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Chief Compliance Office

REPORT TO THE RIVERSIDE DIVISION

May 21, 2019

To Be Adopted

Proposed Changes to Senate Bylaw Appendix 5
(Appendix 5.3.1, Proposed Addition of 5.3.11)

PRESENT

PROPOSED

5.3.1 *Applicability and Principles*

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At UCR the following implements the University Policy on Faculty Conduct and the Administration of Discipline (set forth in its entirety in APM-016) and the Faculty Code of Conduct (APM-015) and applies to all members of the Academic Senate and to academic staff whose instructional duties are not subject to direct supervision. These procedures adhere to the five principles for Enforcement and Sanctions (Part III, Section A) articulated in the Faculty Code of Conduct (APM-015).

No Change

No disciplinary sanctions for professional misconduct shall be imposed by the administration except in accordance with the procedures set forth below. In circumstances where these procedures are silent, the policies and procedures contained in APM-015, APM-016, and UC Academic Senate Bylaw 336 shall govern.

No Change

The procedures set forth below describe several stages in the process: (a) an allegation of faculty misconduct, (b) efforts for informal resolution, (c) filing of a formal complaint, (d) inquiry by the Committee on Charges of the Academic Senate, (e) determination by the Chancellor¹ to initiate disciplinary action by filing charges with the

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Committee on Privilege and Tenure of the Academic Senate, (f) disciplinary hearing by a Hearing Committee of the Committee on Privilege and Tenure, and (g) imposition of disciplinary sanctions by the Chancellor.

No change.

~~If the matter involves an alleged violation of the University of California Policy on Integrity in Research, the allegation should be filed according to the UCR Policy and Procedures for Responding to the Allegations of Research Misconduct.~~

If the matter involves an alleged violation of the University of California Sexual Violence and Sexual Harassment Policy (SVSH Policy), it shall be addressed in accordance with Section 5.3.11.

~~If the matter involves an alleged violation of the University of California Policy on Sexual Harassment, the allegation may be filed according to the UCR Policy and Procedures for Responding to Reports of Sexual Harassment, instead of or in addition to filing an allegation under these Rules of Procedure.~~

If the matter alleges violations of the SVSH Policy and/or the Policy on Integrity in Research (Research Misconduct) in addition to other provisions of the Faculty Code of Conduct, the Chancellor's Designee, in consultation with the Charges Committee, shall have the discretion, in the interest of fairness to the parties and efficiency in the resolution of the dispute, to separate out the non-SVSH Policy and/or non-Research Misconduct allegations and to proceed to determine probable cause for the non-SVSH Policy and non-Research Misconduct Policy allegations or to defer making such determinations until the SVSH and/or Research Misconduct investigations are completed.

This document indicates the timelines for the conduct of separate steps of the process, and it is important that such matters proceed expeditiously. However, it is recognized that these timelines may not always be adequate. Where individuals or committees require additional time to complete a step(s) in this

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process, all members involved shall be informed of the reasons for the delay and provided with a revised timeline for this step of the process, with a commitment that the step will be completed as promptly thereafter as possible.

All proceedings covered under this document are to be treated as confidential. No participant in such proceedings shall reveal or disclose the identity of the complainant, the accused Faculty member, witnesses, the nature of the allegation, the evidence, or the deliberations of any decision maker, other than to individuals who have a legitimate need for such information in order to conduct the proceeding or as may be required by law. (Am 20 Feb 07)

1 For the purposes of this document, the Chancellor shall be taken to mean the Chancellor or the appropriate Chancellor's designee, such as the Executive Vice Chancellor and Provost. This shall apply in all cases with the exception of imposing discipline, which shall not be delegated by the Chancellor.

5.3.2 Allegation Procedures and Channels

Allegations against a member of the Faculty in violation of the Faculty Code of Conduct may originate from members of the faculty, staff, students, the administration, and other members of the University community. Allegations shall be accepted for inquiry only on the basis of a written signed statement by the complainant. Allegations by a complainant shall be addressed to the Chair of the accused Faculty member's department or to the Dean for units with no Chairs, unless this will present a potential conflict of interest, in which case the allegation will be directed to the administrator to whom this Chair or Dean reports.

The Faculty member accused of alleged misconduct shall be promptly informed of the allegation, in writing, by the recipient of the

signed allegation. It shall also be the accused Faculty member's right to examine all relevant documents assembled in connection with the allegation and to be heard at each step in the progress of the case.

The recipient of the allegation shall advise both the complainant and the accused Faculty member to obtain and become familiar with this document (Rules of Procedure for Implementation of Policies on Faculty Conduct and the Administration of Discipline at UCR), as well as the Faculty Code of Conduct (APM-015), the University Policy on Faculty Conduct and the Administration of Discipline (APM-016), and the UC Academic Senate Bylaw 336 (Privilege and Tenure Divisional Committees' Disciplinary Cases).

No Change

If the complainant is a student, the complainant shall be given the option of retaining anonymity until the filing of a formal complaint with the Committee on Charges, with the understanding that such anonymity may preclude the opportunity for informal resolution prior to consideration by the Committee on Charges.

No Change

The channels for processing a matter involving allegations in violation of the Faculty Code of Conduct that do not pertain to allegations of research misconduct or sexual harassment shall be from the Department Chair (in those Schools and Colleges that have Chairs) to the Dean of the School or College to the Chancellor to the Committee on Charges of the Academic Senate.

No Change

If the normal level of the channel appears inappropriate to the individual making the allegations, the complainant may address the allegations, in writing, directly to the next level in the channel.(Am 20 Feb 07)

No Change

5.3.3 Informal Resolution

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The goal of informal resolution is to resolve the concerns at the earliest stage possible. The recipient of the signed allegation shall attempt to resolve the matter informally within

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twenty-one days of receiving the allegation. Informal resolution of the matter may result in withdrawal of the complaint by the complainant prior to the matter reaching the Committee on Charges or may result in a formal settlement, including conditions or the acceptance of disciplinary sanction(s) by the accused Faculty member (SBL 336.C). In cases where a settlement resolving disciplinary charges is entered into after a matter has been referred to the Committee on Privilege and Tenure, the Chancellor shall meet with the Chair of the Committee on Privilege and Tenure prior to finalizing the settlement.

If efforts to resolve the matter informally within twenty-one days prove unsatisfactory to the complainant and/or the accused Faculty member, the recipient of the signed allegation shall forward the signed allegation to the next step in the process as soon as an impasse has been reached, along with his or her written statement describing the efforts to resolve the matter informally and the reasons for forwarding the matter. When the file is forwarded, a copy of the recipient's written statement shall be provided to the complainant and the accused Faculty member.(Am 20 Feb 07)

No Change

5.3.4 *The Formal Complaint*

If the matter has not been settled to the satisfaction of the complainant at some step in the process described above, and if the Chancellor is unable to resolve the matter informally, the Chancellor shall furnish the complainant with the Academic Complaint Form. To complete the Academic Complaint Form, the complainant must identify the relevant section(s) of the University Policy on Faculty Conduct and the Administration of Discipline and include a full statement of the facts that allegedly constitute a violation of the University Faculty Code of Conduct. The Form must be signed by the complainant and submitted to the Chancellor. Materials elaborating the evidence may be appended to the Academic Complaint Form.

5.3.4 *The Formal Complaint*

No Change

The Chancellor shall promptly transmit the signed formal complaint to the Committee on Charges of the Academic Senate. At the same time, the Chancellor shall transmit the signed formal complaint to the accused Faculty member, along with a statement that the matter has been transmitted to the Committee on Charges.(Am 20 Feb 07)

No Change

5.3.5 Inquiry by the Committee on Charges of the Academic Senate

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The Committee on Charges shall promptly determine whether the allegations in the complaint, if true, would constitute a violation of the University Faculty Code of Conduct. If the Committee on Charges determines this issue affirmatively, it shall ask the Chancellor for any supporting evidence from earlier stages in the procedure and shall conduct an inquiry to determine whether there is probable cause to warrant a disciplinary hearing before the Committee on Privilege and Tenure of the Academic Senate. For this purpose, the probable cause standard means that the facts as alleged in the complaint, if true, justify the imposition of discipline for a violation of the Faculty Code of Conduct and that there is credible evidence to support the claim.

No Change

The Committee on Charges shall treat all steps in its inquiry as confidential. In conducting its inquiry, the Committee on Charges may, at its discretion, conduct interviews in private with the complainant and other individuals relevant to the case. The Committee on Charges shall make every effort to complete its inquiry and make a determination of probable cause and reports its findings to the Chancellor within sixty days after receiving the formal complaint.

No Change

If the Committee on Charges finds no probable cause to warrant a disciplinary proceeding, the Committee shall promptly (within fifteen days) transmit its decision, in writing, to the Chancellor, along with a report of the substantive review made by the Committee. The Committee also shall recommend that all existing references to the

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matter be expunged from personnel files, and from the records of the Department Chair and the Dean of the School or College.

If the Committee on Charges finds probable cause to warrant a disciplinary hearing, the Committee shall promptly transmit its decision, in writing, to the Chancellor, along with a report of the inquiry made by the Committee and the complete file assembled by the Committee on Charges during its inquiry.(Am 20 Feb 07)

No Change

5.3.6 *Determination by the Chancellor to Initiate Disciplinary Action*

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The Chancellor shall make a final determination of probable cause within thirty days of receiving the recommendation from the Committee on Charges.

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If the Chancellor concurs with the Committee on Charges on a no-probable-cause finding, this decision shall be immediately transmitted, in writing, to the Chair of the Committee on Charges. The Chancellor shall promptly (within fifteen days) notify both the complainant and the accused Faculty member, in writing, of the finding of no probable cause by the Committee on Charges, of the concurrence by the Chancellor, and of the substance of the inquiry made by the Committee on Charges. The only record of the case shall be a statement prepared by the Committee on Charges and placed in its permanent file in the Academic Senate. That statement shall include the following information: the date, name of the accused Faculty member, name of the complainant, a brief statement of the allegations, and the decision by the Chancellor to dismiss the case on recommendation of the Committee on Charges.

No Change

If the Chancellor determines that there is probable cause to warrant a disciplinary hearing, the Chancellor shall immediately notify the Chair of the Committee on Charges, in writing.

No Change

If the Chancellor does not concur with the recommendation of the Committee on Charges, the Chancellor shall inform the Chair of the Committee on Charges, in writing, of the reasons for the decision.

No Change

Upon a determination of probable cause, the Chancellor shall initiate notice of proposed disciplinary action, which requires that the Chancellor prepare written charges to be submitted to the Chair of the Committee on Privilege and Tenure of the Academic Senate, with a full statement of the facts underlying the charges and the disciplinary sanction(s) the Chancellor proposes in this case. The types of discipline that may be imposed on a member of the faculty are as follows, in order of severity: written censure, reduction in salary, demotion, suspension, denial or curtailment of emeritus status, and dismissal from the employ of the University.

No Change

At the same time that the Chancellor submits the formal charges to the Committee on Privilege and Tenure, the Chancellor shall also notify both the complainant and the accused Faculty member, in writing, of the decision to file a formal complaint with the Committee on Privilege and Tenure.(Am 20 Feb 07)

No Change

5.3.7 Disciplinary Hearing by the Committee on Privilege and Tenure

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The Committee on Privilege and Tenure shall follow the procedures detailed in UC Academic Senate Bylaw 336 (Privilege and Tenure Divisional Committees' Disciplinary Hearings) with regard to prehearing procedures, early resolution, hearing and posthearing procedures, and relation to prior grievance cases.

No Change

At the conclusion of the disciplinary hearing, the Hearing Committee of the Committee on Privilege and Tenure shall promptly make its findings of fact, conclusions supported by a statement of reasons based on the evidence, and recommendation. These shall be forwarded promptly to the parties in the case, including the complainant and the accused

No Change

Faculty member, the Chancellor, the Chair of the Committee on Privilege and Tenure, and the Chair of the University Committee on Privilege and Tenure. The findings, conclusions, recommendations, and record of the proceedings shall be confidential to the extent allowed by law and UC policy. The Hearing Committee may, however, with the consent of the accused Faculty member, authorize release of the findings, conclusions, and recommendations to other individuals or entities, to the extent allowed by law (SBL 336.D.10).

If the Committee on Privilege and Tenure determines that there is clear and convincing evidence that the accused Faculty member has violated the Faculty Code of Conduct, the Committee shall also recommend an appropriate sanction that shall not be more severe than the maximum sanction specified in the formal charge from the Chancellor.(Am 20 Feb 07) No Change

5.3.8 *Imposition of Disciplinary Sanction* **5.3.8 *Imposition of Disciplinary Sanction***

The authority to impose disciplinary sanctions and the procedures for imposition of sanctions are detailed in the University Policy on Faculty Conduct and the Administration of Discipline, (APM-016, Section II Types of Disciplinary Sanctions). The final decision to impose disciplinary sanction shall be made by the Chancellor and shall not be delegated. No Change

If the Chancellor's decision differs from the findings and recommendation of the Hearing Committee of the Committee on Privilege and Tenure, the Chancellor shall meet with the Hearing Committee prior to reporting the decision to explain the reasons for his or her decision. No Change

Within forty-five days after receiving the findings from the Hearing Committee of the Committee on Privilege and Tenure, the Chancellor shall report his or her decision, in writing, to the Committee on Privilege and Tenure, the Executive Vice Chancellor and Provost, the Dean of the School or College, the Department Chair, the accused Faculty No Change

member, and the complainant.(Am 20 Feb 07)

5.3.9 Role of the Complainant

Complainants have a legitimate interest in being kept informed as the process proceeds and, within appropriate parameters, should be able to participate in various stages of the process. In the inquiry stage by the Committee on Charges, the complainant must be willing to meet with the Committee on Charges should that Committee consider such appearance necessary to the inquiry. The complainant does not have a right to receive written statements submitted by the accused Faculty member or any other evidence uncovered in the course of the inquiry by the Committee on Charges, nor does the complainant have a right to be present during any interview that may occur as part of the inquiry. (Am 29 May 12)

If it is determined by the Committee on Charges or the Hearing Committee of the Committee on Privilege and Tenure that the allegations brought by the complainant are both groundless and malicious, that finding may serve as a basis for counter charges by the accused Faculty member.(Am 20 Feb 07)

5.3.10 Provision for Interim Suspension in Extreme Emergency

If in the judgment of the Chancellor there is a high probability that the continued assignment of a Faculty member to regular duties will be immediately and seriously harmful to the University community, the Chancellor may place the Faculty member on full or partial interim suspension with full pay. Such a suspension is a precautionary action and not a form of discipline. Before imposing such an interim suspension, the Chancellor shall, to the extent feasible under the circumstances in the individual case, consult with the chairs of the Committee on Charges and the Committee on Privilege and Tenure. The Chancellor shall promptly provide the Faculty member with a written statement of the reason for such suspension and shall

5.3.9 Role of the Complainant

No Change

No Change

5.3.10 Provision for Interim Suspension in Extreme Emergency

No Change

promptly refer the matter to the Committee on Privilege and Tenure. The Committee on Privilege and Tenure shall promptly provide an opportunity for a hearing to the Faculty member and report its findings and recommendations with respect to the propriety of the suspension to the Chancellor.(Am 20 Feb 07)

5.3.11 Allegations of Violation of University Sexual Violence and Sexual Harassment Policy

A complaint that a faculty member has violated the University Sexual Violence and Sexual Harassment (SVSH) Policy will be addressed in accordance with the Policy and the University SVSH Investigation and Adjudication Framework for Senate and Non-Senate Faculty, as provided in this Section. Timelines provided in this or other parts of Section 5.3 are subject to extension as provided in this Section 5.3.11.

Alleged SVSH Policy violations are initially processed by the UCR Title IX Office. An allegation may be addressed through alternative resolution (with the agreement of both parties) or formal investigation; a formal investigation may also be initiated after alternative resolution is attempted but does not resolve the matter. Upon initiation of a formal investigation by the Title IX Office in a case alleging violation of the University SVSH Policy by a faculty member, the Chancellor's Designee and the Chair of the Charges Committee, in addition to the faculty respondent, shall be promptly notified of the initiation of the formal investigation. The Chancellor's designee, in consultation with the Charges Committee, shall retain the discretion to determine whether any and all related non-SVSH Policy Code of Conduct violation allegations should be referred to the appropriate internal or external investigator for a joint investigation and/or whether the investigation of such allegations shall be stayed pending the outcome of the SVSH investigation.

Following the Title IX investigation, the Notice of Outcome and the Title IX investigation

report shall be submitted to the Title IX complainant and faculty respondent, and to the Chancellor's Designee. The Chancellor's Designee shall review the report to determine if other (non-SVSH) potential Code of Conduct violations are identified and, if so, shall address them in accordance with Section 5.3-5.10.

The Chancellor's Designee shall offer the parties an opportunity (10 business days from the dissemination of the report, unless extended by the Designee) to respond in writing. The purpose of this response is not to challenge the factual findings in the Title IX investigation report or present new evidence, but to provide the complainant and the respondent with an opportunity to express their perspectives and address what outcome they wish to see. If there is a finding that a faculty respondent is responsible for a violation(s) of the University SVSH policy, the Notice of Outcome and the report, with redactions as appropriate, shall also be provided to the respondent's Dean and the Chair of the Charges Committee.

If a Title IX investigation report makes a finding of an SVSH Policy violation, the Peer Review Committee (which shall be comprised of two members of the Charges Committee, and the Chief Diversity Officer or designee) shall, based on the record before it, advise the Chancellor's Designee whether to pursue an early resolution of the case and shall provide advice on the appropriate discipline or other corrective or remedial measures. Additionally, the Peer Review Committee shall be consulted and shall advise on any proposed early resolution before it becomes final. In all such cases, the Peer Review Committee will act as promptly as possible. The Peer Review Committee is not an investigative body and does not engage in fact-finding; the formal conclusion in the Title IX report that the respondent faculty member violated the University SVSH Policy shall constitute probable cause that there was a violation of the Faculty Code of Conduct.

Within 40 business days of receiving the investigation report, and after consulting with the Peer Review Committee and the Title IX Officer, the Chancellor's Designee shall notify the parties as to the decision as to what action to take to resolve the matter, including but not limited to: (1) early resolution; (2) no formal discipline; or (3) the filing an Academic Complaint with the Privilege & Tenure Committee alleging violation of the Faculty Code of Conduct, APM-015, Part II, Sections A.3, C.6, or D.3 in accordance with Section 5.3.4 herein against the respondent faculty member based on the same events considered by the Title IX investigator. If the matter has not been resolved within 40 business days, an Academic Complaint will be filed. The Chancellor may grant extensions to the 40-day timeline in accordance with Section 5.3.11.

If an Academic Complaint is filed, a hearing shall be scheduled to begin within 60 days of the filing. The Title IX investigation report shall be evidence in the hearing. The hearing shall be considered concluded when the P&T disciplinary hearing Committee has submitted a report to the Chancellor. The Committee shall issue its report (Section 5.3.7) within 30 days of conclusion of the hearing. The Committee Chair may extend either deadline with notice to the parties, for good cause as defined below. The Chancellor shall make his or her decision on the final disposition of the matter (Section 5.3.8) within 14 days of receiving the Committee's report, unless the Chancellor communicates an extension. The Title IX Officer shall receive copies of all notifications, reports and decisions made in this process.

Deadlines established in this procedure may be extended for good cause and with notice to the parties. Extensions shall be granted prior to the end of the specified time period. Good cause is material or unforeseen circumstances directly relating to the matter. Material circumstances may include, for example, the number, complexity and severity of the allegations, the number of parties or witnesses, the unavailability of

necessary parties or witnesses, the number of parties or witness, the amount of relevant evidence, the need to provide language assistance to a party or key witness, or the need to accommodate a party's disability. Unforeseen circumstances may include, for example, serious illness or other unexpected unavailability of a party or key witness, the death of a party's family member, or the discovery of new evidence late in the process.

Statement of Purpose and Effect

The UC Sexual Violence and Sexual Harassment (SVSH) Policy, approved by the President in 2016, includes investigation and adjudication “frameworks” to address reports of SVSH Policy violations. The framework for reports with faculty respondents (available at <http://sexualviolence.universityofcalifornia.edu/files/documents/Faculty-SVSH-Investigation-and-Adjudication-Framework-and-Flowcharts.062917.pdf>) was designed to work with the existing faculty code of conduct process.

All frameworks require local implementation but do not allow for significant campus variation; the basic process and many specifics, such as the role of the Peer Review Committee, are dictated by the framework. Other steps, such as time lines and rules for extensions, were recommended by the California State Auditor in a systemwide audit completed in 2018 (available at <https://www.auditor.ca.gov/reports/2017-125/index.html>). The Regents and President Napolitano accepted these recommendations.

The current UCR Senate Bylaws, Appendix 5, recognize that there is a separate process for handling reports of sexual harassment; Section 5.3.1, Applicability and Procedures, provides:

If the matter involves an alleged violation of the University of California Policy on Sexual Harassment, the allegation may be filed according to the UCR Policy and Procedures for Responding to Reports of Sexual Harassment, instead of or in addition to filing an allegation under these Rules of Procedure.

This provision is outdated (referring to an obsolete policy and procedure) and does not provide detail as to how the sexual harassment procedure integrates with the Senate process for adjudication and discipline. The proposed revisions would remedy these problems by creating a new section focused on the processing of SVSH cases.

Please note that this proposal does not respond to the Title IX regulations proposed by the U.S. Department of Education. Those regulations, when finalized, likely will require significant modification of UC policy and may require further changes to Senate Bylaws.

Notes Regarding Proposed Process:

1. **Peer Review Committee.** The process includes the role mandated by the SVSH Policy for the Peer Review Committee; SVSH Policy Section IV, Assessment and Consultation, provides:
 - B. Peer Review Committee for Senate Faculty. In the event that the Title IX investigation finds a Senate faculty respondent responsible for violating the SVSH Policy, the Chancellor or Chancellor's designee will engage the campus Peer Review Committee to advise on appropriate resolution. The Peer Review Committee, composed on each campus at the direction of the President, will advise the Chancellor or Chancellor's designee regarding how to resolve the matter, including whether the Chancellor or Chancellor's designee should pursue a formal charge for violation of the Code of Conduct or pursue an early resolution. The Peer Review Committee should also provide advice on the appropriate discipline or other corrective or remedial measures.

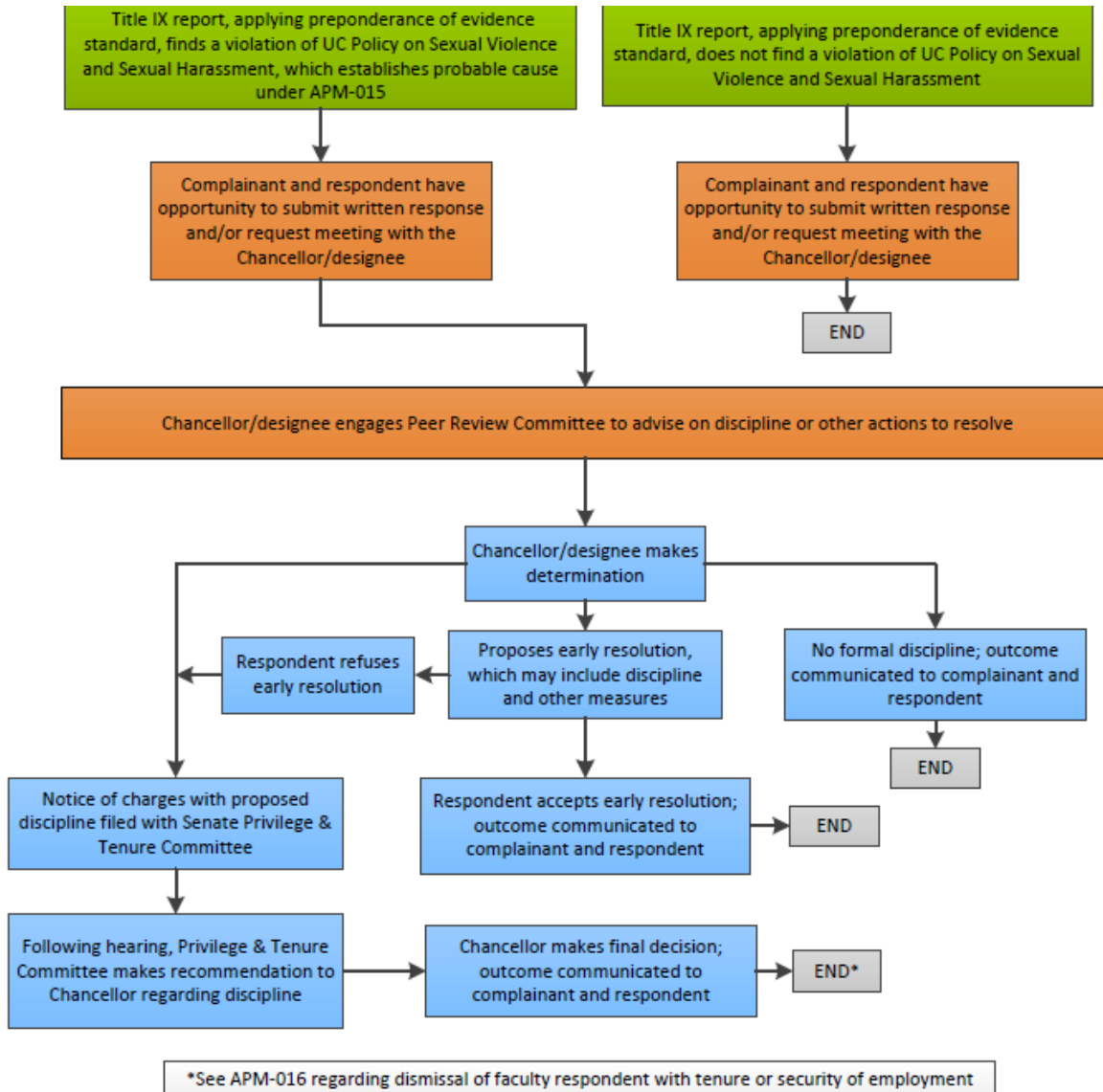
The Peer Review Committee will be engaged in all cases where the Title IX investigation has found a Senate faculty respondent has violated the SVSH Policy. (emphasis added).

Members of the Peer Review Committee, like members of the Promotion and Tenure Committee, will be required to complete regular training with a trauma-informed perspective on the issues related to reviewing and considering SVSH cases, including training on the SVSH Policy (as it may be revised), the adjudication procedures, and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

2. **Deadlines.** The proposed new Section 5.3.11 includes deadlines for various process stages. These deadlines are required by the SVSH Policy or by State Auditor recommendations. Extension of deadlines is permitted for good cause, provided that good cause is defined. The State Audit recommendations are that good cause "should be related to material or unforeseen circumstances connected to that specific case," rather than reasons unrelated to the case such as personal leave taken by an investigator or increased workload from other cases. This proposal includes UCOP-developed definitions consistent with these recommendations.

Summary of Proposed Process:

This flow chart illustrates how the SVSH process interacts with the faculty code of conduct process.



Approved by the Committee on _____ : (Insert date of committee approval)

Or

Submitted by: Kiersten Boyce, Associate Vice Chancellor and Chief Compliance Officer:
April 24, 2019

Approvals

Approved by the Committee on _____ : (Insert date of committee approval)

The Committee on Rules and Jurisdiction finds the wording to be consistent with the code of the Academic Senate:

(leave blank)

Received by Executive Council:

(leave blank)