

CAMPUS PROCEDURES FOR ENFORCEMENT OF THE FACULTY CODE OF CONDUCT (Revised 6-1-06)

1. Scope

These procedures shall apply to allegations of violations of the Faculty Code of Conduct by members of the Academic Senate, except for allegations of sexual harassment, which shall be dealt with following the procedures issued by the Chancellor's office.

A complaint may be brought, under these procedures, by any student, staff member or faculty member of the University of California.

2. Handling of Informal Complaints

Informal complaints of violations of the Faculty Code of Conduct may be received by the following campus officers: for any complain, the Chair of the relevant department, the Dean or Provost of the relevant College, the Ombuds; complaints by students are also appropriately received by the Dean of Students, and those by graduate students by the Dean of the Graduate Division; complaints by staff members are also appropriately received by the immediate supervisor of the staff member concerned and the Assistant Vice Chancellor for Personnel Services or designee. Complaints made by a faculty member, and any complaint of a very serious nature, may be taken immediately to the Charges Officer of the Santa Barbara Division of the University of California Academic Senate. The Charges Officer shall be appointed by the Divisional Committee on Committees for a term of one year, which shall be renewable.

The recipient of the informal complaint may deem it appropriate either to undertake an informal resolution of the complaint, or to refer the complainant to another appropriate campus officer who may be better able to undertake this task.

3. Notification Before Filing of a Formal Complaint

Faculty members often occupy positions of power over students, staff, and other faculty members. All such persons therefore have a legitimate interest in being able to make allegations against a faculty member in confidence, i.e. without the accused knowing that they have done so. This legitimate interest, however, cannot override the right of the accused to reply to accusations. This right requires that the accused know what he or she is charged with, and by whom. There shall be no trial *in absentia*.

Whether a faculty member shall be notified that an informal complaint has been made against him or her is an issue that requires discretion and good sense on the part of all campus officers concerned. What follows are guidelines

The recipient of an informal complaint may in all cases listen to the complaint without informing the accused of it. The recipient of the complaint may also refer the complaint to another appropriate campus officer, as specified under 2, without giving rise to the right of the accused to be informed. If the recipient of the complaint, or any campus officer or agency, begins to investigate the merits of the complaint, beyond what can be established simply by talking to the complainant, the accused faculty members shall at that stage have a right to notification.

The initial recipient of the complaint, or campus officer or agency, may refer the complainant to the Counseling Center, for the purposes of counseling only, without notifying the accused.

When a complaint has been made, all faculty members, campus officers and agencies shall treat the identity of the complainant and the faculty member against whom the complaint is made as a matter of the utmost confidentiality. Each must play his or her part in seeing that rumors concerning the complaint are not begun or spread.

If the complaint is not pursued to the point at which the faculty member complained against is notified, then there shall be no evidence left in Department or Administration files that a complaint was ever made. In particular, if the complainant has put the complaint in writing and given it to a campus officer, that document shall be destroyed or returned to the complainant.

The initial notification of a faculty member against whom a complaint has been made need not be in writing. For relatively minor cases, or cases where an informal resolution is being attempted, oral notification may be appropriate as a first step. Oral notification may be carried out by any person or agency involved in the attempt to resolve the complaint with the permission of the complainant. The accused faculty member, however, has the right to insist on a written statement of the complaint. Once the accused has so insisted, the complaint shall be deemed to be in abeyance until the complainant has prepared a written statement of the complaint and given a copy to the campus officer or agency involved in the attempt to resolve the complaint. This officer or agency shall in turn provide a copy to the accused.

4. Formal Complaint Procedures

If the recipient of the informal complaint deems it to be non-frivolous, and if procedures of informal resolution are either unsuccessful, unacceptable to the complainant, or deemed inappropriate by the campus officer or agency involved, then that officer or agency shall refer the complainant to the Charges Officer. This step in itself does not require that the faculty member against whom the informal complaint is made shall be notified of the complaint. The Charges Officer shall listen to the informal complaint, and shall explain the Faculty code of Conduct to the complainant, and shall also explain to the complainant the need to substantiate any complaint that is made. If he or she thinks it appropriate, the Charges Officer may attempt informal resolution of the complaint, either directly or by referring the complainant to a person or agency listed under 2 as an appropriate officer.

If the Charges Officer determines that informal resolution is inappropriate, or if such resolution is unsuccessful or unacceptable to the complainant, the complainant may then submit a written statement of the charges that he or she wishes to make. On receipt of this written complaint the Charges Officer shall initiate formal complaint procedures.

The first step shall be the notification of the faculty member that a formal complaint has been lodged. The Charges Officer shall send a copy of the written complaint to the faculty member against whom the complaint has been made as soon as is feasible, and retain a copy. The faculty member shall also, at this stage, be given by the Charges Officer a copy of the Faculty Code of the Conduct, of these procedures, and of all other relevant documents.

The second stage in the initiation of formal procedures shall be the formation of an ad hoc Charges Committee. To this end, the Charges Officer shall request the Academic Senate Divisional Committee on Committees to form such a committee consisting of at least three members. The Committee on Committees shall consult with the Charges Officer on the composition of the ad hoc committee. The purpose of this consultation is

to ensure that the Committee on Committees excludes from the ad hoc committee those who are members of the same department as one or other of the parties to the complaint, and those who may be in some other way prejudiced. In order to advise the Committee on Committees on the selection of an unprejudiced ad hoc committee, the Charges Officer shall consult, if it is prudent to do so, with the complainant or the faculty member complained against, or both. The committee shall be formed expeditiously; the Charges Officer shall not be a member of the committee.

If the Charges Officer believes that the complaint is frivolous or unfounded, he or she will refer the complaint to the Advisory Committee to the Charges Officer for an evaluation of the merits of the case. If the Advisory Committee unanimously determines that the charges lack evidence or merit, the process ends at that point. In the absence of that unanimity, the matter will be referred to an ad hoc Charges Committee for a full investigation.

Once the Charges Committee has been formed, and the accused has received written notification of the complaint, the Charges Officer shall then give the Charges Committee a copy of the complaint. The Charges Officer shall also send a copy of the complaint, and notification of the fact that a Charges Committee has been drawn up, to the Chancellor or the chancellor's designee.

The faculty member against whom a complaint is made shall have the right to file a preliminary written response to the complaint with the Charges Committee before that committee meets, provided that the response is filed within ten working days of the receipt of the complaint by the faculty member; the Charges Officer may, if it is fair and prudent to do so, allow more time for a full response to be made to the complaint. The committee shall consult with the Charges Officer at its first meeting, and subsequently at its discretion.

5. Interim Suspension

If at any time there is, in the judgment of the Chancellor, a clear probability that the continued assignment of a faculty member to certain duties will be immediately and seriously harmful to the University community, the Chancellor may place the faculty member on full or partial interim suspension from those duties with full pay. The Chancellor shall consult with the Charges Officer before imposing such an interim suspension, and shall provide the faculty member with a written statement of the reasons for the suspension.

Such interim suspension is a precautionary and not a disciplinary action; it is no way meant to prejudge the guilt of the faculty member suspended.

When a faculty member has been placed on interim suspension in this way, the Charges Officer, the Committee on Committees, and others involved shall act as quickly as is compatible with fairness to see that the complaint is heard and, if appropriate, passed on to the Committee on Privilege and Tenure.

6. Charges Committee Procedures

(a) The Charges Committee shall determine whether any of the allegations in the complaint, if true, would constitute a violation of the Faculty Code of Conduct. If it determines that none of them would, it shall transmit the complaint, with its findings,

to the Chancellor. If the Chancellor also concludes that none of them would, the matter is terminated.

(b) If either the Charges Committee or the Chancellor concludes that any or all of the allegations in the complaint, if true, would constitute a violation of University policy on faculty conduct, the complainant and the faculty member complained against shall be so notified. The Charges Committee shall conduct a factual investigation with respect to such allegations to determine whether there is probably cause for undertaking disciplinary action.

The investigation shall be conducted in accordance with the appended rules of procedure. The complainant must be willing to appear before the Charges Committee should the Committee in its discretion consider such an appearance necessary to determine the truth or substance of the allegations in the complaint. The Committee may, in its discretion, hear witnesses *in camera* and shall treat all steps in its investigation as confidential. In the case of grading complaints, the Charges Committee shall use its best efforts to complete its investigation by no later than the quarter following the one in which the complaint was lodged.

Probably cause "... is shown as that which would lead a person of ordinary caution or prudence to believe, or to entertain a strong suspicion ..." that a violation of the Faculty Code of Conduct has occurred. [Adapted from People v. Martin, Cal 3d 687.692(la). 1973]

(c) After completing its investigation, the Charges Committee shall determine whether there is or is not probable cause, and transmit its findings and the full file to the Chancellor or the Chancellor's designee. The complainant and/or the faculty member complained against may request, in writing, from the Charges Committee, a summary of the Committee's findings. If the Chancellor (or designee) determines there is probable cause for undertaking disciplinary action affecting the privileges or tenure of a member of the Academic Senate, the findings of the Charges Committee shall be transmitted to the Committee on Privilege and Tenure, together with a written statement by the Chancellor (or designee) setting out the reasons for undertaking such an action.

(d) Whenever a matter is terminated or if the complaint or portions thereof are transmitted to the Committee on Privilege and Tenure, the complainant and the faculty member complained against shall be notified.

(e) In any case in which the complaint, or portions thereof, is transmitted to the Committee on Privilege and Tenure, as provided above, the faculty member complained against shall be entitled to a prompt hearing before the Committee on Privilege and Tenure and to all the privileges and protections specified in the Standing Orders of the Regents and in the provisions of the Manual of the Academic Senate that implement those Orders. In no case will any disciplinary sanction be imposed prior to completion of such proceedings.

The Committee on Privilege and Tenure shall report its findings and recommendations to the Chancellor. In the event that it finds that the faculty member has not violated the Faculty Code of Conduct, it shall recommend that no sanction be imposed. In the event that it determines that the faculty member has, in fact, violated the Faculty Code of Conduct, it shall recommend an appropriate sanction, in view of the gravity of the offence and of all of the facts and circumstances. Permissible disciplinary sanctions, as authorized in the Regents' statement of University Policy on Faculty Conduct and the Administration of Discipline are: written censure; suspension (other than interim suspension with pay); demotion (in rank or salary step); dismissal from the employ of

the University. Should the Chancellor dispute the committee's findings, or reject its recommendations, his or her reasons shall be communicated to the committee in writing.

The faculty member complained against, the complainant, the Dean, and the Department Chair, the Committee on Privilege and Tenure, the Charges Officer and the Charges Committee shall be advised of the Chancellor's decision and of the sanction, if any, to be imposed by the Chancellor. When the sanction to be imposed involves dismissal or demotion of a tenured faculty member, Provost, or academic Dean, the Chancellor's recommendation is subject to approval by the President and the Regents.

7. Material in Charges Committee Files

Once a matter is terminated or is transmitted to the Committee on Privilege and Tenure, all file material generated by the Charges Committee shall be returned to the Office of the Academic Senate. In the event that the Charges Committee recommends further proceedings before the Committee on Privilege and Tenure, the following materials shall be retained in a confidential file in the Academic Senate: a copy of the complaint, its determinations, the determinations of the Chancellor (or designee) and any additional materials (including an inventory of the contents of the file) determined by the Committee to be necessary in order to preserve an adequate record of the matter. In the event that the Charges Committee does not sustain the allegations against the defendant, all such material shall be destroyed after a period of one year.

Other material shall be returned to the individual who provided it, or be destroyed at the expiration of one year following the termination of the matter or the transmittal to the Committee on Privilege and Tenure unless the complainant or the faculty member complained against notifies the Charges Committee in writing that further proceedings are contemplated which require their retention. Subsequent notices, if any, shall cause the other material to be retained for an additional year following the notice and the materials shall then be returned or destroyed at the expiration of thereof.

POLICIES AND RULES FOR HEARING BEFORE CHARGES COMMITTEES

1. At its discretion, a committee may choose an adviser to sit with to advise it on any legal and technical problems that may arise in the course of the hearing.
2. All witnesses before the committee shall be heard in closed hearings. Both the complainant and the accused shall have the right to appear as witnesses. Each may be accompanied by a friend, counselor and/or attorney.
3. Both the complainant and the accused faculty member shall have the right to call witnesses to appear before the committee, but this right is subject to the constraint that the panel may require either party to justify the relevance of any witness. If, when called upon to do so, the party cannot justify the relevance of a given witness to the satisfaction of the committee, then that witness shall not appear. The committee shall have the right to call witnesses who have been called by neither of the two parties.
4. No record shall be kept of any hearing before the Charges Committee, except such notes as individual committee members may make for their own personal use. All such notes shall be destroyed after the committee has reached a decision on the case.
5. If at any time in the proceedings the committee thinks that certain facts which could be helpful to it in reaching a decision could best be obtained through its own investigative efforts, it may conduct such an independent inquiry.
6. The committee may also attempt to dispose of the complainant's charge informally through agreement of both parties at any time prior to or in the course of the proceedings, if such informal disposition appears to be both possible and appropriate.
7. The chair of the committee shall advise each witness at the outset that everything he or she may say will be held in strict confidence by the committee. Witnesses shall not be sworn, but the chair of the committee shall caution the witness to exercise great care in giving information because of the serious nature of the committee's determination. Each committee member has the right to question witnesses, but the complainant and the accused faculty member do not have a similar right. Each witness may be asked if he or she can suggest other witnesses who might be helpful.

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