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).


\(^2\) 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:
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