

November 21, 2019

To: Academic Employees, Department Chairs, Directors, and Business Officers
(via SBFACU-L, SBCHR-L, SBDIR-L, and SBADM-L)

From: Cindy Doherty, Director
Academic Personnel

Re: ACADEMIC PERSONNEL POLICY ISSUANCES: NEW POLICY

ACADEMIC PERSONNEL POLICY ISSUANCES: NEW POLICY

APM-011 Academic Freedom, Protection of Professional Standards, and Responsibilities of Non-Faculty Academic Appointees

Issued November 13, 2019 by Provost and Executive Vice President Michael T. Brown, new Academic Personnel Manual (APM) Section 011, Academic Freedom, Protection of Professional Standards, and Responsibilities of Non-Faculty Academic Appointees is effective February 1, 2020.

The issuance letter is attached for your reference and can also be found online, along with the new policy and a FAQ document, at:

<https://www.ucop.edu/academic-personnel-programs/academic-personnel-policy/policy-issuances-and-guidelines/index.html>

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November 13, 2019

CHANCELLORS

LABORATORY DIRECTOR MICHAEL WITHERELL
ACADEMIC COUNCIL CHAIR KUM-KUM BHAVNANI
ANR VICE PRESIDENT GLENDA HUMISTON

**Re: Issuance of Academic Personnel Manual (APM) Section 011,
Academic Freedom, Protection of Professional Standards, and
Responsibilities of Non-Faculty Academic Appointees (APM - 011)**

Dear Colleagues:

I am formally transmitting a new section of the Academic Personnel Manual (APM), Section 011, Academic Freedom, Protection of Professional Standards, and Responsibilities of Non-Faculty Academic Appointees (APM - 011). The new policy is effective February 1, 2020 and may be found online at: <https://www.ucop.edu/academic-personnel-programs/academic-personnel-policy/policy-issuances-and-guidelines/index.html>. Also, while not a part of APM - 011, FAQs that provide responses to the frequently asked questions may also be found online at the same site.

The policy on Academic Freedom is located in the Academic Personnel Manual, Section 010 (APM - 010), including its two appendices, one speaking to the 2003 revisions to policy, and one speaking to the Freedom of Scholarly Inquiry for students. The issuance of APM - 011 does not result in any changes to APM - 010 (Academic Freedom) or APM - 015 (The Faculty Code of Conduct). As such, the protections afforded faculty under the UC policy on Academic Freedom, along with the attendant responsibilities of the Faculty Code of Conduct, are unaffected by APM - 011. The freedom of scholarly inquiry for students, as well as academic student employees and mentored/trainee academics ("students"), as it derives from the faculty's academic freedom (Appendix B to APM - 010), is also unaffected by APM - 011.

Key Policy Provisions

Academic Freedom and Code of Conduct

In recognition of the respected and important role non-student, non-faculty academic appointees ("non-faculty academic appointees") play in advancing the University's

fundamental mission to discover knowledge and to disseminate it to its students and to society at large, APM - 011 firmly enshrines in University policy that academic freedom, pursuant to APM - 010 (Academic Freedom) and Part II of APM - 015 (The Faculty Code of Conduct), extends to non-faculty academic appointees when they are engaged in teaching, research, scholarship, or the public dissemination of knowledge. The principle for this extension is broadly functional: Non-faculty academic appointees, when participating in teaching, research, scholarship, or the public dissemination of knowledge, have the same protections and responsibilities that faculty have, via APM - 010 and Part II of APM - 015, when faculty participate in these activities.

APM - 010 defines academic freedom as it pertains to faculty only and defines the freedom of scholarly inquiry for students (which includes undergraduate students, graduate students, postdoctoral fellows, as well as students when serving as paid instructors and researchers), as it derives from the faculty's academic freedom. APM - 015 also defines the corresponding responsibilities as it pertains to faculty only. APM - 010 and APM - 015, in conjunction, link faculty rights to the faculty obligation to act within professional standards and responsibilities.

Consistent with APM - 010 and APM - 015, the Unit 18 Non-Senate Faculty Collective Bargaining Agreement, which includes Lecturers, extends academic freedom and the corresponding academic responsibilities to the unit members who are faculty.

Although APM - 010 states that it is not intended to "diminish the rights and responsibilities enjoyed by other academic appointees," APM - 010 and APM - 015 do not address how these concepts apply or do not apply to non-faculty academic appointees. APM - 011 does address this issue.

APM - 110-4(2) defines a University of California academic appointee as "one who is engaged primarily in one or more of the following: teaching, research, and public service, and whose duties are closely related to the University's instructional and research functions." As it is the primary functions performed – teaching, research, scholarship, and the public dissemination of knowledge – that are integral to being an academic appointee, the extension of the rights and the expectation of meeting the appropriate national professional standards and responsibilities when engaged in these functions, is equally important when it is a non-faculty academic appointee performing them.

The Regents of the University of California have bestowed on the Academic Senate the responsibility to protect academic freedom at UC: "The Regents recognize that faculty participation in the shared governance of the University of California through the agency of the Academic Senate ensures the quality of instruction, research and public service at the University and protects academic freedom" (Bylaw 40.1). APM - 010 establishes that the Senate has primary responsibility for articulating the professional standards by which academic freedom may be sustained. APM - 010 also emphasizes the role of the Academic Senate in the realm of academic freedom:

Academic freedom requires that the Academic Senate be given primary responsibility for applying academic standards, subject to

appropriate review by the Administration, and that the Academic Senate exercise its responsibility in full compliance with applicable standards of professional care. (APM - 010)

Given the Academic Senate's role in shared governance and in the protection of academic freedom, non-faculty academic appointee APM - 011 grievances alleging violations of academic freedom as they relate to teaching, research, scholarship, or the public dissemination of knowledge are to be adjudicated by the same Academic Senate procedures as for faculty grievances under APM - 010. If the grievant has a campus affiliation, the grievance should be filed in accordance with the procedures of the divisional Academic Senate. If the appointee is not affiliated with a campus, the grievance should be submitted to the systemwide Academic Senate.

The Academic Senate grievance procedures are available to all academic appointees who have been afforded the protections of academic freedom with the exception of represented Academic Researchers (Professional Researchers, Project Scientists, Specialists, and Coordinators of Public Programs) who are represented by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and who have declined to avail themselves of the ability to grieve any violations of academic freedom. Non-represented Academic Researchers, including supervisors who are in non-represented title codes, are extended all of the privileges and responsibilities of APM - 011, including the ability to submit an academic freedom grievance under the Academic Senate's grievance procedures.

Applicable National Professional Standards and Responsibilities

Parallel to APM - 010, in which academic freedom is predicated on professional standards, APM - 011 additionally extends protections, and their corresponding responsibilities, to non-faculty academic appointees when they are engaged in activities, governed by applicable, acknowledged, national, professional standards, but that are not teaching, research, scholarship, or the public dissemination of knowledge. The applicable professional standards must not be inconsistent with the University's mission, vision, and values. This extension enhances the concept of academic work protections beyond that covered by academic freedom to include a range of activities that non-faculty academic appointees undertake in support of the academic mission of the University.

Grievances concerning violations of this aspect of APM - 011, which do not pertain to APM - 010, are to be adjudicated in accordance with the procedures specified in APM - 140; Non-Senate Academic Appointees/Grievances, with the modification that the procedures include an advisor, who is in the same professional community and has similar responsibilities as the grievant, to advise on the professional standards on which the grievance is based. There is a requirement that the outcome of any such grievances will be reported to the Provost and Executive Vice President so that the anonymized outcome can be posted publicly online to create a record of the applicable, acknowledged, national, professional standards recognized by the University. Similar to above, Academic Researchers who are not represented by the UAW may have the ability to grieve any such violations, while Academic Researchers who are represented by the UAW will not.

If there is a question as to whether an applicable, acknowledged, national, professional standard exists for the conduct at issue, APM - 011 vests that determination with the Provost and Executive Vice President, with the expectation there will be appropriate consultation, including with an ad hoc committee if needed. This process ensures that a standard is established across the University.

Intersection with Supervision

Requiring non-faculty academic appointees to perform the duties and functions mandated as part of their employment at the University is not a violation of the provisions of APM - 011. Supervisors retain authority to direct the professional activities of those they supervise, as long as non-faculty academic appointees are not directed to violate accepted standards of their professional community.

APM - 011 Background and Consultation Process

On December 18, 2018, after consultation with the President and the Chancellors, I appointed then Chancellor George Blumenthal, UC Santa Cruz, and then Academic Council Chair Robert May to co-chair the Working Group on Privileges and Responsibilities of Non-Faculty Academic Appointees; their charge was to develop recommendations for a policy that would address the academic privileges, protections, obligations, and responsibilities of non-faculty academic appointees, especially in relation to APM - 010 (Academic Freedom) and APM - 015 (The Faculty Code of Conduct).

In developing recommendations for draft policy, I asked the Working Group to undertake the following:

- Review relevant policy from other peer universities, relevant APM policy history, and related research and scholarship.
- Consult, as needed, non-faculty academic appointees affected by the recommendations.
- Determine whether additional policy language is needed to ensure non-faculty academic appointees have appropriate academic privileges, protections, obligations, and responsibilities for their work at the University.
- Provide recommendations on additions to APM policy that address academic privileges, protections, obligations, and responsibilities of non-faculty academic appointees.
- Focus at least as much (if not more) on responsibilities and obligations than on privileges and protections, because those former circumscribe and determine the appropriateness of the exercise of the latter.

The Working Group was not asked to recommend changes to APM - 010 (Academic Freedom) or APM - 015 (The Faculty Code of Conduct).

The co-chairs appointed the members of the Working Group, which included Senate faculty from the University Committee on Academic Freedom, as well as representatives

from the Librarians Association of the University of California (LAUC), UCANR Academic Assembly Council, and UCOP Academic Personnel and Programs. In addition to the Office of General Counsel serving as an advisor, Robert Post, Sterling Professor of Law, Yale University, and member of the Academic Freedom and Tenure Committee (Committee A) of the American Association of University Professors, served as an advisor to the Working Group. Professor Post is a distinguished scholar on First Amendment law, was a member of the Law School faculty at UC Berkeley for approximately 20 years, and also served in an advisory role during the 2003 revisions to APM - 010 (Academic Freedom).

The Working Group met four times from January, 2019 through March, 2019. Aside from its internal deliberations, the Working Group reached out to a range of individuals and stakeholder groups for their input on the content of APM - 011. Among those whom the Working Group consulted were the Academic Senate, Council of University Librarians, Vice Chancellors for Research, Vice Provosts for Academic Personnel/Academic Affairs, Academic Personnel Directors, Librarians Association of the University of California, the UCANR Academic Assembly Council Executive Board, the UC Davis Academic Federation, UC-AFT Librarians, UAW Postdoctoral Scholars and Academic Researchers, and other staff and faculty whom the Chancellors had recommended for Working Group membership.

On March 20, 2019, the Working Group submitted their recommendations to me, including a cover letter; a draft policy, APM - 011 (Academic Freedom, Protection of Professional Standards, and Responsibilities of Non-Faculty Academic Appointees); and a set of accompanying FAQs. APM - 011 and the FAQs were then disseminated for systemwide 90-day review and, upon the conclusion of the review period, the Working Group re-convened to revise APM - 011 in response to the comments received. On August 21, 2019, the Working Group submitted their revised recommendations to me. The Working Group believes the policy revisions address the majority of concerns raised in the systemwide review comments and believes that a second systemwide review is unnecessary. I agree with the Working Group recommendations.

Implementation and Review

APM - 011 is effective February 1, 2020. UCOP Academic Personnel and Programs, in consultation with the campus Vice Provosts for Academic Personnel/Academic Affairs and Academic Personnel Directors, will be developing a detailed implementation toolkit, which will include a template APM - 140 grievance form; the procedures for requesting a determination of an applicable national professional standard and the designation of an advisor for the APM - 140 grievance process; directions for reporting APM - 140 grievance resolutions related to APM - 011 to me for online posting; and any other guidance that will assist in the application and implementation of APM - 011.

In addition, a procedure will be established for the collection of evaluative information regarding the application of APM - 011, including workload on the Academic Senate and administrators, policy impacts, resource limitations, and unintended or intended consequences that will inform future policy evolution. By February 1, 2023, three years

from the effective date of APM - 011, Academic Affairs will convene a workgroup to collect and review the evaluative information and make recommendations as to whether revisions to APM - 011 are needed.

I wish to thank all members of the University community for their efforts in extending these important academic protections, privileges, and responsibilities to non-faculty academic appointees. Your contributions are deeply appreciated.

Sincerely,



Michael T. Brown, Ph.D.
Provost and
Executive Vice President for Academic Affairs

Enclosures

cc: President Napolitano
Executive Vice Chancellors/Provosts
Executive Vice President Byington
Executive Vice President, Chief Operating Officer, and Chief of Staff Nava
Senior Vice President and Chief Compliance Officer Bustamante
Vice President Leasure
Vice Provost Carlson
Acting Vice President Lloyd
APM – 011 Working Group
Vice Provosts/Vice Chancellors of Academic Affairs/Personnel
Academic Personnel Directors
Council of University Librarians
Deputy General Counsel Woodall
Executive Director Baxter
Executive Director Chester
Executive Director Peterson
Interim Executive Director Tom
Chief of Staff and Director Henderson
Chief of Staff Levintov
Director Grant
Director Lee
Associate Director DiGrazia
Associate Director Fishel
Manager Donnelly
Manager Smith
HR Manager Crosson
Policy Analyst Wilson