm
Linda Mohr, UCLA Academic Senate CAO
Christopher E. Jados, Executive Assistant/Analyst
March 9, 2016

Professor Leo Estrada
Chair, UCLA Academic Senate

Re: Report of the Joint Committee of the Administration and Academic Senate

Dear Professor Estrada,

President Napolitano appointed a Joint Committee of the Administration and Academic Senate to examine how the University manages disciplinary proceedings for faculty respondents to allegations of sexual violence, sexual assault, or sexual harassment. The Committee on Faculty Welfare has reviewed the report issued by the Joint Committee and appreciates the thorough examination of the current administrative and judicial policies regarding cases alleging sexual violence, sexual assault, or sexual harassment.

Our Committee shares the understanding that it is of utmost importance that the University works to create a safe and equitable environment for faculty, staff and students. We also have a number of concerns with Section C of the Report issued by the Joint Committee, which addresses the imposition of non-disciplinary measures on faculty respondents while an investigation is underway. The Report recommends clarifying “…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 disciplinary process during an investigation (pp. 4-5).”

Our committee is concerned by the possibility that involuntary unpaid leave may be imposed outside of the disciplinary process during an investigation. This does appear to be allowed under the current language of APM-016 (see p. 5, third paragraph: http://www.ucop.edu/academic-personnel-programs/_files/apm/apm-016.pdf). Placing a faculty member on involuntary leave without pay pending the result of an investigation is a form disciplinary action. **We recommend that leave without pay only be imposed as a disciplinary action once an investigation has been completed and the accused faculty respondent has been found guilty of violating the Faculty Code of Conduct.**

The Joint Committee notes that Administrators who impose paid involuntary leave must currently file formal disciplinary charges within 10 days (p. 4, section C). The Joint Committee found this timeline to be unrealistic, and recommended that the 10-day policy be replaced with the following (p. 5, Section 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.”
We are concerned that there appears to be no time limit on the duration of the period of involuntary leave before charges are brought under the suggested revision. Instead, within 5 days, the Chancellor or designee must simply notify the faculty member of the anticipated date by which charges will be brought. **We recommend that some reasonable limit be placed on the time between when a faculty member is placed on involuntary leave and the date when formal charges are brought.** Second, the original text in APM-016 regarding the 10-day limit appears to refer to either involuntary paid or unpaid leave (again, see p. 5, third paragraph: [http://www.ucop.edu/academic-personnel-programs/_files/apm/apm-016.pdf](http://www.ucop.edu/academic-personnel-programs/_files/apm/apm-016.pdf)). As noted above, our committee does not support placing faculty members on unpaid leave outside of the disciplinary process. That said, were this policy to remain in effect, we feel particularly strongly that some reasonable limit be placed on the time between when a faculty member is placed on unpaid involuntary leave and the date when formal charges are brought.

Finally, our Committee strongly agrees with the Report’s recommendation that the University include Senate faculty to augment teams at the time of the Title IX investigation (p. 2, Recommendation A.2.b). The Committee believes that this recommendation is in keeping with the spirit of shared governance and that faculty oversight and involvement should occur at all stages of the investigative process.

On behalf of the Committee on Faculty Welfare, I thank you for the opportunity to comment on the Report of the Joint Committee of the Administration and Academic Senate. Please do not hesitate to contact me if I can be of further assistance. I can be reached at 310-206-7290, or by email to msweeney@soc.ucla.edu. Our Committee Analyst, Eric Wells, is also available to assist. He can be reached at 310-206-2070 or by email to ewells@senate.ucla.edu.

Respectfully,

Megan Sweeney
Chair, Committee on Faculty Welfare

cc: Members of the Committee on Faculty Welfare
    Linda Mohr, CAO, Academic Senate
    Eric Wells, Committee Analyst, Committee on Faculty Welfare
The College FEC appreciates the opportunity to review the recommendations of the Joint Administration-Academic Senate Committee on Faculty Discipline. The committee reviewed the document at its meeting on March 4, 2016. We were grateful to have Kathleen Salvaty, Title IX Coordinator, for joining the meeting and highlighting key points of the document. Below you will find a summary of the questions and concerns raised during the discussion.

Colleagues were concerned that there might be some misunderstanding about mandatory reporting of disclosures about sexual assault and sexual harassment. One member mentioned a recent Daily Bruin editorial that suggested that victims of sexual abuse might feel apprehensive about disclosing information about their experience if mandatory reporting was in place. The same member raised the question whether mandatory reporting might discourage members of our campus from showing willingness to discuss sexual matters of any kind. Ms. Salvaty responded by stating that all referrals to the Title IX office resulted in contact with the complainant. Such contact ensured that the victim had all of the necessary information to make a clear decision about whether to move forward with a complaints procedure. There was also brief discussion about the role that the Title IX office at UCR played in the Regents' decision to fire Rob Latham from a tenured position in the UCR English department in January this year. One further issue that was raised related to the widespread discussion of “affirmative consent” in the nationwide drafting of Title IX policies on sexual assault and sexual harassment. There was some concern that “affirmative consent” was a concept that proved difficult to implement in certain sexual situations.

As always, our membership appreciates the consultative process and welcomes the opportunity to opine on important matters like this. You are welcome to contact me at jbristow@humnet.ucla.edu with questions. Mitsue Yokota, Academic Administrator, is also available to assist you and she can be reached at (310) 794-5665 or myokota@college.ucla.edu.

cc: Lucy Blackmar, Assistant Vice Provost, Division of Undergraduate Education
Linda Mohr, Chief Administrative Officer, Academic Senate
Kathleen Salvaty, Title IX Coordinator
MEMO

March 8, 2016

TO: Leo Estrada, Chair, Academic Senate

FROM: Lily Chen-Hafteck, Chair, Faculty Executive Committee, School of the Arts and Architecture

RE: Response to the Report from the Joint Committee of the Administration and Academic Senate on disciplinary processes for faculty related to sexual violence, sexual assault and sexual harassment

The Faculty Executive Committee of the School of the Arts and Architecture (SOAA FEC) received the request for review on the Report from the Joint Committee of the Administration and Academic Senate on disciplinary processes for faculty related to sexual violence, sexual assault and sexual harassment on February 19, 2016.

Given the important aspect of this topic, members of our FEC recommend to have a representative from this task force to make a presentation and lead a discussion with the FEC or our faculty members. It seems hard to comment on an important document without the leaders of the initiative explaining the nature and scope of these processes.

In addition, please note that since we were given a review period of 19 days, members of the FEC did not have the opportunity to discuss this document at our monthly meeting. Therefore, we could only compile our responses through email correspondence. We sincerely wish that in future, the Academic Senate can provide adequate review period when requesting for responses (i.e. of no less than one month) so that we can discuss those important items thoroughly at our meetings to ensure that we provide the most helpful responses.

Thank you for the opportunity to respond. Please do not hesitate to contact me at lhafteck@ucla.edu if you have any questions on this memo.