

COMMENTS TO REPORT OF THE JOINT COMMITTEE OF THE ADMINISTRATION AND ACADEMIC SENATE

The Joint committee was tasked with addressing five separate issue areas. Comments to each area are listed below.

A. Examine and provide clear explanation of current policies and existing processes.

Committee states that “in general, the Joint committee found that the system-wide and campus policies are clearly written and reasonable, consistent with The Faculty Code of Conduct,” the University Policy on Faculty Conduct and the Administration of discipline, and Senate Bylaws.

Comments:

- (1) Comments from students and other stakeholders clearly indicate that systemwide policies are NOT clear, as students do not know or understand the process, even after reviewing the policies. The Committee contradicts itself in its own report. It acknowledges at page 1, “the Joint Committee found that misunderstandings about the policies and procedures are widespread among different University groups. Timeframes and processes are not known by faculty and vary campus-to-campus.” This statement alone indicates that the policies are not clear, and they are not adequately publicized.
- (2) Existing sexual harassment policies do not reference possible sexual harassment by Faculty members *at all*. It is focused almost entirely on student-to-student harassment. We recommend that faculty be explicitly mentioned as potential perpetrators covered by the SVSH policy.
- (3) Recommendation 2(c) states: “To the extent that additional training is required for Title IX Offices to make findings based on a clear and convincing evidence standard, such training should be provided to the Title IX Offices in the context of the comprehensive and regular training they are required to receive by law and policy.” (Report at 2)
 - a. Through this recommendation, the Committee may be attempting to change the burden of proof of the Title IX investigation process from a “preponderance of the evidence” standard to a “clear and convincing evidence” standard, which is a much higher threshold. In other words, the Committee wants to make it more difficult for a Title IX officer to conclude that a violation of the SVSH Policy occurred. (Report at 2)
The report should clarify that any training on the “clear and

convincing standard” is purely for purposes of assisting the Title IX officer in understanding the burden of proof for faculty discipline, and not to enhance the standard of proof required for a typical Title IX investigation.

- b. The Committee repeatedly references training “required by law and policy,” but does not indicate what training this is. (Report at 2) Regardless, a revised training is needed.

B. Review whether procedures are clear, and identify possible variation in procedures and mechanisms among campuses.

No comments, agree with recommendations.

C. Interim Measures – review and provide a clear explanation of current policies governing the imposition of interim measures.

Comments:

- (1) Broaden Recommendation 1 to include broad outreach and education to Title IX officers and investigators to ensure they are aware of interim administrative measures available to protect complainants pending an investigation into allegations.
- (2) Change recommendation 2 so that Administration has ten days to complete all of the tasks the Committee currently proposes to be done within five. Specifically, the Committee believes that 10-days is not enough time to file formal charges after a faculty member is placed on involuntary paid leave. We agree with this. The Committee’s recommended alternative, however, is that within five days, the Administration must provide the faculty member: (1) reasons for involuntary leave, including allegations being investigated; (2) anticipated date when charges will be brought, if substantiated; and (3) a statement that the leave will end when allegations are resolved or disciplinary proceedings are concluded; and (4) the faculty member’s right to contest the involuntary leave. The recommended alternative is good, but the deadline for providing the information should be extended to ten working days.

D. Assess legitimacy of criticisms of current policies, including statute of limitations, time required for privilege & tenure hearing, and interim measures once a complaint is lodged.

Comments:

- (1) In analyzing the highlighted issues deemed to be problematic – the statute of limitations, timelines and availability of interim measures – the Committee repeatedly refers to anonymous “critics” in its analysis of the particular provisions, rather than referring to students, faculty, staff, union or committee members concerned about the provisions or who have bad experiences caused by the policies. This characterization sets the Committee up to defend the policy from these “critics” rather than evaluate the particular provisions at issue, which it was tasked to do.
- (2) The Committee mischaracterizes the “three-year rule” as a “time limit by which the Administration must initiate disciplinary action once it becomes aware of an allegation,” rather than what it is, a statute of limitations not prompted by the date of the alleged offense, but by the date the University first had knowledge of the allegation. What makes the “three-year rule” a statute of limitations has nothing to do with the date triggering the 3-year rule. Rather, it is the fact that the University would be prohibited from taking any action against a faculty member if the three-years elapses before the University does so. (Report at 6)
- (3) We recommend that the University incorporate an exception to the “three-year rule” for allegations pertaining to violations of the SVSH policy.
- (4) In Recommendation 2(a), the Committee states that the three year rule is not a statute of limitations that restricts “reporting, investigation, or imposition of discipline for offenses that occurred more than three years in the past.” That is true. However, it *does restrict* reporting, investigation, or imposition of discipline for offenses that the University had notice of for “more than three years in the past.” A change in the date triggering the three-year countdown does not transform the rule from a statute of limitations to a deadline. It is still a statute of limitations.
- (5) The key issue in 2(b) is that the Committee neglects to state that if an Administration fails to conclude an initial investigation or inform the faculty respondent to resulting charges within three years of the report, then the Administration can no longer take any action against the faculty for violations of SVSH. This is not a good policy, as under this rule, the Administration would not be able to take action simply because an investigation took three and a half years or just one day beyond three years.
- (6) The current three-year rule does not contain any exceptions for situations where a faculty member or department chair fails to report an allegation of SVSH pursuant to its affirmative duty. At a minimum, in that event, the three-year rule should not apply.

- (7) Recommendation 3(a) should not be incorporated. There should not be any language in the policy pertaining to violations of SVSH policies that begins with “No disciplinary action may commence,” or which provides any conditions for which the University is prohibited from bringing disciplinary action against faculty members for violations of SVSH policies.
- (8) In part 2, the Committee acknowledges the concern that the length of time required for P& T hearings discourage complainants from reporting. But then they dismiss this by declaring that the Joint Committee found that delays occur “for reasons beyond anyone’s control.” The Joint Committee should explain these delays, and propose suggestions to expedite the process so that complainants are not deterred from reporting violations, rather than simply excuse it as something that cannot be corrected.

E. Compile data on existing processes.

Comments:

- (1) The Committee confidently reports that the majority of complaints are resolved (citing 90%), and that another substantial portion are withdrawn. We caution the Committee that the number of cases not resolved does not correlate with the percentage of cases that are meritorious. The data does not reflect complaints that were withdrawn or resolved because the complainant resigned or suffered some other adverse consequence, even if the complainant ultimately agreed to it. More information is required to determine how the cases are resolved, and what the resolution entails (what the complainant and accused each agree to do).
- (2) The low number of cases that are not resolved may also signify the suppression of legitimate complaints. The most egregious complaints may go unreported, as was evidenced by the decade of complaints against Professor George Marcy, which despite knowledge by many supposed “mandatory reporters,” went unreported to the Title IX officer and without discipline against the perpetrator.
- (3) Similarly, the data point that 76% of all reported cases are either unsubstantiated or resolved through “alternate resolution” raises questions about the manner in which they were resolved. It is also important to separate this percentage, as there may be other deficiencies in the investigation and reporting process if the majority of complaints are unsubstantiated. The Committee needs more detailed information to properly assess the value of the data.

F. Recommend policies, processes, and mechanisms for handling future cases of sexual violence, sexual assault and sexual harassment.

Comments:

- (1) The report fails to address the inadequate timelines for Title IX officer to receive and investigate allegations of SVSH violations. There are currently no deadlines for a Title IX officer to return a phone call or email, or conduct an initial evaluation of a complaint. In some instances, this process, which precedes a formal investigation, has taken more than one year.
- (2) The report does not address the right to representation for a complainant who is involved in or providing testimony at a Privilege & Tenure disciplinary hearing.
- (3) Finally, we are concerned with the attitude of the Academic Senate toward the Joint Committee's charge. In the Academic Senate's February meeting minutes, the Joint Committee report is summarized as follows:

Joint Committee on Faculty Discipline: The Joint Committee is investigating campus and systemwide policies and processes for the investigation, adjudication, and discipline of sexual misconduct cases involving UC faculty. It has found less need to change written policy than to improve understanding about existing policies and to increase the consistency of Title IX policy implementation across campuses.

Not only is this summary inaccurate, as the Joint Committee *did* recommend changes in policy, but the characterization of the Joint Committee's findings in this manner imply that the overall problem is a mere miscommunication rather than deficiencies in the current policies. This mischaracterization and casual attitude toward the issue is particularly disconcerting considering the Joint Committee is primarily composed of members of the Academic Senate. It raises questions about their ability to fulfill the President's charge through this Committee.