



OFFICE OF THE PROVOST AND EXECUTIVE VICE PRESIDENT

OFFICE OF THE PRESIDENT
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

July 19, 2013

CHANCELLORS
LABORATORY DIRECTOR ALIVISATOS
ACADEMIC COUNCIL CHAIR POWELL
ANR VICE PRESIDENT ALLEN-DIAZ

Dear Colleagues:

I am formally transmitting revised Section 015 of the Academic Personnel Manual (APM - 015), The Faculty Code of Conduct, effective immediately. The attached policy can be found online at: http://www.ucop.edu/academic-personnel/_files/apm/apm-015.pdf. The revisions issued herein were approved by the Assembly of the Academic Senate on June 12, 2013 and by The Regents on July 18, 2013.

The systemwide consultation process engaged to develop the policy consisted of three separate reviews conducted over the past two years: Management Consultation, Systemwide Review, and Final Review. Policy language was refined following each review based on recommendations received from campus administration and Senate committees.

Background

At its meeting on January 26, 2011, the Academic Council adopted a resolution proposed by the Committee on Academic Freedom and reviewed by Senate committees to recommend revising the language of Sections 010 and 015 of the APM to include within the protections of academic freedom the freedom to speak on matters of institutional policy. Since that time, Academic Personnel has been in consultation with The Regents, the President, the Academic Senate, the Assembly of the Academic Senate, the Office of General Counsel, campus administration, and me regarding the proposed changes.

The final changes only include revisions to APM - 015. This decision to focus on APM - 015 was first suggested by the Senate Committees and there was consensus from other parties that this was the best way to proceed. During Systemwide Review, the University Committee on Academic Personnel (UCAP) and the University Committee on Privilege and Tenure (UCP&T) stated that Committee members favored inclusion of the language in APM - 015 but thought it unnecessary in APM - 010, believing that academic freedom as currently delineated in APM - 010 extends to faculty speech on matters of institutional policy or action.

Following additional consultation with all parties, proposed revisions to APM - 015 were circulated for Final Review. An analysis of comments received from Final Review follows.

Analysis of Final Review

Academic Personnel received comments from nine of the ten campus Academic Affairs offices. Eight of the nine campuses indicated that they had no further comments on the proposed revisions.

Academic Council indicated that most Senate divisions and committees who submitted new comments endorsed the proposed revision. However, some respondents continued to express concern that the qualifying phrase “when acting as a faculty member” is confusing, even though most preferred accepting the revision with the language rather than rejecting it altogether. The University Committee on Faculty Welfare did not support the proposed revision.

Additionally, Academic Council offered a new citation from a National Labor Relations Board decision on December 14, 2012 in the matter of *Hispanics United of Buffalo, Inc.* and *Carlos Ortiz* (Case 03-CA-027872), reported in the *New York Times* on January 21 (see <http://www.nytimes.com/2013/01/22/technology/employers-social-media-policies-come-under-regulatory-scrutiny.html?pagewanted=all>) that a private employer may not discipline its employees for statements they make as private citizens in social media that are critical of fellow employees, under existing law interpreting the National Labor Relations Act (NLRA). (The NLRA protects “concerted” activity by an employee, seeking to engage other employees in a discussion of job performance.)

Review by legal counsel determined that, with respect to the NLRA, it applies only to private employers. Public employees, speaking in their private capacity, are protected from employer discipline by the First Amendment. Nothing in the proposed changes to APM - 015 affects University employees’ First Amendment protections.

With respect to the phrase “when acting as a member of the faculty,” that specific language is already used in APM - 010, the University statement on Academic Freedom. The language is used to link faculty rights to the faculty obligation to act within professional standards. It is included in the revision to make clear that the Professional Rights of Faculty (the subject of Part I of APM - 015) are rights that derive from the exercise of professional responsibilities. That is the area in which additional explicit protection for faculty was requested by the Senate, in light of recent case law restricting protections for speech by employees when exercising their job duties. As noted, private speech remains protected by the First Amendment.

Technical Changes

Additionally, technical revisions conform with California state law referenced in the July 2012 issuance of APM - 035, Affirmative Action and Nondiscrimination in Employment. Revisions reflect changes in California’s Fair Employment and Housing Act (FEHA), California Government Code Section 12900 et seq., which prohibits discrimination in employment. The California Legislature had amended FEHA to clarify that discrimination on the basis of “gender” and “gender expression” are among the prohibited types of discrimination. Revisions also were made to insure that the definition of “service in the uniformed services” is consistent with both the federal Uniformed Services Employment and Reemployment Act of 1994 (USERRA) and California’s Military and Veterans Code Section 394.

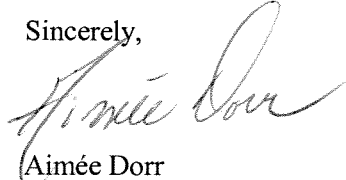
July 19, 2013

Page 3

Questions related to implementing this policy may be addressed to Janet Lockwood (Janet.Lockwood@ucop.edu).

I wish to thank all members of the University community from both the faculty and administration for their efforts to revise APM - 015. Your contributions are deeply appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Aimée Dorr".

Aimée Dorr
Provost and Executive Vice President

Attachment: APM - 015, The Faculty Code of Conduct

cc: President Yudof
Members, President's Cabinet
Council of Vice Chancellors
Vice Provost Carlson
Vice President Duckett
Vice Provosts for Academic Personnel
Academic Personnel Directors
Executive Director Fox
Executive Director Larsen
Executive Director Rodrigues
Executive Director Tanaka
Executive Director Winnacker
Interim Systemwide Policy Director Hilliard
Deputy General Counsel Drown
Senior Counsel Van Houten
Director Chester
Manager Lockwood
Human Resources Policy Analyst Bello