



OFFICE OF THE VICE PROVOST --
ACADEMIC PERSONNEL AND PROGRAMS

OFFICE OF THE PRESIDENT
1111 Franklin Street, 11th Floor
Oakland, California 94607-5200

March 13, 2015

COUNCIL OF VICE CHANCELLORS
LABORATORY DIRECTOR ALIVISATOS
ACADEMIC COUNCIL CHAIR GILLY
ANR VICE PRESIDENT ALLEN-DIAZ

**Re: Final Review of Proposed Revised Academic Personnel Policy Section 080
(APM - 080), Medical Separation**

Dear Colleagues:

Enclosed for Final Review are proposed revisions to Academic Personnel Policy Section 080 (APM - 080), Medical Separation. Academic Personnel and Programs has been in consultation for two years with the Provost and Executive Vice President for Academic Affairs, the Academic Senate, the Office of General Counsel, and campus administration regarding proposed changes to APM - 080, Medical Separation.

Following distribution of proposed revised language amending this policy, Academic Personnel and Programs received a broad set of comments during both Management Consultation (April, 17, 2014 to June 19, 2014) and Systemwide review (September 19, 2014 to December 19, 2014) from campus administration and Academic Council. The proposed changes in this Final Review version result from the new input identified in Systemwide Review; the most substantive matters are discussed below.

The purpose of APM - 080 is to provide a non-disciplinary method to medically separate a faculty member or other academic appointee who has exhausted eligible leave and who remains unable to perform the essential functions of his/her position or another vacant position for which the appointee is qualified, due to a disability or medical condition. Proposed revisions in this review as well as in the prior reviews are intended to 1) bring APM - 080 into conformance with Regents Standing Order 101.1(b), Employment Status, 2) clarify authority to medically separate faculty with and without tenure or security of employment and appointees who are not members of the Academic Senate, and 3) revise language so that it is congruent with the requirements of the Americans with Disabilities Act (ADA). Summarized below are some of the recommendations from Systemwide Review (September 2014 through December 2014) that have been incorporated in the Final Review draft and responses to some of the questions asked by reviewers:

- New language clarifies that all elements of the interactive process must be exhausted before the medical separation process is initiated. Medical separation procedures cannot be initiated when reasonable accommodations might resolve the problem.
- If vested, the academic appointee may opt to retire rather than be medically separated and to receive disability income from the University of California Retirement Plan.

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- As part of the interactive process, the Disability Management Officer (or equivalent) will determine whether there is an alternative vacant position for which the employee is qualified and in which s/he can perform the essential functions, with or without reasonable accommodation. "Another vacant position" could refer to another faculty position or any other vacant position for which the employee is qualified. However, the policy does not circumvent the normal academic review process to determine if the appointee is qualified. The term "without reasonable accommodation" does not mean "regardless of" or "despite" reasonable accommodation; it recognizes that the employee might be able to do some jobs in the University for which the disability does not need to be accommodated. In other words, the term is used in connection with a person whose qualifying disability does not require accommodation in order to perform the duties of an alternative vacant position.
- Some reviewers were concerned about the application of leave policies. Leave policies are not changing. APM - 080 may be applied only after all leaves are exhausted.
- Some reviewers suggested language that is appropriate for campus policy and procedures and/or the Medical Separation Toolkit, which Academic Personnel and Programs will issue once the policy is final. For example, details about the content of a medical separation review file will be included in the Toolkit.
- The process and timelines for tenured and untenured faculty are different. For cases involving faculty with tenure or security of employment, there are additional steps. Prior to making a determination of medical separation for faculty with tenure or security of employment, the Chancellor must consult with the Chair of the Committee on Privilege and Tenure, in accordance with Regents Standing Order 101.1(b). If the Chancellor recommends separation for faculty with tenure or security of employment, the President and the Regents must approve the action. The Chancellor holds authority to separate faculty who do not have tenure or security of employment.

Final Review is intended to advise the results of the Systemwide Review and how language has been refined. We do not anticipate substantive revisions during Final Review. This stage of consultation is intended to resolve prior discussions and to answer remaining questions.

This letter and enclosures anticipate that you will submit comments, should there be any, no later than **April 17, 2015**. Please submit your comments to ADV-VPCARLSON-SA@ucop.edu. If you have any questions, please contact Janet Lockwood at Janet.Lockwood@ucop.edu or (510) 987-9499.

Sincerely,



Susan Carlson
Vice Provost
Academic Personnel and Programs

Enclosures: Proposed Revised APM - 080 (redline and clean copy)

cc: President Napolitano
Provost and Executive Vice President Dorr
Chancellors
Secretary Shaw

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Senior Vice President Vacca
Vice President Duckett
Vice Provosts of Academic Personnel/Academic Affairs
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Executive Director Baxter
Executive Director Fox
Executive Director Tanaka
Director Chester
Director Henderson
Director Lockwood
Manager Donnelly
Policy Coordinator Trifonov
Human Resources Policy Analyst Bello
Senior Administrative Assistant Rupert
Analyst Jordan

080-0 **Policy**

Medical separation will be considered only in cases where an academic appointee has a ~~long term or serious~~ disability ~~occurs~~ (or a medical condition that has become disabling) that cannot be reasonably accommodated without causing undue hardship. Prior to medical separation, the University will engage in an interactive process in accordance with the provisions of APM - 711, Reasonable Accommodation for Academic Appointees with Disabilities. ~~After an appropriate period of leave and/or other accommodation(s), if~~ If an academic appointee holding an appointment that is not self-terminating is still unable to return to work and/or perform the essential functions of the ~~position within a reasonable period of time~~ academic position after the interactive process has been exhausted, a medical separation review may be initiated. ~~Thereafter,~~ an The interactive process is exhausted when it has been determined that (a) no reasonable accommodation(s) can be provided that would enable the academic appointee to perform the essential assigned functions of the position without causing undue hardship and (b) there is no alternative vacant position for which the employee is qualified and can perform the essential functions, with or without reasonable accommodation.¹ After the required medical separation review has been completed, the academic appointee may be medically separated.

Comment [AP1]: New language inserted to clarify that the interactive process must be exhausted before the medical separation process is initiated. Periods of leave are a type of reasonable accommodation that are determined in part by other leave policy (see leave policy within the APM, Section V). Reasonable accommodation is part of the interactive process. Medical separation procedures cannot be initiated when reasonable accommodations might resolve the problem.

Comment [AP2]: The term "without reasonable accommodation" here does not mean "regardless of" or "despite" reasonable accommodation; it recognizes that the employee might be able to do some jobs in the University for which the disability does not need to be accommodated. In other words, the term is used in connection with a person whose qualifying disability does not require accommodation in order to perform the duties of an alternative vacant position.

¹ See APM - 711-5 and APM - 711-80 for descriptions of the interactive process and reasonable accommodation for academic appointees.

An appointee's inability to perform the essential assigned functions of the position or another vacant position on campus for which the appointee is qualified, with or without reasonable accommodation, due to a disability or medical condition, will constitute a good cause for ~~termination~~separation, and an appointee may be separated after the required review is completed. An appointee may be medically separated only pursuant to the procedures provided herein.

Comment [AP3]: Confirms that the interactive process must be exhausted and that all procedures contained in APM - 080 must be followed prior to medical separation

080-1—~~Basis~~10 Procedures for Medical Separation Review

~~Whenever possible, the chair~~The Department Chair, Dean, or unit head, ~~or with the~~assistance of the campus Disability Management office (or equivalent), shall attempt to consult, if possible, with an academic appointee who is being considered for a medical separation review prior to the initiation of such a review.

Comment [AP4]: Authority levels differ by campus and sometimes by schools within campuses.

a. After consultation with the Disability Management office (or equivalent), and discussion with the appointee, if possible, the Department Chair, Dean, or unit head may determine that a medical separation review should be initiated.

Comment [AP5]: Consultation with the appointee is the first step in the process taking place prior to determining whether a medical separation review should be initiated.

A medical separation review may also be initiated following notice to the University of approval, for the appointee, of disability income from a retirement system to which the University contributes, such as the University of California Retirement Plan (UCRP) or Public Employees' Retirement

System (PERS), or the approval of benefits from University long-term disability insurance. This notice must be accompanied by a written review by the Disability Management office (or equivalent) showing a determination that there is no reasonable accommodation available.

~~If after consultation with the Disability Management office (or equivalent) the chair, Dean, or unit head determines that a medical separation review may be appropriate, the chair,~~ To initiate a medical separation review, the Department Chair, Dean, or unit head will prepare~~written documentation describing, in coordination with the Disability Management office (or equivalent), a medical separation review file. The file should describe~~ the essential functions of the position, those functions that the academic appointee is unable to perform, the interactive process that took place ~~in consideration of~~ to consider possible reasonable ~~accommodation,~~ accommodations, and why reasonable accommodations were not possible or were unsuccessful, ~~and; the file should contain~~ any other pertinent documentation. (~~See~~ In determining essential job functions, see APM - 210-1-d or other academic personnel policies relevant to the appointee's title series. Concerning the interactive process and reasonable accommodation, see APM - 711-5 and APM - 711-80.)

~~210-1-d, other relevant academic personnel policy, or job description for criteria for standards of essential job functions; see APM 711-5 and 80 for information about the interactive process and reasonable accommodation). The chair, Dean, or unit head shall notify the appointee in writing that the file has been prepared and that it is~~

~~being sent to the Chancellor for review. The file will then be reviewed by the Chancellor who, upon approval, will forward the request for a medical separation review to the campus Disability Management office (or equivalent). In cases where the Dean initiates the request for a medical separation review, the chair shall be consulted before the file is submitted to the Chancellor. In cases where the chair or unit head initiates the request for a medical separation review, the Dean must approve the request before the file is submitted to the Chancellor. The file shall include any comments received from the Dean and/or chair and/or unit head. The Disability Management office (or equivalent) will review the statements of the chair and/or Dean and/or unit head and any other pertinent material. The Disability Management office (or equivalent) will advise the Chancellor whether or not a medical separation is appropriate. The Chancellor shall then determine whether or not to proceed with a medical separation. The authority to make this determination rests with the Chancellor, and this authority may not be redelegated.~~

~~The University may also initiate a medical separation review based on notice of approval of disability income from a retirement system to which the University contributes, such as UCRP or PERS, or approval of University long term disability insurance benefits.~~

b. After a review and recommendation by the Department Chair or unit head and the Disability Management office (or equivalent), the Dean shall send a copy of the medical separation review file, with a notice of intent to forward the file to the Chancellor for action and stating that the appointee may respond orally or in writing to the Dean within thirty (30) consecutive days of the date of the notice. Following a

Comment [AP6]: The appointee should be able to respond orally in the event a written response is not possible.

review of any such response, which shall be added to the review file, the Dean may decide to submit the file to the Chancellor.

080-~~3~~-20 Notice of Intent to Separate and Notice of Action

~~An academic appointee shall be given advance~~If determining to proceed with a medical separation, the Chancellor shall provide written notice ~~by~~to the ~~Chancellor~~appointee of the intention to separate. ~~The notice shall state, stating (1)~~ the reason for medical separation ~~and include copies of the statements of the chair and/or Dean and/or unit head and any other pertinent material considered, and (2) that the appointee has the right to respond either orally or in writing, to a designated named person, within thirty (30) calendar days of the date of the notice. Accompanying the notice of intent to separate will be a copy of the review file upon which the Chancellor relied. Any subsequent written response of the appointee shall be added to the review file.~~

~~a. For Academic Senate faculty the notice of intent to separate shall state that the faculty member has the right to respond either orally or in writing within thirty (30) calendar days of the date of issuance of the notice regarding the separation and the right to a hearing before the properly constituted advisory committee of the Academic Senate under Regents Standing Order 103.9. The notice shall include the name of the person to whom the faculty member should respond. The faculty member must respond within thirty (30) calendar days to request a hearing; otherwise, the Chancellor will make a final decision as to whether or not to forward the medical separation recommendation to the President. Upon recommendation of~~

~~the President, the file shall be forwarded to The Regents for approval. The authority of the Chancellor to recommend medical separation to the President may not be redelegated.~~

a. Faculty with Tenure or Security of Employment

(1) For faculty with tenure or security of employment, the notice of the intent to separate shall also state that the faculty member has the right to a hearing before the properly constituted advisory committee of the Academic Senate under Regents Standing Order 103.9 and Academic Senate Bylaw 337.

(2) For cases involving faculty with tenure or security of employment, there is an additional step. Prior to making a determination of medical separation for faculty with tenure or security of employment, the Chancellor, in accordance with Regents Standing Order 101.1(b), shall consult with the Chair of the Committee on Privilege and Tenure who shall respond in writing to the Chancellor within 15 (fifteen) business days. The Chancellor shall then determine whether to proceed with a medical separation. The authority to make this determination for faculty rests with the Chancellor and may not be redelegated.

(3) Following a response from the Chair of the Committee on Privilege and Tenure, and following a response by the faculty member and/or following a hearing (and recommendation) if any, the Chancellor shall decide, based on

the file and any hearing record, whether to recommend medical separation.
If so recommending, the Chancellor shall forward a recommendation with
the medical separation file to the President for a decision whether to
recommend medical separation to The Regents for approval in accordance
with Regents Standing Order 101.1(b).

b. Faculty without Tenure or Security of Employment

~~(1) b.~~ For ~~non-Academic Senate~~ faculty without tenure or security of
employment, the notice of intent to separate shall also state that the faculty
member has the right to ~~respond either orally or in writing within thirty (30)~~
~~calendar days regarding the separation and the right to~~ a hearing before the
properly constituted advisory committee of the Academic Senate under
~~Regents' Standing Order 103.9. The notice shall include the name of the~~
~~person to whom the faculty member should respond. The appointee must~~
~~respond within thirty (30) days to request a hearing; otherwise, the~~
~~Chancellor will make the final decision as to whether or not to proceed with a~~
~~medical separation. The Chancellor may not redelegate the authority to~~
~~decide whether to proceed with a medical separation. If the Chancellor~~
~~decides to proceed, a written notice of medical separation will be issued~~
~~within sixty (60) calendar~~ Regents' Standing Order 103.9 and Academic
Senate Bylaw 337. There is a timeframe to request a hearing (within thirty
[30] consecutive days of the notice of intent. ~~The non-senate faculty member~~
~~shall be notified of the effective date in writing and of the right to grieve~~

~~under APM -140 if the appointee did not elect a hearing under Regents' Standing Order 103.9, to separate) and a second timeframe to respond to the notice of intent (also within thirty [30] consecutive days).~~

Typically, within sixty (60) consecutive days of a recommendation following a hearing, or the waiver of a hearing by the failure to request it within thirty (30) consecutive days from the date of the notice of intent, the Chancellor shall decide, based on the file and any hearing record, whether to proceed with medical separation. The faculty member must respond within thirty (30) consecutive days of the date of the notice of intent to request a hearing; otherwise, the Chancellor will make the final decision as to whether to proceed with a medical separation.

- (2) If proceeding, the Chancellor shall send to the faculty member a written notice of action to medically separate, which shall state the effective date of separation and the right to grieve under Academic Senate Bylaw 335 for Academic Senate faculty or under APM -140-33, Non-Senate Academic Appointees/Grievances, for Non-Senate faculty, if the faculty member did not previously elect a hearing under Regents' Standing Order 103.9.

c. Other Academic Appointees

~~e. — For other academic appointees the notice of intent to separate shall state that the appointee has the right to respond either orally or in writing within thirty (30) calendar days. The notice shall include the name of the person to whom the appointee should respond. If the Chancellor determines, if having determined that a medical separation is appropriate following the review of a timely response, if any, from the appointee, a letter of medical separation shall be issued to the appointee. review of the file, the Chancellor shall issue a written notice of action to medically separate, typically within sixty (60) consecutive days of the date of the notice of intent. The letter written notice shall include state the separation effective date of separation and the right to file a grievance under grievance under APM - 140-33-B, Non-Senate Academic Appointees/Grievances.~~

~~— APM - 140.~~

d. Adequacy of Notice

During the review process a documented effort to contact the appointee via phone, mail, and email shall be made. The written notice of intent and notice of action to medically separate shall be sent by U.S. first class mail to the appointee's home address on file with the payroll office.

080-24 **Authority**

- a. ~~a.~~ For ~~Academic Senate~~ faculty with tenure or security of employment, the Chancellor ~~is authorized~~ has the authority to recommend medical separation to the President; this authority may not be redelegated. Authority for approving medical separation of ~~an Academic Senate~~ a faculty member with tenure or security of employment rests with The Regents, upon recommendation of the President. ~~The authority of the Chancellor to recommend medical separation to the President may not be redelegated.~~
- b. ~~b.~~ ~~The~~ For faculty without tenure or security of employment, the Chancellor has the authority to approve ~~the~~ medical separation ~~of non-Academic Senate faculty~~ in accordance with this policy and ~~after appropriate~~ its due process requirements. This authority may not be redelegated.
- c. ~~The~~ For other academic appointees, the Chancellor has the authority to approve ~~the~~ medical separation ~~of other academic appointees~~ in accordance with this policy and ~~after appropriate~~ its due process requirements.

080-0 **Policy**

Medical separation will be considered only in cases where an academic appointee has a disability (or a medical condition that has become disabling) that cannot be reasonably accommodated without causing undue hardship. Prior to medical separation, the University will engage in an interactive process in accordance with the provisions of APM - 711, Reasonable Accommodation for Academic Appointees with Disabilities. If an academic appointee holding an appointment that is not self-terminating is still unable to return to work and/or perform the essential functions of the academic position after the interactive process has been exhausted, a medical separation review may be initiated. The interactive process is exhausted when it has been determined that (a) no reasonable accommodation(s) can be provided that would enable the academic appointee to perform the essential assigned functions of the position without causing undue hardship and (b) there is no alternative vacant position for which the employee is qualified and can perform the essential functions, with or without reasonable accommodation.¹ After the required medical separation review has been completed, the academic appointee may be medically separated.

¹ See APM - 711-5 and APM - 711-80 for descriptions of the interactive process and reasonable accommodation for academic appointees.

An appointee's inability to perform the essential assigned functions of the position or another vacant position on campus for which the appointee is qualified, with or without reasonable accommodation, due to a disability or medical condition, will constitute a good cause for separation, and an appointee may be separated after the required review is completed. An appointee may be medically separated only pursuant to the procedures provided herein.

080-10 Procedures for Medical Separation Review

The Department Chair, Dean, or unit head, with the assistance of the campus Disability Management office (or equivalent), shall attempt to consult, if possible, with an academic appointee who is being considered for a medical separation review prior to the initiation of such a review.

- a. After consultation with the Disability Management office (or equivalent), and discussion with the appointee, if possible, the Department Chair, Dean, or unit head may determine that a medical separation review should be initiated.

A medical separation review may also be initiated following notice to the University of approval, for the appointee, of disability income from a retirement system to which the University contributes, such as the University of California Retirement Plan (UCRP) or Public Employees' Retirement

System (PERS), or the approval of benefits from University long-term disability insurance. This notice must be accompanied by a written review by the Disability Management office (or equivalent) showing a determination that there is no reasonable accommodation available.

- b. To initiate a medical separation review, the Department Chair, Dean, or unit head will prepare, in coordination with the Disability Management office (or equivalent), a medical separation review file. The file should describe the essential functions of the position, those functions that the academic appointee is unable to perform, the interactive process that took place to consider possible reasonable accommodations, and why reasonable accommodations were not possible or were unsuccessful; the file should contain any other pertinent documentation. (In determining essential job functions, see APM - 210-1-d or other academic personnel policies relevant to the appointee's title series. Concerning the interactive process and reasonable accommodation, see APM - 711-5 and APM - 711-80.)
- c. After a review and recommendation by the Department Chair or unit head and the Disability Management office (or equivalent), the Dean shall send a copy of the medical separation review file, with a notice of intent to forward the file to the Chancellor for action and stating that the appointee may respond orally or in writing to the Dean within thirty (30) consecutive days of the date of the

notice. Following a review of any such response, which shall be added to the review file, the Dean may decide to submit the file to the Chancellor.

080-20 Notice of Intent to Separate and Notice of Action

If determining to proceed with a medical separation, the Chancellor shall provide written notice to the appointee of the intention to separate, stating (1) the reason for medical separation, and (2) that the appointee has the right to respond either orally or in writing, to a designated named person, within thirty (30) calendar days of the date of the notice. Accompanying the notice of intent to separate will be a copy of the review file upon which the Chancellor relied. Any subsequent written response of the appointee shall be added to the review file.

a. Faculty with Tenure or Security of Employment

- (1) For faculty with tenure or security of employment, the notice of the intent to separate shall also state that the faculty member has the right to a hearing before the properly constituted advisory committee of the Academic Senate under [Regents Standing Order 103.9 and Academic Senate Bylaw 337](#).
- (2) For cases involving faculty with tenure or security of employment, there is an additional step. Prior to making a determination of medical

separation for faculty with tenure or security of employment, the Chancellor, in accordance with Regents Standing Order 101.1(b), shall consult with the Chair of the Committee on Privilege and Tenure who shall respond in writing to the Chancellor within 15 (fifteen) business days. The Chancellor shall then determine whether to proceed with a medical separation. The authority to make this determination for faculty rests with the Chancellor and may not be redelegated.

- (3) Following a response from the Chair of the Committee on Privilege and Tenure, and following a response by the faculty member and/or following a hearing (and recommendation) if any, the Chancellor shall decide, based on the file and any hearing record, whether to recommend medical separation. If so recommending, the Chancellor shall forward a recommendation with the medical separation file to the President for a decision whether to recommend medical separation to The Regents for approval in accordance with [Regents Standing Order 101.1\(b\)](#).

b. Faculty without Tenure or Security of Employment

- (1) For faculty without tenure or security of employment, the notice of intent to separate shall also state that the faculty member has the right to a hearing before the properly constituted advisory committee of the Academic Senate under [Regents' Standing Order 103.9 and Academic](#)

[Senate Bylaw 337](#). There is a timeframe to request a hearing (within thirty [30] consecutive days of the notice of intent to separate) and a second timeframe to respond to the notice of intent (also within thirty [30] consecutive days).

Typically, within sixty (60) consecutive days of a recommendation following a hearing, or the waiver of a hearing by the failure to request it within thirty (30) consecutive days from the date of the notice of intent, the Chancellor shall decide, based on the file and any hearing record, whether to proceed with medical separation. The faculty member must respond within thirty (30) consecutive days of the date of the notice of intent to request a hearing; otherwise, the Chancellor will make the final decision as to whether to proceed with a medical separation.

- (2) If proceeding, the Chancellor shall send to the faculty member a written notice of action to medically separate, which shall state the effective date of separation and the right to grieve under [Academic Senate Bylaw 335](#) for Academic Senate faculty or under [APM -140-33](#), Non-Senate Academic Appointees/Grievances, for Non-Senate faculty, if the faculty member did not previously elect a hearing under [Regents' Standing Order 103.9](#).

c. Other Academic Appointees

For other academic appointees, if having determined that a medical separation is appropriate following review of the file, the Chancellor shall issue a written notice of action to medically separate, typically within sixty (60) consecutive days of the date of the notice of intent. The written notice shall state the effective date of separation and the right to grieve under APM - 140-33-B, Non-Senate Academic Appointees/Grievances.

d. Adequacy of Notice

During the review process a documented effort to contact the appointee via phone, mail, and email shall be made. The written notice of intent and notice of action to medically separate shall be sent by U.S. first class mail to the appointee's home address on file with the payroll office.

080-24 **Authority**

- a. For faculty with tenure or security of employment, the Chancellor has the authority to recommend medical separation to the President; this authority may not be redelegated. Authority for approving medical separation of a faculty member with tenure or security of employment rests with The Regents, upon recommendation of the President.

- b. For faculty without tenure or security of employment, the Chancellor has the authority to approve medical separation in accordance with this policy and its due process requirements. This authority may not be redelegated.

- c. For other academic appointees, the Chancellor has the authority to approve medical separation in accordance with this policy and its due process requirements.