

MEMORANDUM

TO: Raymond Hall, Chair, Academic Senate

FROM: David Low, Chair, University Personnel Committee

DATE: November 10, 2022

RE: APM 301 – Policy and Procedures on the Appointment of Tenure-Track Faculty including the Award of Service Credit

Background

At its meeting on September 9, 2021, the University Personnel Committee voted to undertake revisions to APM 301 – Policy and Procedures on the Appointment of Tenure-Track Faculty including the Award of Service Credit. At its meeting on October 14, 2021, we voted 6-0 to approve the committee's working revision and submit it to the Academic Senate. At its meeting on March 3, 2022, the University Personnel Committee voted to undertake additional revisions to APM 301 to align with the recently updated Collective Bargaining Agreement for 2021-2024. At its meeting on March 10, 2022, we voted 6-0 to approve the committee's updated working revision and submit it to the Academic Senate for deliberation and enactment.

The Personnel Committee's proposed amendments were brought before the Academic Senate on September 12, 2022, and went up for a second reading on September 26, 2022. At both meetings, friendly amendments were made on the floor to fix typographical errors. At the 9/26/22 meeting, following discussion initiated by Sen. Moreman, the Senate voted to return APM to the University Personnel Committee for retooling.

The Personnel Committee spent several meetings addressing the Senate's comments. At its meeting on November 10, 2022, the Committee voted 7 to 0 to resubmit the re-revised APM 301 to the Senate.

The policy has been amended in the following areas. Previous unapproved revisions appear above the dividing line and new revisions (following the policy's return to the Personnel Committee on 9/26/22), appear below the dividing line. Following that section, the Committee includes rationales for any suggested changes we elected not to make.

Proposed Revisions to APM 301:

1. A footnote has been added (301.III.5) clarifying the term "insufficient." In the interest of recruiting and hiring diverse faculty, the Personnel Committee feels it is important to acknowledge representational insufficiency as a rationale for including a search committee member (with full voting rights) from outside the department.

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- This proposed amendment to APM 301 will not disrupt existing procedures, such as “two-thirds of the membership of the committee consist[ing] of full-time tenured faculty.”
 - As a reminder, all prospective members of any faculty search committee must be voted in by members of the department in which the search is conducted.
2. APM 301.IX.D.4 has been added to bring the policy into alignment with the CBA. This addition states: “Pursuant to the Collective Bargaining Agreement, when a temporary faculty unit employee applies for a tenure track position on their campus, and the search committee deems them to meet the minimum requirements of the position, that employee should be interviewed. If the temporary faculty unit employee is not granted an interview, the search committee should provide sufficient justification.” A footnote clarifies: “See CBA (2021-2024) Article 12.28. This provision uses the word “should” rather than “must” and is not subject to grievance.”
 3. APM 301.XV has been added. This provision is titled PROBATIONARY APPOINTMENTS OUTSIDE OF A FORMAL SEARCH and mirrors language from the new CBA. To wit: “Pursuant to the Collective Bargaining Agreement, a departmental peer review committee may review and recommend a probationary tenure-track faculty appointment for a part-time or full-time lecturer within the same department who has received an offer of tenure track employment from another university. Such a recommendation may only occur in a department where there is no current tenure-line recruitment for which the temporary faculty member is qualified. “Such recommendation[s] shall be directed to the President or their designee for review, consideration, and response. The decision of the President or designee shall not be subject to Article 10 (Grievance Procedures) of the Collective Bargaining Agreement.” A footnote clarifies: “See CBA (2021-2024) Article 12.22.c.”
 4. APM 301’s use of gender-binary pronouns has been updated to include gender-neutral pronouns (the singular they).
 5. Several minor tweaks in wording, punctuation, and spacing have been applied for ease of understanding.

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6. The erroneous title “**Associate Vice President for Academic Personnel**” has been replaced in numerous spots with the correct title “Associate Vice President for Faculty Affairs.”
 7. Footnote 2 – “**Doesn’t allowing the chair to meet with the committee create a conflict of interest if the chair is to write an independent recommendation?**” The language of the footnote has been revised to read: “The department chair should meet occasionally with the committee during the selection process to discuss logistical matters, but shall not participate in the deliberations of the committee.”

8. Of Footnote 6, Sen. Moreman writes: **“representative identities” “perspectives?”** The wording of this footnote was attended to on the Senate floor, following the lead of Sen. Pitts.
9. Of Footnote 11, Sen. Moreman writes: **“Dead URL. Do not use URLs.”** The Personnel Committee agrees in this instance, and the new language of Footnote 11 reads: “Once approved, official vacancy announcements will be posted on the Internet.”
10. From Engineering – **“Consider modifying APM 301 to include rules on hiring tenure track faculty for a new undergraduate degree program. Perhaps you know, we are planning to start a new degree program in biomedical engineering in LCOE and currently there is no department in the same area. We are planning to start a search for the new degree program and debating whether the college can initiate the search involving two of its departments as there are no rules provided in the APM 301 to initiate search on a new degree program. As you take this back to the committee on the Senate's mandate, I would suggest you discuss these to add specific rules for the same.”** The Personnel Committee has added the following language to 301.III.3: “In instances where new cross-departmental degree programs are being formed, search committees may be composed of faculty in multiple departments that overlap with the new program.”
11. APM 301.III.4 – **“III.3 already states that the chair cannot serve on the search committee. It may be redundant here to restate non-participation of the chair, merely state the role of writing an independent recommendation separate from that of the committee.”** 301.III.4 has been revised to read: “The department may form a committee consisting of all full-time tenured faculty or all full-time tenured and probationary faculty members in the department. If the department forms a committee consisting of all full-time tenured and probationary faculty, at least two-thirds of the membership of the committee shall be composed of tenured faculty. Independent recommendations will be written by the department chair and the department search committee.”
12. APM 301.III.6 – Sen. Moreman writes that the wording “The EEO designee shall be from the list available from the campus EEO Officer” **is passive voice and requests that it be put into active voice.** The revised wording reads: “The campus EEO Officer shall appoint an EEO designee from a list of those eligible to serve.”
13. Of Footnote 14, which links to the State of California’s list of protected classes, Sen. Moreman asks: **“Why URL? Why not list protected classes, based on California State Senate’s list which is based on The California Department of Fair Employment and Housing. We have a list in our General Catalog... This is based on CSU Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking and Retaliation (Nondiscrimination Policy)...CBA Article 16 Non-Discrimination.”** The current approved version of APM 301 does list out the protected classes, but they are out of date because protected classes

are updated with some regularity. This is what spurred the Personnel Committee to remove the list and instead link to the State of California's list, which is updated in real time (to ensure our policy stays in compliance and does not become obsolete when protected classes are added/amended in the future). However, we can also see and agree with Sen. Moreman's points. There are additional protected classes (caste and ethnicity) that do not appear in the State of CA's list. Further, it is perhaps not a good idea to include URLs in policy, because the APM is riddled with dead links. Thus, the Personnel Committee offers a compromise in which the following language is included in Footnote 14:

- "Protected classes are subject to change, and both the California State Senate's list (posted on the Internet) and CSU's (CBA Article 16.1) list of protected classes are to be consulted regularly. The protected classes included in VII.1 are drawn from both sources."

Meanwhile, 301.VII.1 itself has been updated to include the most current list of protected classes, pulled from both sources:

- Age (over 40), Ancestry, Caste, Color, Disability (mental and physical including HIV/AIDS, cancer, and genetic characteristics), Ethnicity, Gender, Gender expression, Gender identity, Genetic information, Marital status, Medical Condition (genetic characteristics, cancer or a record or history of cancer), Military or veteran status, Nationality/National origin (includes language use and possession of a driver's license issued to persons unable to provide their presence in the United State is authorized under federal law), Race, Religion (includes creed, religious dress, and grooming practices), Request for family care leave, Request for leave for an employee's own serious health condition, Request for Pregnancy Disability Leave, Retaliation for reporting patient abuse in tax-supported institutions, Sex/gender (includes pregnancy, childbirth, breastfeeding and/ or related medical conditions), Sexual orientation, and Sex stereotype.

14. Of Footnote 15, Sen. Moreman asks: "**What is the EEO Plan? The EO Plan for Individuals with disabilities?**" The language in the footnote has been amended to read: "See Equal Employment Opportunity Plan for Individuals with Disabilities, Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans"
15. Of Footnote 16, Sen. Moreman writes: "**through HighEdJobs.**" The language in the footnote has been amended to read: "Faculty Affairs posts vacancy announcements for all full-time faculty positions on Higher Ed Jobs."
16. Regarding 301.VII.3, Sen. Moreman writes: "**...on its own webpage...**" **Do we do that anymore?**" The language has been amended to read: "The Office of Faculty Affairs will post the official vacancy announcement on (a) nationally recognized job line(s) on the Internet as well as post the announcement on the University's web page."
17. APM 301.IX.B.2 – "**FAX copies may be used only for screening purposes**" has been removed.

18. APM 301.IX.D.1 – Sen. Moreman requests the addition of “**a footnote of how ‘telephone conference interview’ is being defined... so that all later references are understood and not contested.**” Footnote 26 was amended to read: “Telephone conference interviews consist of audio-only interviews attended by the candidate and search committee (including EEO officer). They may be taped for future reference provided that, at the beginning of the interview, the candidate’s consent is freely given on tape. This consent is required to comply with California statutes.”
19. Footnote 26 has been amended to read: Candidates “may be taped for future reference provided that, at the beginning of the interview, the candidate’s consent is freely given before recording and again on tape. This consent is required to comply with California statutes. The candidate’s consent must be given twice, first to commence recording and then to provide record of the consent.”
20. APM 301.XIII.3 – Sen. Moreman points out that the policy states “**The Provost will... when in actuality, “the CBA actually says the President.**” The policy has been amended to say “President or designee.”
21. APM 301.XIV – Sen. Moreman requests **the word “boxed” be replaced with “archived.”** This change has been instituted.
22. The Personnel Committee has corrected all minor typographical errors that Sen. Moreman alerted us to. These include lack of subject/verb agreement and superfluous strike-outs and punctuation marks.

Suggestions the Committee Elected Not to Move Forward With:

- In response to Sen. Moreman’s **concerns about gender-neutral pronoun usage in policy, and whether they/them excluded those who go by he/him and she/her**, the Personnel Committee reached out to the Cross-Cultural and Gender Center for consultation. We have determined that they/them pronouns are currently the most inclusive pronouns we can use in policy while also providing the clearest language (a desire expressed by Chair Hall). From Coordinator Parra: *“When I don’t know someone’s pronouns, I use they/them pronouns. But also, for the sake of syntax, I would recommend using they/them.”*
- Of Footnote 3 (“For purposes of recommendation regarding appointment, academic administrators above the level of department chair shall not participate in the search process at the department level”), Sen. Moreman posed the following questions: **“What about advocacy for search committee composition? Search committee composition? Wording of job ad? Are department chairs academic administrators?”**
 - i. As currently, worded, the footnote specifies that for purposes of recommendation regarding appointment, administrators shall not participate in the search process at the department level. This does not

preclude admin from engaging in advocacy or helping word/disseminate the job ad.

- ii. As currently worded, the footnote specifies academic administrators above the level of department chair. Thus, it doesn't matter whether department chairs are considered academic administrators in this wording.
- Of Footnote 5 (“Whether a small committee or a committee of the whole, each member of the search committee is required to read and evaluate all the applications”) Sen. Moreman asks: “**Necessary?**” This footnote predates our current revision of APM 301 and we do not want to guess at the rationale of the author(s) who previously included the line. Clearly, they felt it was necessary. Perhaps more importantly, the Personnel Committee can imagine a hypothetical large search committee comprising the entirety of a department that would benefit from a reminder that each member must review all applications, rather than divvying them up.
- Of Footnote 19, Sen. Moreman writes “**EEO Plan ? Where is that? I can't find this document to exist.**” A quick search turns up that “Both the Equal Opportunity Plan for Individuals with Disabilities, Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans and the Equal Employment and Educational Opportunity Plan shall be available for inspection by any employee, or applicant for employment, during normal business hours, Monday through Friday, 8am to 5pm, at the Office of Human Resources and in the Academic Personnel Office. Interested persons should contact Human Resources at (559) 278- 2364 for assistance.”
 - Perhaps these documents should be housed online, rather than requiring a physical inspection during business hours, but that is beyond the ability of APM 301 footnote 19 to legislate.
- Regarding 301.IX.D.4, Sen. Moreman writes that “**CBA 12.28 does not say that the search committee’s decision to interview or not interview cannot be grieved. That is inaccurate. For example, CBA 12.22.c. specifically says the President’s decision cannot be grieved. The Collective Bargaining Agreement is silent on whether the committee’s decision to interview can be grieved or not.**” However, because CBA 12.28 uses the word “should” rather than “must” when specifying a temporary faculty unit employee *should* be granted an interview for a TT position in their area, the Personnel Committee does not deem there to be any actionable language to use in a grievance. Should ≠ must. Search committees are not compelled by policy to interview temporary faculty for fulltime positions.

Enclosed are new tracked changes to APM 301 for the Executive Committee and full Senate review.

Respectfully (re)submitted,

D. Low

CC: Xuanning Fu, Interim Provost

Jim Schmidtke, Interim Associate Vice President for Faculty Affairs