

## **VII. REPORTS OF STANDING COMMITTEES (CONT'D)**

### **A. Academic Council (Cont'd)**

#### **5. Ad Hoc Committee on Bylaw Revisions (oral report, discussion) George Blumenthal, Chair**

### **B. University Committee on Privilege and Tenure (UCP&T) Carolyn Martin-Shaw, Chair (Action)**

- Approval of Amendments to Senate Bylaw 335

The University Committee on Privilege and Tenure (UCP&T) recommends that Senate Bylaw 335, which governs the standards and procedures employed by Privilege and Tenure committees for grievance cases, be modified as set forth below. The following proposed amendment to SBL 335.B.1-2 has been approved by the Academic Council and reviewed by the University Committee on Rules and Jurisdiction for its consonance with the Code of the Senate. The Academic Council, with the concurrence of the University Committee on Rules and Jurisdiction, is recommending that the Academic Assembly approve the proposed amendment to SBL 335.

#### **Present Wording:**

#### **SBL 335. Privilege and Tenure: Divisional Committees -- Grievance Cases**

#### **335.**

##### **B. Preliminary Procedure in Grievance Cases**

1. For the purpose of advising Senate members on the available relief in case of a potential grievance, each Division, in accordance with specifications to be determined by such Division, shall appoint an individual or panel (preferably former members of the Privilege and Tenure Committee, but not current members) who shall be available to each grievant to discuss the claim of violation of rights and privileges and to provide advice on the appropriate procedure to be followed. Such individuals or panel members shall not serve as representatives of any grievant, and they shall maintain full confidentiality to the extent allowable by law. An aggrieved Senate member may consult with the individuals appointed under this provision with the understanding that the grievance will not be disclosed and that the consultation shall not constitute notice of the grievance to the campus or University administration.
2. Upon receipt of a written grievance, the Privilege and Tenure Committee shall first determine whether or not the grieving Senate member has made out a *prima facie* case. This determination shall be limited to a review of the written grievance only. A *prima facie* case shall be deemed established if the Committee concludes that the

allegations as stated in the written grievance, if true, would constitute a violation of the faculty member's rights and privileges.

**Proposed Wording:**

**SBL 335. Privilege and Tenure: Divisional Committees -- Grievance Cases**

**335.**

**B. Preliminary Procedure in Grievance Cases**

1. For the purpose of advising Senate members on the available relief in case of a potential grievance, each Division, in accordance with specifications to be determined by such Division, shall appoint an individual or panel (preferably former members of the Privilege and Tenure Committee, but not current members) who shall be available to each grievant to discuss the claim of violation of rights and privileges and to provide advice on the appropriate procedure to be followed. Such individuals or panel members shall not serve as representatives of any grievant, and they shall maintain full confidentiality to the extent allowable by law. An aggrieved Senate member may consult with the individuals appointed under this provision with the understanding that the grievance will not be disclosed and that the consultation shall not constitute notice of the grievance to the campus or University administration. **In cases where the grievance contains allegations of improper governmental activities and/or allegations of retaliation for reporting improper governmental activities, panel members shall inform grievants of their right to make a protected disclosure of allegations of improper governmental activities and/or allegations of retaliation for reporting improper governmental activities to the Locally Designated Official (LDO) pursuant to the Whistleblower Policy and the Whistleblower Protection Policy. Panel members also shall inform grievants that any such allegations that are part of a grievance brought to the Privilege and Tenure Committee will be reported to the LDO in accordance with the Whistleblower Policy and/or the Whistleblower Protection Policy.**
2. Upon receipt of a written grievance, the Privilege and Tenure Committee shall first determine whether or not the grieving Senate member has made out a *prima facie* case. This determination shall be limited to a review of the written grievance only. A *prima facie* case shall be deemed established if the Committee concludes that the allegations as stated in the written grievance, if true, would constitute a violation of the faculty member's rights and privileges. **If the grievance includes allegations of improper governmental activities and/or allegations of retaliation for reporting improper governmental activities, the Committee shall report those**

**allegations to the LDO in accordance with the Whistleblower Policy and/or the Whistleblower Protection Policy.**

**JUSTIFICATION:**

Effective January 1, 2000, California Government Code Section 8547 was revised and renamed the California Whistleblower Protection Act. This revised statute effectively expanded the types of communications that must be treated as whistleblower reports by creating the concept of a “protected disclosure” as the triggering event for officially notifying the University of alleged wrongdoing. A protected disclosure need not be in writing and is defined in the Government Code as:

Any good faith communication that discloses or demonstrates an intention to disclose information that may evidence (1) an improper governmental activity or (2) any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition (Section 8457.2.d).

Several significant elements of the new statute required amendment of Business & Finance Bulletin G-29, Procedures for Investigating Misuse of University Resources and the Policy and Procedures for Reporting Improper Governmental Acts and Protection Against Retaliation for Reporting Improper Acts. To ensure compatibility with the new state law, a University task force developed two new policies, the Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (Whistleblower Policy) and the Policy for Protection of Whistleblowers from Retaliation and Guidelines for Reviewing Retaliation Complaints (Whistleblower Protection Policy), which became effective on October 4, 2002.

Aspects of these two new University policies impact the divisional Privilege and Tenure committees’ preliminary procedures for grievance cases that are outlined in SBL 335. The UC Whistleblower Policy dictates that a “Locally Designated Official” or “LDO” be designated by each campus, Laboratory, the Office of the President and the Division of Agriculture and Natural Resources to serve as “the official with primary responsibility to receive reports of allegations of suspected improper governmental activities” (p. 3). The UC Whistleblower Protection Policy in turn specifies that this LDO must be provided with a copy of all grievance complaints alleging retaliation that are filed pursuant to academic or staff personnel policies or collective bargaining agreements. For members of the Academic Senate, the Whistleblower Protection Policy defines the applicable personnel policy as the Senate’s procedures for grievance cases outlined in SBL 335 (pp. 3-4).

At the request of the Office of the President, the University Committee on Privilege and Tenure (UCP&T) considered amendments to Senate Bylaw 335 so that the LDO, as provided under the Whistleblower Policies, receives reports of protected disclosures or retaliation complaints. It was determined that in order to fulfill the University’s obligations for reporting under the Whistleblower Policy and the Whistleblower Protection Policy, SBL 335 must be amended. Our committee also elected to explicitly

state in SBL 335 that potential grievants must also be informed by panel members of (1) their right to make a protected disclosure to the LDO and (2) that any whistleblower retaliation allegations that are part of a grievance brought to the Privilege and Tenure Committee will be reported to the LDO in accordance with the Whistleblower and Whistleblower Protection policies. UCP&T supports and requests the adoption of these amendments to SBL 335.