

## Faculty Code of Conduct and Disciplinary Procedures for the Berkeley Campus

As approved by the Assembly of the Academic Senate, the Faculty Code of Conduct is set forth in APM - 015 as follows:

### ***Preamble***

*The University seeks to provide and sustain an environment conducive to sharing, extending, and critically examining knowledge and values, and to furthering the search for wisdom. Effective performance of these central functions requires that faculty members be free within their respective fields of competence to pursue and teach the truth in accord with appropriate standards of scholarly inquiry.*

*The faculty's privileges and protections, including that of tenure, rest on the mutually supportive relationships between the faculty's special professional competence, its academic freedom, and the central functions of the University. These relationships are also the source of the professional responsibilities of faculty members.*

*It is the intent of the Faculty Code of Conduct to protect academic freedom, to help preserve the highest standards of teaching and scholarship, and to advance the mission of the University as an institution of higher learning.*

*Part I of this Code sets forth the responsibility of the University to maintain conditions and rights supportive of the faculty's pursuit of the University's central functions.*

*Part II of this Code elaborates standards of professional conduct, derived from general professional consensus about the existence of certain precepts as basic to acceptable faculty behavior. Conduct which departs from these precepts is viewed by faculty as unacceptable because it is inconsistent with the mission of the University. The articulation of types of unacceptable faculty conduct is appropriate both to verify that a consensus about minimally acceptable standards in fact does exist and to give fair notice to all that departures from these minimal standards may give rise to disciplinary proceedings.*

*In Part II a clear distinction is made between statements of (1) ethical principles and (2) types of unacceptable behavior.*

### ***1. Ethical Principles***

*These are drawn primarily from the 1966 Statement on Professional Ethics and subsequent revisions of June 1987 issued by the American Association of University Professors. They comprise ethical prescriptions affirming the highest professional ideals. They are aspirational in character, and represent objectives toward which faculty members should strive. Behavior in accordance with these principles clearly precludes*

*the application of a disciplinary sanction. These Ethical Principles are to be distinguished from Types of Unacceptable Faculty Conduct referred to in the following paragraph. The Types of Unacceptable Faculty Conduct, unlike the Ethical Principles, are mandatory in character, and state minimum levels of conduct below which a faculty member cannot fall without being subject to University discipline.*

## **2. Types of Unacceptable Faculty Conduct**

*Derived from the Ethical Principles, these statements specify examples of types of unacceptable faculty behavior which are subject to University discipline because, as stated in the introductory section to Part II, they are “not justified by the Ethical Principles” and they “significantly impair the University’s central functions as set forth in the Preamble.”*

*The Ethical Principles encompass major concerns traditionally and currently important to the profession. The examples of types of unacceptable faculty conduct set forth below are not exhaustive. It is expected that case adjudication, the lessons of experience and evolving standards of the profession will promote reasoned adaptation and change of this Code. Faculty may be subjected to disciplinary action under this Code for any type of conduct which, although not specifically enumerated herein, meets the standard for unacceptable faculty behavior set forth above. It should be noted, however, that no provision of the Code shall be construed as providing the basis for judging the propriety or impropriety of collective withholding of services by faculty. Rules and sanctions that presently exist to cover such actions derive from sources external to this Code.*

*Part III of this Code deals with the enforcement process applicable to unacceptable faculty behavior. That process must meet basic standards of fairness and must reflect significant faculty involvement. In order to guide each campus in the development of disciplinary procedures that comply with this policy and Senate Bylaws, Part III provides an outline of mandatory principles to which each Division must adhere and discretionary principles which are strongly recommended.*

### **Part I – Professional Rights of Faculty**

*In support of the University’s central functions as an institution of higher learning, a major responsibility of the administration is to protect and encourage the faculty in its teaching, learning, research, and public service. The authority to discipline faculty members in appropriate cases derives from the shared recognition by the faculty and the administration that the purpose of discipline is to preserve conditions hospitable to these pursuits. Such conditions, as they relate to the faculty, include, for example:*

- 1. free inquiry, and exchange of ideas;*
- 2. the right to present controversial material relevant to a course of instruction;*
- 3. enjoyment of constitutionally protected freedom of expression;*

4. *participation in the governance of the University, as provided in the Bylaws and Standing Orders of The Regents and the regulations of the University, including*
  - (a) *approval of course content and manner of instruction,*
  - (b) *establishment of requirements for matriculation and for degrees,*
  - (c) *appointment and promotion of faculty,*
  - (d) *selection of chairs of departments and certain academic administrators,*
  - (e) *discipline of members of the faculty, and the formulation of rules and procedures for discipline of students,*
  - (f) *establishment of norms for teaching responsibilities and for evaluation of both faculty and student achievement, and*
  - (g) *determination of the forms of departmental governance;*
5. *the right to be judged by one's colleagues, in accordance with fair procedures and due process, in matters of promotion, tenure, and discipline, solely on the basis of the faculty members' professional qualifications and professional conduct.*

## ***Part II – Professional Responsibilities, Ethical Principles, and Unacceptable Faculty Conduct***

*This listing of faculty responsibilities, ethical principles, and types of unacceptable behavior is organized around the individual faculty member's relation to teaching and students, to scholarship, to the University, to colleagues, and to the community. Since University discipline, as distinguished from other forms of reproof or administrative actions, should be reserved for faculty misconduct that is either serious in itself or is made serious through its repetition, or its consequences, the following general principle is intended to govern all instances of its application:*

*University discipline under this Code may be imposed on a faculty member only for conduct which is not justified by the ethical principles and which significantly impairs the University's central functions as set forth in the Preamble. To the extent that violations of University policies mentioned in the examples below are not also inconsistent with the ethical principles, these policy violations may not be independent grounds for imposing discipline as defined herein. The Types of Unacceptable Conduct listed below in Sections A through E are examples of types of conduct which meet the preceding standards and hence are presumptively subject to University discipline. Other types of serious misconduct, not specifically enumerated herein, may nonetheless be the basis for disciplinary action if they also meet the preceding standards.*

## A. **Teaching and Students**

**Ethical Principles.** “As teachers, the professors encourage the free pursuit of learning of their students. They hold before them the best scholarly standards of their discipline. Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to assure that their evaluations of students reflect each student’s true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment of students. They acknowledge significant academic or scholarly assistance from them. They protect their academic freedom.” (AAUP Statement, 1966; Revised, 1987.)

*The integrity of the faculty-student relationship is the foundation of the University’s educational mission. This relationship vests considerable trust in the faculty member, who, in turn, bears authority and accountability as mentor, educator, and evaluator. The unequal institutional power inherent in this relationship heightens the vulnerability of the student and the potential for coercion. The pedagogical relationship between faculty member and student must be protected from influences or activities that can interfere with learning consistent with the goals and ideals of the University. Whenever a faculty member is responsible for academic supervision of a student, a personal relationship between them of a romantic or sexual nature, even if consensual, is inappropriate. Any such relationship jeopardizes the integrity of the educational process.*

*In this section, the term student refers to all individuals under the academic supervision of faculty.*

### **Types of unacceptable conduct:**

#### **1. Failure to meet the responsibilities of instruction, including:**

(a) *arbitrary denial of access to instruction;*

(b) *significant intrusion of material unrelated to the course;*

(c) *significant failure to adhere, without legitimate reason, to the rules of the faculty in the conduct of courses, to meet class, to keep office hours, or to hold examinations as scheduled;*

(d) *evaluation of student work by criteria not directly reflective of course performance;*

(e) *undue and unexcused delay in evaluating student work.*

2. *Discrimination, including harassment, against a student on political grounds, or for reasons of race, religion, sex, sexual orientation, ethnic origin, national origin, ancestry, marital status, medical condition, status as a covered veteran, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons.*
3. *Violation of the University policy, including the pertinent guidelines, applying to nondiscrimination against students on the basis of disability.*
4. *Use of the position or powers of a faculty member to coerce the judgment or conscience of a student or to cause harm to a student for arbitrary or personal reasons.*
5. *Participating in or deliberately abetting disruption, interference, or intimidation in the classroom.*
6. *Entering into a romantic or sexual relationship with any student for whom a faculty member has, or should reasonably expect to have in the future<sup>1</sup>, academic responsibility (instructional, evaluative, or supervisory).*
7. *Exercising academic responsibility (instructional, evaluative, or supervisory) for any student with whom a faculty member has a romantic or sexual relationship.*

## **B. Scholarship**

**Ethical Principles.** *“Professors, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognize the special responsibilities placed upon them. Their primary responsibility to their subject is to seek and to state the truth as they see it. To this end professors devote their energies to developing and improving their scholarly competence. They accept the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. They practice intellectual honesty. Although professors may follow subsidiary interests, these interests must never seriously hamper or compromise their freedom of inquiry.” (AAUP Statement, 1966; Revised, 1987.)*

### **Types of unacceptable conduct:**

*Violation of canons of intellectual honesty, such as research misconduct and/or intentional misappropriation of the writings, research, and findings of others.*

## **C. The University**

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<sup>1</sup> A faculty member should reasonably expect to have in the future academic responsibility (instructional, evaluative, or supervisory) for (1) students whose academic program will require them to enroll in a course taught by the faculty member, (2) students known to the faculty member to have an interest in an academic area within the faculty member’s academic expertise, or (3) any student for whom a faculty member must have academic responsibility (instructional, evaluative, or supervisory) in the pursuit of a degree.

**Ethical Principles.** “As a member of an academic institution, professors seek above all to be effective teachers and scholars. Although professors observe the stated regulations of the institution, provided the regulations do not contravene academic freedom, they maintain their right to criticize and seek revision. Professors give due regard to their paramount responsibilities within their institution in determining the amount and character of the work done outside it. When considering the interruption or termination of their service, professors recognize the effect of their decision upon the program of the institution and give due notice of their intentions.” (AAUP Statement, 1966; Revised, 1987.)

**Types of unacceptable conduct:**

1. Intentional disruption of functions or activities sponsored or authorized by the University.
2. Incitement of others to disobey University rules when such incitement constitutes a clear and present danger that violence or abuse against persons or property will occur or that the University’s central functions will be significantly impaired.
3. Unauthorized use of University resources or facilities on a significant scale for personal, commercial, political, or religious purposes.
4. Forcible detention, threats of physical harm to, or harassment of another member of the University community, that interferes with that person’s performance of University activities.
5. Discrimination, including harassment, against University employees on political grounds, or for reasons of race, religion, sex, sexual orientation, ethnic origin, national origin, ancestry, marital status, medical condition, status as a covered veteran or, within the limits imposed by law or University regulations, because of age or citizenship, or for other arbitrary or personal reasons.
6. Violation of the University policy, including the pertinent guidelines, applying to nondiscrimination against employees on the basis of disability.
7. Serious violation of University policies governing the professional conduct of faculty, including but not limited to policies applying to research, outside professional activities, conflicts of commitment, clinical practices, violence in the workplace, and whistleblower protections.

**D. Colleagues**

**Ethical Principles.** “As colleagues, professors have obligations that derive from common membership in the community of scholars. Professors do not discriminate against or harass colleagues. They respect and defend the free inquiry of associates. In the exchange of criticism and ideas professors show due respect for the opinions of

*others. Professors acknowledge academic debts and strive to be objective in their professional judgment of colleagues. Professors accept their share of faculty responsibilities for the governance of their institution.” (AAUP Statement, 1966; Revised, 1987.)*

***Types of unacceptable conduct:***

- 1. Making evaluations of the professional competence of faculty members by criteria not directly reflective of professional performance.*
- 2. Discrimination, including harassment, against faculty on political grounds, or for reasons of race, religion, sex, sexual orientation, ethnic origin, national origin, ancestry, marital status, medical condition, status as a covered veteran, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons.*
- 3. Violation of the University policy, including the pertinent guidelines, applying to non-discrimination against faculty on the basis of disability.*
- 4. Breach of established rules governing confidentiality in personnel procedures.*

***E. The Community***

***Ethical Principles.*** *“Faculty members have the same rights and obligations as all citizens. They are as free as other citizens to express their views and to participate in the political processes of the community. When they act or speak in their personal and private capacities, they should avoid deliberately creating the impression that they represent the University.” (U.C. Academic Council Statement, 1971.)*

***Types of unacceptable conduct***

- 1. Intentional misrepresentation of personal views as a statement of position of the University or any of its agencies. (An institutional affiliation appended to a faculty member’s name in a public statement or appearance is permissible, if used solely for purposes of identification.)*
- 2. Commission of a criminal act which has led to conviction in a court of law and which clearly demonstrates unfitness to continue as a member of the faculty.*

## **DISCIPLINARY PROCEDURES AND SANCTIONS**

1. (a) Along with APM 015 and 016, the following procedures shall govern the discipline of members of the faculty and, except as herein otherwise provided, no discipline of any type shall be imposed on a member of the faculty except in accordance with these procedures.
  - (b) The following disciplinary sanctions are authorized in the University Policy on Faculty Conduct and the Administration of Discipline: written censure, reduction in salary, demotion, suspension, denial or curtailment of emeritus status, and dismissal from the employ of the University. (APM-016.)
  - (c) Communications to faculty members by department chairs or comparable officers of administration, not authorized to impose disciplinary sanctions, shall not be subject to these procedures.
  - (d) These procedures are also inapplicable to communications by administrators at a level higher than department chairs which are not disciplinary sanctions; a faculty member who receives a communication from such an administrator which has not gone through these procedures shall not be regarded, for any purpose, as having been disciplined by such communication.
  - (e) Actions which do not constitute discipline, e.g., those described in subparagraphs (c) and (d) above, failure to reappoint at the expiration of a term appointment, and which are therefore not subject to these procedures may nevertheless provide the occasion for a claim of violation of privilege or tenure under Senate Bylaw 337.
  - (f) Allegations of faculty misconduct shall be lodged with the Executive Vice Chancellor and Provost (EVCP), and may be made by any member of the University community—faculty, staff, students, and administrators.
  - (g) Consistent with Senate Bylaw 336(B)(4), no disciplinary action may commence if more than three years have passed between the time when the Chancellor or the Chancellor's designee knew or should have known about the alleged violation of the Faculty Code of Conduct and the delivery of the notice of proposed disciplinary action.
2. (a) The Berkeley Division shall maintain a Panel of Counselors, consisting of a chair and four to seven members of the faculty appointed by the Committee on Committees. The chair shall, if feasible, be a former member of the Committee on Privilege and Tenure (P & T).
  - (b) Members of the Panel of Counselors shall serve as mediators in disciplinary cases as set forth in paragraph 9 below.

- (c) Members of the Panel of Counselors may also be requested by P & T to make preliminary investigations and reports, and to act as hearing officers in non-disciplinary cases under the provisions of Senate Bylaw 112 (d).
- (d) Members of the Panel of Counselors may also be requested by P & T to assist a complainant in a grievance case or a defendant in a disciplinary case, when the Committee determines that there is an urgent need for such experienced assistance. A member who has served as a mediator or hearing officer in a case is disqualified from assisting a complainant or defendant in the same case. A member who has provided assistance to a complainant or defendant is disqualified from serving in other capacities in the same case.

**3. Designation of an Investigative Officer** The EVCP shall designate an Academic Senate faculty member (or a committee of up to four faculty members) as an Investigative Officer (or Investigative Committee) to investigate allegations, wherever originating, of faculty misconduct. The Investigative Officer shall determine whether the facts alleged, if true, would justify the imposition of discipline for a violation of the Faculty Code of Conduct. In a case where the facts alleged would justify discipline, the Investigative Officer shall investigate the allegations and determine whether sufficient credible evidence can be produced to support a finding of misconduct. A positive finding on both of these two elements justifies a determination that there is *probable cause* to believe that misconduct has occurred.

(a) In cases involving allegations of research misconduct, the faculty investigative committee appointed by the Vice Chancellor for Research, pursuant to UC Berkeley policies (“Research Misconduct: Policies, Definitions, and Procedures” (11/21/03)) and Federal regulations, may substitute for the EVCP designated Investigative Officer(s).

(b) In cases involving allegations of violation of University policy on sexual harassment, a faculty Campus Complaint Resolution Officer(s) appointed by the Chancellor, pursuant to the University and Campus policies on sexual harassment, may substitute for the EVCP designated Investigative Officer(s).

**4. The Investigation.** The investigation shall normally include examination of pertinent documents and interviews with those making allegations of misconduct and with the individual against whom the allegations are made. Investigators shall create and maintain a record of their interviews either through recordings or written notes. The Investigative Officer (or Committee) shall report its findings in writing within 90 days from the date of appointment, unless the EVCP determines that circumstances warrant a longer period.

(a) All individuals affected by the investigation shall be accorded confidential treatment to the maximum extent possible in an investigation, and consistent with University policy and applicable law.

**5. Opportunity to reply to preliminary findings of Investigative Officer.** Prior to reporting a determination of probable cause of faculty misconduct to the EVCP, the Investigative Officer shall notify the accused faculty member in writing of his/her intention to do so and the reasons therefore, and invite the faculty member to reply to the determination. Said notification will be delivered to the residence of the accused by registered mail. The faculty member may reply, either in writing or in a personal conference, or both. Such reply shall be within 14 days of the receipt of the notice. If there is a personal conference, the faculty member and the Investigative Officer shall each be entitled to bring a representative of their choice to the conference.

**6. Report of the Investigative Officer(s).** After the accused faculty member has had an opportunity to reply, the investigative officer shall submit his/her report to the EVCP. If there is a probable cause finding of faculty misconduct, the Investigative Officer may make recommendations as to an appropriate disciplinary sanction. If the accused faculty member has provided a written reply to the preliminary findings, it shall become part of the formal record and shall be appended to the Investigative Officer's report.

**7. Notification of intent to file formal charges.** Within 14 days of the receipt of an investigative report which determines that there is probable cause to believe that misconduct has occurred, the EVCP shall decide whether or not he or she intends to lodge a formal complaint against the accused faculty member with the Divisional Committee on Privilege and Tenure, and shall notify the accused faculty member of that decision.

**8. Proposed Settlement.** Before filing formal charges with P & T, the EVCP may offer a settlement involving a proposed sanction. If the settlement is accepted by the accused faculty member, a hearing before P&T shall not be necessary.

**9. Mediation.** Following receipt of a notification of intent to file formal charges, either the accused faculty member or the administration may request the chair of the Panel of Counselors to appoint a counselor from among the Panel to aid in exploring the facts and the issues and resolving differences between the parties through informal mediation. If the chair determines that the other party concurs in the request, he or she shall make such an appointment.

- (a) In order to promote a free exchange of views, all aspects of the counselor's mediation shall be treated as strictly confidential. Without limiting the foregoing:
- (b) The counselor shall not disclose to either party any statements made to him or her by the other party without that other party's explicit consent; shall not make known any observations, conclusions, or recommendations he or she may have concerning the case to any person except the parties; and shall not discuss any aspect of the case with the Chair or any member of the P&T or testify before said Committee; and

- (c) The parties and their representatives shall not directly or indirectly make known to any other person any observations, conclusions, or recommendations submitted to any of them by the counselor.

**10.** If discipline is to be imposed upon the accused faculty member pursuant to the settlement, as provided in paragraph 8, or if there is no settlement, but the faculty member has informed the EVCP that he or she does not intend to contest the proposed discipline the EVCP may thereupon impose such discipline. If the matter is not thus resolved, the EVCP shall then file a complaint with P & T, and designate an officer to represent the administration in the proceedings. Commencing with the filing of a complaint with P & T, proceedings in disciplinary matters shall be governed by the rules set forth in Academic Senate Bylaw 336, with the following supplemental procedures.

- (a) references in Senate Bylaw 336 to the Chancellor's designee shall be interpreted as referring to the EVCP.
- (b) in every case where Senate Bylaw 336 calls for the EVCP or the accused faculty member to deliver or submit a document to P&T, such reference shall be interpreted as calling for that document to be delivered or submitted to the opposing party as well.
- (c) in exercising its discretion to set time frames for the case pursuant to Senate Bylaw 336 (B)(3) P&T shall use best efforts, consistent with the other goals of that provision, to schedule a hearing within 60 days after the receipt of an answer or, if no answer is received, after the deadline for receipt of an answer. If no answer is filed within the twenty-one day time period for a response specified in Senate Bylaw 336(B)(3), or if at any later time the accused faculty member ceases to participate in the proceedings, P&T may take such steps as it deems reasonable in the circumstances to determine whether the failure to file an answer or other failure to participate was intentional or inadvertent. If the Committee determines to its satisfaction that such failure was intentional, then it may report to the EVCP its determination pursuant to APM -015, Part III, Paragraph 4, that the failure is, in substance, an explicit waiver of the right to a hearing, in which case the EVCP may proceed to impose the discipline proposed in the complaint. In cases where P&T is unable to establish to its satisfaction that the failure to file an answer is in substance a deliberate waiver of the right to a hearing, the Committee shall proceed to a hearing in the normal course.
- (d) The accused faculty member may submit to the Chancellor, within fourteen days after receipt of the Committee's findings, conclusions and recommendations pursuant to Senate Bylaw 336 (D)(10), a written statement as to why the Committee's findings, conclusions and/or recommendations should not be adopted. After such request has been considered, or if there is no such request, after the expiration of such fourteen day period, the Chancellor may reach a final determination and impose discipline.

- (e) In cases where the Chancellor disagrees with the findings and/or recommendations of the Committee, before imposing discipline the Chancellor shall, in accord with APM-016 (Section I, page 2, ¶4) inform the Committee Chair in writing of the disagreement and offer to meet with the Chair, or whole committee, prior to reaching a final decision. The Chancellor may request that the Committee reconsider the case, taking into account particular reasons or objections to the Committee's determination.
- (f) In any reconsideration pursuant to Senate Bylaw 336 (D)(12), the Committee may entertain argument by the parties, either orally or in writing, on any issues not fully presented at the first hearing. The Committee shall submit its findings and conclusions on reconsideration, which will be distributed in the same manner as the original findings and conclusions. The Chancellor shall then make a final decision, taking into account the Committee's action on reconsideration. The Chancellor may conditionally waive or limit the imposition of disciplinary sanctions as set forth in APM-016, p. 5, ¶¶1 and 2.

***II.*** Notwithstanding the foregoing, the Chancellor can initiate involuntary leave with pay prior to the initiation of a disciplinary action if it is found that there is a strong risk that the accused faculty member's continued assignment to regular duties or presence on campus will cause immediate and serious harm to the University community or impede the investigation of his or her wrongdoing, or in situations where the faculty member's conduct represents a serious crime or felony that is the subject of investigation by a law enforcement agency. The procedures with respect to initiating such action are set forth in APM-016, p. 5, ¶3.