March 17, 2016

Daniel Hare
Chair, Academic Council

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

Dear Dan,

The Executive Board of the UCLA Academic Senate discussed the draft recommendations from the Joint Committee of the Administration and Academic Senate to review the disciplinary processes for faculty related to sexual violence, sexual assault and sexual harassment at its meeting on March 10, 2016. The Executive Board solicited comments from the standing committees of the Senate, as well as the Faculty Executive Committees, to maximize faculty feedback; the individual responses are available online.

This issue is an important concern to the campus and the faculty and the Academic Senate is glad to be able to opine on the report. In general, we are supportive of the administrative training and data collection efforts outlined in the recommendations. As indicated below, however, we have several concerns and a few editing suggestions.

In addition to the interim remedies available during an investigation, UCLA’s Privilege and Tenure Committee (P&T) would like 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.”

Possible disciplinary actions are found in Appendix E. However, APM 016 also describes other non-disciplinary administrative actions for failure to comply.

It is important not to confound discipline and remedy processes. Prompt use of administrative actions as remedies also allows the Senate to begin the due process of a disciplinary hearing. By separating the discipline into a separate process, the focus after finding a Title IX violation can be on restoring the equal access to education for the offended party while maintaining the due process rights of the accused. The letter from the P&T Committee provides a five-step diagram to illustrate how to keep the remedy and discipline processes apart and to change the Title IX investigation so that it reaches a conclusion based on “clear and convincing evidence” rather than “preponderance of evidence” (Letter from P&T).

Recommendation I.A.1

The Charges Committee was concerned about amending the Faculty Code of Conduct to prohibit “sexual violence and sexual harassment, as defined by University policy.” These acts are already prohibited in the Faculty Code of Conduct and the additional phrase “as defined by University policy” is unnecessary. If added, it should be accompanied by a statement making the definition of sexual violence and sexual harassment subject to existing free expression and academic freedom protections.

Recommendation I.D.1

Since most complaints have historically been proven to be unsubstantiated, public dissemination of the settlement terms may have negative consequences to an individual faculty member’s reputation. The format for this public dissemination may be the issue. As an aggregate number, there may not be an issue, but if individuals are identified then the Charges Committee rejects this recommendation. The Graduate Council, however, recommended more transparency.
Recommendation I.D.2

The Charges Committee letter indicates that the 3-year rule was intended to be a kind of statute of limitations, albeit a ‘soft’ one subject to exceptions. The intent was to protect faculty from defending themselves from events that took place in the distant past when memories have faded and witnesses are no longer available. The three-year rule has been applied in the past “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.” (Letter from the Charges Committee). In sum, the “soft” three-year rule has operated fairly even in the context of sexual misconduct cases and should not be changed. There is disagreement on this point as noted by the letter from P&T that argues the “clock” begins at the moment the conduct has been repeated enough to be made serious.

Finally, the Report fails to address the consequences for filing “malicious, frivolous or bad faith charges in the disciplinary process” or as stated in P&T’s letter, the policy does not adequately provide for restoration of faculty rights for those accused and later found not responsible.

The Executive Board urges you to read the individual committee responses.

Please feel free to contact me should have any questions.

Cordially,

Leobardo F. Estrada
Chair, Academic Senate
Los Angeles Division

cc:   Hilary Baxter, Executive Director, Systemwide Academic Senate
      Jim Chalfant, Vice Chair, Academic Council
      Michael LaBriola, Principal Policy Analyst, Systemwide Academic Senate
      Linda Mohr, Chief Administrative Officer, UCLA Academic Senate
      UCLA Academic Senate Executive Board Members