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November 30, 2020

TO: Jason Stajich, Chair  
Academic Senate

FROM: Philip Brisk, Chair   
BCOE Executive Committee

RE: 2nd Round-Transition of Vice Provost for Administrative Resolution (VPAR) at UCR

Dear Jason,

The BCOE Executive Committee reviewed the proposed 2nd Round-Transition of Vice Provost for Administrative Resolution (VPAR) at UCR in a meeting held on November 24, 2020. The discussion lasted approximately one hour, which is considerably longer than what the Committee typically allocates to Campus review items.

The BCOE Executive Committee strongly endorses the principle that disciplinary actions should be considered as part of the Merit and Promotion (M/P) process at UCR.

However, the BCOE Executive Committee disagrees with a number of issues in the 2nd Round-Transition proposal and strongly believes that they should be reconsidered prior to implementation.

#### Lack of Regard for Shared Governance

The most serious concern is that the procedure being followed is contrary to the principles of shared governance within the University of California.

- A search for the new Associate Vice Provost of Administrative Resolution (AVPAR) has already been announced. The position has already been reduced from 1.0 FTE to 0.5 FTE. The decision has already been made that the AVPAR will report to the VPAP.
- This preempts all Senate feedback on the 2nd Round-Transition proposal presently under review by various Academic Senate Committees and College/School Executive Committees. The most significant of these are the reduction of the position from 1.0 FTE to 0.5 FTE, and the reorganization of the VPAR position to eliminate the “firewall” that presently exists between the distinct processes of disciplinary resolution and M/P at UCR, wherein the VPAR reports directly to the VPAP within the Academic Personnel Office (APO). The deadline for the BCOE Executive Committee to submit its report to the Division is December 1, 2020.

This is not shared governance! Clearly, the Campus Administration has decided to move forward with this transition in complete disregard of the timeline provided for consultation with the Senate. Coincidentally, this dovetails with the release of the UCR Academic Senate Committee on Faculty Welfare’s Report on the Faculty Campus Climate Survey 2019. Within that report, the first major finding was:

2.1 Campus administrators’ lack of consultation with faculty (regarding funding and hiring priorities, campus growth, allocation of resources, etc.) imperils UCR’s research and teaching missions.

Among the various edited comments that spoke to the first major finding, we would like to point out the following:

Faculty are rarely consulted in decision-making; instead, we are asked to fill out surveys after upper administration has already made the decisions.

This action is a perfect example of this approach. The Division and College Executive Committees have been asked to report on a proposal after the upper administrative has already made the relevant decision and started to implement it. While this letter is neither the time nor the place to address larger-scale concerns about Shared Governance, the path that the administration has taken here is indicative of larger problems at UCR.

The BCOE Executive Committee recommends that the AVPAR search, as currently constituted, be delayed or restarted. The search for a new VPAR/AVPAR should be carried out under the current administrative structure under which the firewall between the VPAR/AVPAR and VPAP/APO remains under place, until thorough consultation with the Division has been achieved and alternatives have been considered. Given the current budget crisis, the BCOE Executive Committee is not opposed to preemptively reducing the FTE of the VPAR/AVPAR from 1.0 FTE to 0.5 FTE without further consultation. The position should be readvertised as such, and all individuals who have applied under the current search should be given the option to continue with their applications or withdraw under the proposed search. Sufficient time should be provided to enable new applicants to apply as well, as the position's appeal may be different, depending on the administrative structure proposed in the language of the announcement.

#### **Elimination of the “firewall” between VPAR and VPAP**

Beyond issues pertaining to shared governance, the BCOE Executive Committee strongly believes that the firewall between the VPAR and VPAP/APO should remain in-place and that the VPAR should not report directly to the VPAP:

- There is no longer a “firewall” if the VPAR reports to VPAP. This firewall ensures that information regarding disciplinary actions be available to VPAP only after a disciplinary finding.
- This is no longer certain if the VPAR reports to VPAP.
- No change in administrative structure is needed for VPAP to have access to faculty disciplinary records during the M/P process subsequent to disciplinary findings.
- The proposed transition includes no accountability clauses whatsoever for the VPAP, and no mechanisms to ensure that the decision-making process is fair. Providing the VPAP with exclusive access to faculty disciplinary records concentrates too much power in one central location. This is not at all meant to be a critique of the current or previous VPAP, but speaks merely to the new powers granted to the VPAP in the M/P process.

The first issue that the BCOE Executive Committee would like to raise is that of **confidentiality within UCR’s existing disciplinary process** and the implications for including disciplinary outcomes in the M/P process. At present, the disciplinary process is maximally confidential, which includes not only the accused, but complainants, witnesses, etc.

Depending on the specifics, other individuals who may “need to know,” such as Deans, may or may not become aware of the outcome. Under the current proposal, the VPAP becomes unique in terms of who “needs to know” about disciplinary outcomes for M/P procedures. It is unclear why only the VPAP “needs to know” and why the disciplinary record should only be considered at the very end of the M/P process. For example, why not also expose the disciplinary record to Department Chairs, Deans, and/or members of the Committee on Academic Personnel (CAP)? Doing so would add a level of transparency to the M/P process

vis-a-vis disciplinary procedures which is presently lacking in what is proposed. It appears that the current proposal aims to minimally impact confidentiality, but in doing so creates an opaque and otherwise thoroughly unaccountable power structure within APO.

### **Issues of Fairness and Completeness of Information**

Assuming that this proposal passes, there are a number of questions about fairness, consistency, and how this proposal should be implemented. For example:

- What mechanism ensures that all faculty members who have disciplinary infractions are treated fairly under what is proposed? For example, what if two faculty members have similar, and independent, disciplinary infractions on their record, and within a similar timeframe. What mechanism guarantees that the VPAP provides them with comparable sanctions in terms of M/P? For whatever reason, the VPAP could decide to deny one of the faculty members a merit/promotion, but grant it to the other? As there is no additional review beyond the VPAP's decision, accountability is wholly lacking.
- It is completely unclear how long a disciplinary sanction will impact a VPAP's decision to deny M/P:
  - Could a VPAP deny an M/P action multiple times for the same sanction?
  - Could a VPAP deny an M/P action due to a much older sanction that exists within a faculty member's disciplinary record?
  - Are there different levels of sanctions with different levels of punishment? If so, is punishment specified in terms of years or M/P requests? Etc.
  - Is it possible that a sanction could be so egregious that it prevents a faculty member from attaining higher rank throughout their career? If so, the presence of such a sanction would completely disincentive additional research output, attempts to improve teaching, or willingness to perform service.
- What mechanisms exist to ensure that some semblance of consistency is maintained from one VPAP to the next?

There are also general concerns about faculty awareness that the VPAP could leverage the disciplinary record to deny an M/P request. For example, faculty will be unaware of this possibility unless The Call is updated to make it clear that the VPAP has the right to view and use the disciplinary record in this way. Is this proposed structure robust to legal challenges if a faculty member chooses to file a lawsuit? These issues need to be thought through thoroughly before this could be implemented.

The BCOE Executive Committee strongly believes that the way in which disciplinary actions impact M/P should be enshrined in policy, rather than being a seemingly arbitrary decision left up to one individual. The Committee recognizes that this may be difficult, as disciplinary actions vary in terms of levels of egregiousness and harm done to impacted members of the campus community. That said, a policy solution is without question preferable to creating a concentration of power with no mechanisms for accountability.

The BCOE Executive Committee would also like to point out that having the AVPAR report directly to the VPAP goes much further than what is outlined in this proposal. Under this reporting structure, it is almost certain that the VPAP would or could become aware of ongoing disciplinary proceedings that have not yet been resolved, and there is concern that this knowledge could bias the VPAP's decision-making; disciplinary proceedings should not impact the M/P process until they are resolved, and it seems like the elimination of the firewall and/or other guardrails under this proposal increases the likelihood that this might happen.

Another concern is that the flowchart shown in Figure 1 is incomplete. This is perhaps indicative of a more general problem with the proposal, which is that it doesn't clearly separate the proposed reporting structure (AVPAR to VPAP) with separate mechanisms to provide the VPAP with access to disciplinary files for consideration during M/P. Within the flowchart, the VPAP's role ends with submission of charges to the P&T Committee; however, it is unclear what happens after the P&T Committee deliberates. If the charge is upheld, what is reported to the VPAP, when is it reported, and how does it feed back into the VPAP's role in the M/P process? Similarly, what happens if the charge is not upheld? What guarantee does the accused faculty member have that the process will not bias the VPAP during the next request for M/P?

In summary, the BCOE Executive Committee believes that disciplinary sanctions should be taken into consideration within the M/P process; however, there are a number of questions and concerns about the current proposal that should be addressed before it is implemented, to ensure that there is some semblance of transparency and accountability. The fact that campus administration has decided to start implementing parts of this proposal while it is under review is also troubling, in a far more general sense.

