

Faculty Code of Conduct [APM015/RP2301, non-SVSH] Investigations Recommended Procedural Changes

In this document, we outline recommended process changes related to how investigations are conducted into allegations of violations of the faculty code of conduct. These changes are motivated by the following two background items:

1. The Academic Senate's Academic Freedom committee (ACFR) has, as part of its discussion of the [misuse of the classroom](#), stated: "As noted... above, determining whether material is related to a course, or whether its intrusion is significant, requires academic and scholarly judgment. These determinations implicate professional standards whose "substance and nature...properly lie within the expertise and authority of the faculty as a body", in the words of APM-010. It is therefore essential that procedures be developed for regular consultation with faculty when complaints about classroom speech are adjudicated. ACFR believes it would make sense to expand the brief of a standing committee of the Senate—such as the Committee on Charges—to provide guidance to the administration about potential violations of RP 2301. This guidance might include advice about whether a complaint regarding classroom speech merits a formal investigation, and also consultation in the process of an investigation once it is undertaken."
2. The Committee on Charges (CoC), which is referenced by ACFR, was created in 2020, prior to the initiation of OPHD as the investigative body for cases involving misuse of the classroom as well as other violations of the Faculty Code of Conduct as outlined in APM015 and RP2301. Currently, OPHD's investigation, which is the first step in the process of evaluating such claims, does not involve faculty participation and is performed to a standard of preponderance of the evidence. In the event of a positive finding, the case flows through the VCF Office, then to CoC, which is charged with doing its own investigation to a standard of probable cause, a lower standard than that applied by OPHD. The problems with the current process are manifold: (1) The existing procedures call for two, potentially redundant, investigations. (2) The second investigation is framed against a lower standard than the first, meaning the second either must refute the finding of the first or essentially rubber-stamp the finding of the first. (3) There is no academic perspective integrated into the first investigative phase, and the approach of OPHD has been inconsistent with the needs of Faculty Code of Conduct cases.

Based on the above, **the Academic Senate requests that the administration join us to develop and implement improved processes for (non-SVSH) disciplinary cases involving the Faculty Code of Conduct and RP2301. Specifically, we would like to form a "Joint Senate-Administration Implementation Working Group on Faculty Investigations and Disciplinary Actions"**. Because RP2301 speaks to classroom speech broadly, and not just to the speech of senate faculty, we recommend consultation with, and potentially the involvement of, non-senate instructional staff. This is particularly important given the explicit authority granted to the Academic Senate in APM011.

Recommendations for Academic Senate Action:

- Expand and reconstitute the Committee on Charges to 10 or more members
- In guidance to COMS on staffing CoC, prioritize having some members with legal expertise and some with P&T committee experience
- Consider preserving anonymity for CoC members
- Adjust committee bylaws to clarify that the Academic Freedom committee can serve as a resource for CoC members on matters of policy (not specific cases)
- Advocate for the recommendations in the following list to be adopted

Recommendations for Consideration by Joint Senate-Administration Working Group:

- As guidance for investigations involving Regents Policy 2301, adopt Berkeley's Academic Freedom Committee's report "On 'Misuse of the Classroom': Guidelines for Understanding and Implementing Regents Policy 2301."
- Create a new initial investigative stage for Faculty Code of Conduct cases, prior to a full investigation, where an intake form (based on a similar form used at UCSB) is reviewed by two representatives of the CoC in collaboration with OPHD to make a determination of probable cause. If no probable cause is found, the case can be dismissed at this stage.
- Should probable cause be established, a full investigation by OPHD can be pursued, but in partnership with 2 CoC members to ensure academic perspective, guidance, and input is present throughout the investigation. These 2 CoC members may deliberate with the entire CoC as needed during the investigation
- At the conclusion of the full investigation, the results will be shared with the entire CoC to develop a preliminary recommendation as to whether to pursue discipline or not and what discipline to be pursued.
- If the preliminary recommendation of the CoC is to pursue discipline, the investigative report and CoC recommendation is shared with the respondent, who is given the opportunity to respond to the report.
- This response, along with the investigative report, is reviewed by the entire CoC to develop final recommendations for discipline in the event that a violation of the Faculty Code of Conduct is found. These are then communicated to the VPF, who would manage the resolution of the case, including possible early conflict resolution or progression to the Privilege and Tenure Committee.
- Throughout the entire process, early conflict resolution should be pursued whenever possible

Additional Questions and Considerations for the Joint Senate-Administration Working Group:

- During the full investigation, how is the role of the CoC participants in the OPHD investigation delineated? Can a formal role be identified for UCOP P&T counsel ?
- What timeline should be established for each of the above phases?
- During the early phases of the case's progression (i.e., prior to the investigative report and CoC recommendations being transmitted to the VPF), an administrative point of

contact should be clearly identified to monitor progress of the case. This may be someone in OPHD's chain of command, for example.

- What communications should be provided to the accused faculty member as the case progresses?
- How should the above procedure be adapted for non-senate faculty? What role might CoC play in those cases?
- What is the expectation for communication back to CoC from the VPF or other administrative bodies as the case progresses?

Recommended Flow of Faculty Code of Conduct Disciplinary Case

