

#### **D. Committee on Privilege & Tenure (UCP&T)**

##### **George Blumenthal, Chair**

- Approval of Revisions to Senate Bylaws Governing Privilege & Tenure Standards and Procedures (action)

The University Committee on Privilege & Tenure is recommending that Universitywide Senate Bylaws governing the standards and procedures employed by Privilege & Tenure committees be modified as set forth below. More specifically, the committee is recommending replacing current Senate Bylaw 335 with the proposed Senate Bylaws 334-337, and modifying Senate Bylaw 195, which governs the membership of the Universitywide Committee on Privilege & Tenure. The Academic Council has approved the proposed legislation for submission to the Assembly.

The University Committee on Rules & Jurisdiction (UCR&J) remains in discussion with UCP&T regarding several points of the proposed legislation. With UCR&J's approval, the legislation is being set forth in this *Notice of Meeting* with the understanding that it may (1) be presented to the Assembly without change – that is, as set forth in this *Notice of Meeting* (2) be presented in this *Notice of Meeting* along with an addendum that specifies several modifications to the proposal (3) be presented to the Assembly in accordance with language finalized between the date this *Notice of Meeting* is mailed and the date the Assembly meets.

#### **Proposed Change to Senate Bylaws Present Wording**

##### **335. Privilege and Tenure: Divisional Committees**

[See Legislative Rulings 3.73, 12.80, 39.3.A-B, 4.94]

- A. Jurisdiction. Divisional Privilege and Tenure Committees shall have jurisdiction to deal with three distinct categories of cases:

1. grievance cases,
2. disciplinary cases, and
3. early termination cases.

Such committees may also be called upon by the campus administration of their Division to render advice on campus policies or local regulations that may affect academic privileges and tenure. [See Legislative Ruling 12.80] (Am 3 Dec 80)

- B. Grievance Cases

1. Any member of the Academic Senate may complain to the Divisional Privilege and Tenure Committee that the member's rights or privileges have been violated. The committee may require that the complainant shall first exhaust all appropriate administrative avenues of redress.

2. In cases of personnel review involving tenure, promotion, or reappointment, such complaints may be based only on allegations: (a) that the procedures were not in consonance with the applicable rules and requirements of the University or any of its Divisions, and/or (b) that the challenged decision was reached on the basis of impermissible criteria, including (but not limited to) race, sex, or political conviction. The committee shall be empowered to determine the validity of the complaints under (a) or (b) but shall not be empowered to reevaluate the academic qualifications or professional competence of the complainant.

#### C. Disciplinary Cases

In cases of disciplinary action commenced by the administration against a member of the Academic Senate, or against other faculty members in cases where the right to a hearing before a Senate committee is given by Section 103.9 or 103.10 of the Standing Orders of The Regents (Appendix I), proceedings shall be conducted before a Divisional Privilege and Tenure Committee. Under extraordinary circumstances and for good cause shown, on petition of any of the parties and with concurrence of the other parties, the University Privilege and Tenure Committee may constitute a Special Committee composed of Senate members from any Division to carry out the proceedings. (CC Jun 77) (Am 3 May 90)

#### D. Early Termination Cases

In cases of proposed termination of a Senate or non-Senate faculty member before the expiration of the faculty member's contract, the faculty member may request a hearing before a Divisional Privilege and Tenure Committee. The committee shall then conduct a hearing on the case to determine whether, in its judgment, the proposed early termination is for good cause and has been recommended in accordance with a procedure that does not violate the privileges of the faculty member. (Am 3 Dec 80)

#### E. Prehearing Procedure in Grievance Cases

1. For the purpose of advising a Senate member on the available relief in case of a grievance, each Division, in accordance with specifications to be determined by such Division, shall appoint an individual or committee (preferably former members of the Privilege and Tenure Committee) whose responsibility shall be to discuss the claim of violation of rights and privileges with the aggrieved Senate member and provide counsel on the appropriate procedure to be followed. Such individuals or committee members shall not serve as representatives of any complainant.

2. Upon receipt of a complaint, the Privilege and Tenure Committee shall first determine whether or not the complaining Senate member has made out a *prima facie* case. A *prima facie* case shall be deemed established if the committee concludes that there is sufficient reason to believe that a right or privilege of the complainant may have been violated. Upon an appropriate showing of need by any party or on its own initiative, the committee may request files and documents under the control of the administration, including the complainant's personnel files and confidential documents contained therein. Such confidential documents shall remain confidential within the committee.
3. The complainant shall have the right to appear before the committee. The committee may also ask other persons involved in the events that gave rise to the complaint, including the department chair, to appear for an informal hearing.
4. If the committee determines that the complainant has not made out a *prima facie* case of violation of a right or privilege, it shall advise the complainant to that effect in a written communication stating the reasons for its conclusion.
5. If the committee determines that the complainant has made out a *prima facie* case of violation of a right or privilege, the committee shall make an attempt to promote a settlement of the controversy between the complainant and the administrative officer, officers, or other persons concerned. If no settlement can be reached, the committee shall conduct a formal hearing in accordance with the provisions set forth herein below under Article 335.G.

#### F. Prehearing Procedure in Disciplinary Cases

1. In cases of disciplinary action commenced by the administration against a member of the Academic Senate, or termination of appointment of a member of the faculty in a case where the right to a hearing before a Senate committee is given under Section 103.9 or 103.10 of the Standing Orders of The Regents, proceedings shall be initiated by the appropriate Chancellor. The complaint shall be in writing and shall contain a full statement of the facts underlying the charges. Upon receipt of the complaint, the chair of the committee shall promptly deliver a copy to the defendant or send it by registered mail to the defendant's last known place of residence. (Am 3 May 90)

2. The defendant shall have fourteen calendar days from the date of the receipt in which to file an answer in writing with the committee. Upon receipt of a written application, the chair of the committee may grant a reasonable extension of time for filing of an answer. (Am 3 May 90)
3. The matter shall first be heard by the committee within 45 calendar days after receipt of an answer or, if no answer is received, after delivery of the complaint. The defendant shall be given, either personally or by registered mail, at least ten calendar days' notice of the time and place of the hearing. The Chancellor or Chair of the Committee may for good reason grant an extension of any of these time limits. (Am 3 May 90)

G. Hearing and Posthearing Procedures (Am 3 Dec 80)

1. The committee shall appoint a hearing committee for each case. The Hearing Committee may be the Divisional Committee on Privilege and Tenure or may be composed of at least five members selected from the membership of the Divisional Committee on Privilege and Tenure and an appointed panel of Division members (except as provided in C above). At least two of the members shall be members of the Divisional Committee on Privilege and Tenure, one of whom shall be chair. The committee may not appoint a member of the department or equivalent unit of the complainant or grievant to the Hearing Committee. A quorum for the conduct of the hearing shall consist of a majority of the Hearing Committee, including at least one member of the Divisional Committee on Privilege and Tenure. (Am 3 May 90)
2. Each party shall be entitled to be present at all sessions of the Hearing Committee when evidence is being received and to select a representative who may act as counsel. Each party shall have the right to present its case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. In order to preserve the confidentiality of the hearing, persons whose presence is not essential to a determination of the facts shall, as a general rule, be excluded from the hearing.
3. The hearing need not be conducted according to the technical legal rules relating to evidence and witnesses. The Hearing Committee may, upon an appropriate showing of need by any party or on its own initiative, request files and documents under the control of the administration. In hearings on grievances or early terminations, the

identity of sources of personnel evaluations, insofar as they are confidential, shall remain so within the Hearing Committee. The Hearing Committee may call witnesses not referred to in the complaint or answer.

4. No evidence other than that presented at the hearing shall be considered by the Hearing Committee or have weight in the proceedings, except that notice may be taken of any judicially noticeable fact. Parties present at the hearing shall be informed of matters thus noticed, and each party shall be given a reasonable opportunity to refute such matters.
5. The Divisional Committee on Privilege and Tenure may, in its discretion, request appointment of a qualified person or persons, designated by the Chair of the University Committee on Privilege and Tenure, to assist in the organization and conduct of the hearing.
6. At the conclusion of the hearing, the Hearing Committee shall promptly make its findings of fact, conclusions supported by a statement of reasons based on the evidence, and recommendation, and forward these to the parties in the case, the Chair of the Divisional Committee on Privilege and Tenure, and the Chair of the University Committee on Privilege and Tenure. The findings, conclusions, recommendations, and record of the proceedings shall be confidential; the Hearing Committee may, however, authorize their release with the consent of the complainant in a grievance case, with the consent of the defendant in a disciplinary case, and with the consent of the faculty member involved in an early termination case.
7. In a disciplinary proceeding, the Hearing Committee shall not have power to recommend the imposition of a sanction more severe than that proposed in the complaint.
8. The hearing shall be recorded and the parties and their representatives shall have the right to a copy of the recording. The cost of the copy shall be assumed by the requesting party. (Am 3 May 90)
9. The Hearing Committee may reconsider a case if either party presents, within a reasonable time after the decision, newly discovered facts or circumstances that might significantly affect the previous decision. (En 25 May 76; Am 3 Dec 80)

## **195. Privilege and Tenure**

- A. Membership shall consist of: One member from each Division normally serving three-year staggered terms and so selected that at least one-half of the members currently serve on or have had previous service on a Divisional Committee on Privilege and Tenure.
- B. Duties.
  - 1. The committee shall advise the President, the Academic Senate and its Divisions, and the Divisional Privilege and Tenure Committees on general policies involving academic privileges and tenure [see Bylaw 335]. (Am 25 May 76)
  - 2. The Committee shall constitute special Hearing Committees as provided for in Bylaw 335.C.

## **Proposed Wording**

### **334. Privilege and Tenure: Divisional Committees -- Jurisdiction**

[See Legislative Rulings 3.73, 12.80, 3.93.A-B, 4.94]

- A. Divisional Privilege and Tenure Committees shall have jurisdiction to deal with three distinct categories of cases:
1. grievance cases (SBL335), **where a member of the Senate claims injury through the violation of his/her rights and privileges;**
  2. disciplinary cases (SBL 336), **where a member of the Senate is accused of having violated the Faculty Code of Conduct; and**
  3. early termination cases (SBL 337), **where a Senate or non-Senate faculty member challenges whether there is good cause for his/her early termination.**

Such committees may also be called upon by the campus administration of their Division to render advice on campus policies or local regulations that may affect academic privileges and tenure. [See Legislative Ruling 12.80] (Am 3 Dec 80)

- B. **At the end of every year, the Divisional Committee will supply a summary of its cases to the University Committee on Privilege and Tenure, to be used for statistical purposes only. This summary shall not include the name of any individual involved in a case before the Divisional Committee. For any matter held over from the previous year, the Committee shall report the final disposition of the case. The Divisional Committee shall also report any final disagreements with their Chancellor.**
- C. **Resolution of Disagreements with the Chancellor. After any formal hearing on grievance, discipline, or early termination, upon notice of the Chancellor's tentative decision to disagree with the Privilege and Tenure findings or recommendations, the Chair of the Divisional Privilege and Tenure Committee should either meet with the Chancellor or arrange for the full Divisional Privilege and Tenure Committee to meet with the Chancellor. The Committee is obliged to report the existence of agreement or disagreement with the Chancellor annually to the Division of the Senate, without divulging confidential information.**

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

A. **Scope**

1. Any member of the Academic Senate may ~~complain~~ **grieve** to the Divisional Privilege and Tenure Committee (**hereafter, the Committee**) that the member's rights or privileges have been violated. **Before considering the grievance and determining whether a formal evidentiary hearing is warranted, the committee** ~~Committee~~ may require that the complainant **grievant** shall first exhaust all appropriate administrative avenues of redress. **Administrative avenues of redress include, but are not limited to,**

**presentation of the grievance along with a request for an administrative remedy to the department chair, dean, or other appropriate academic administrator with authority to investigate and offer a remedy.**

2. In cases of personnel review involving tenure, promotion, or reappointment, such ~~complaints~~ **grievances** may be based only on allegations: (a) that the procedures were not in consonance with the applicable rules and requirements of the University or any of its Divisions, and/or (b) that the challenged decision was reached on the basis of impermissible criteria, including (but not limited to) race, sex, or political conviction. The committee shall be empowered to determine the validity of the ~~complaints~~ **grievances** under (a) or (b) but shall not be empowered to reevaluate the academic qualifications or professional competence of the ~~complainant~~ **grievant**.

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

1. For the purpose of advising a ~~Senate member~~ **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 ~~committee~~ **panel** (preferably former members of the Privilege and Tenure Committee, **but not current members**) whose responsibility shall be **who shall be available to each grievant** to discuss the claim of violation of rights and privileges with the aggrieved ~~Senate member~~ and **to** provide ~~counsel~~ **advice** on the appropriate procedure to be followed. Such individuals or ~~committee~~ **panel** members shall not serve as representatives of any ~~complainant~~ **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 ~~complaint~~ **written grievance**, the Privilege and Tenure Committee shall first determine whether or not the ~~complaining~~ **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.**
3. **If it finds that there is a prima facie case, the Committee may conduct a preliminary review of the evidence to determine whether** that there is sufficient reason to believe that a right or privilege of the ~~complainant~~ **grievant** may have been violated. The ~~complainant~~ shall have the right to appear before the committee. **In the course of its preliminary review, the Committee shall provide the grievant with an opportunity to discuss his or**

**her allegations with the Committee, either orally or in writing.** Upon an appropriate showing of need by any party or on its own initiative, the Committee may request files and documents under the control of the administration, including the complainant's **grievant's** personnel files and confidential documents contained therein. Such confidential documents shall remain confidential within the committee **unless disclosure is required by law. At this stage, the Committee may also give the administrator with authority to offer a remedy notice of the grievance and an opportunity to respond. To further facilitate its review,** the Committee may also ask other persons involved in the events that gave rise to the complaint, **grievance,** including the department chair, to appear for an informal hearing **before or provide information to the Committee.**

4. If the committee determines **either** that the complainant **grievant** has not made out a *prima facie* case of violation of a right or privilege, **or that after a preliminary review, there is not sufficient reason to believe that the grievant's rights and privileges may have been violated,** it shall advise the complainant **grievant** to that effect in a written communication stating the reasons for its conclusion. **The Committee may, at its discretion, provide a copy of that communication to the administration.**
5. If the Committee determines that the complainant **grievant** has made out a *prima facie* case of violation of a right or privilege, **and that there is sufficient reason to believe that the grievant's rights and privileges may have been violated, the Committee shall advise the Chancellor's designee of the grievance and the prima facie determination.** The Committee shall make an attempt to promote a settlement **resolution** of the controversy between the complainant **grievant** and the administrative officer, officers, or other persons concerned. If no settlement **resolution** can be reached, the Committee shall conduct a formal hearing in accordance with the provisions set forth **below.** ~~herein below under Article 335.G.~~
6. **No grievance may be considered by the Committee if more than three years have passed between the time the grievant knew or should have known about the violation of his/her rights and privileges and the resulting injury therefrom, and the filing of a grievance with the Committee.**

### **C. Early Resolution**

1. **Any party may attempt to resolve the grievance informally through negotiations. Such negotiations may proceed with the assistance of impartial third parties, including one or more members of the Committee. A negotiated resolution is permissible and appropriate at any stage of these grievance procedures. If a negotiated resolution is reached after a written grievance is**

**filed, then the Privilege and Tenure Committee should be given notice that the matter has been resolved.**

- 2. The grievance may also be resolved through mediation in cases where such mediation is acceptable to the administration and the grievant. With the consent of the administration and the grievant, the Committee may assist in the selection of an appropriate mediator. Other relevant parties, including members of the Committee, may participate in the mediation.**

D. Hearing and Posthearing Procedures (Am 3 Dec 80)

1. The **Privilege and Tenure Committee** committee shall appoint a Hearing Committee for each **grievance** case **that is not resolved through a negotiated resolution or mediation.** The Hearing Committee may be the Divisional Committee on Privilege and Tenure or may be composed of at least five **should consist of at least three Division members.** members selected from the membership of the Divisional Committee on Privilege and Tenure and an appointed panel of Division members (except as provided in C above). At least two of the members shall be members of the Divisional Committee on Privilege and Tenure, one of whom shall be chair **the Hearing Committee.** The committee may not appoint a member of the department or equivalent **administrative** unit of the complainant or grievant **any of the parties** to the Hearing Committee. **Hearing committee members shall disclose to the hearing committee any circumstances that may interfere with their objective consideration of the case and recuse themselves as appropriate.** A quorum for the conduct of the hearing shall consist of a majority **at least half but not less than three members** of the Hearing Committee, including at least one member of the Divisional Committee on Privilege and Tenure. (Am 3 May 90)
2. **Prior to the formal hearing, the chair of the Hearing Committee shall schedule a conference with the parties and/or their representatives. This conference should attempt to:**
  - a. Determine the facts about which there is no dispute. At the hearing, these facts may be established by stipulation.**
  - b. Define the issues to be decided by the hearing committee.**
  - c. Set a time for both sides to exchange a list of witnesses and copies of exhibits to be presented at the hearing. The Hearing Committee has the discretion to limit each party to those witnesses whose names were disclosed to the other party prior to the hearing and to otherwise limit evidence to that which is relevant to the issues before the hearing committee.**
  - d. Specify whether prehearing and post-hearing briefs will be submitted by the parties as well as the deadlines for those briefs.**

- e. **Attain agreement about whether any person other than the Chancellor, the Chancellor's designee, the grievant, and their representatives may be present during all or part of the hearing.** In order to preserve the confidentiality of the hearing, persons whose presence is not essential to a determination of the facts shall, as a general rule, be excluded from the hearing.
3. Each party **The Chancellor's designee, the grievant, and/or their representatives** shall be entitled to be present at all sessions of the Hearing Committee when evidence is being received. ~~and to select a representative who may act as counsel.~~ Each party shall have the right **to be represented by counsel,** to present its case ~~or defense~~ by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts.
4. The hearing need not be conducted according to the technical legal rules relating to evidence and witnesses. The Hearing Committee may, upon an appropriate showing of need by any party or on its own initiative, request files and documents under the control of the administration. ~~In hearings on grievances or early terminations, The identity of sources of personnel evaluations, insofar as they are confidential,~~ **All confidential information introduced into evidence, including the identity of confidential sources of personnel evaluations,** shall remain so within the Hearing Committee. The Hearing Committee may call witnesses **or make evidentiary requests on its own volition.** ~~not referred to in the complaint or answer~~ **The Hearing Committee also has the discretion to require that all witnesses affirm the veracity of their testimony.**
5. No evidence other than that presented at the hearing shall be considered by the Hearing Committee or have weight in the proceedings, except that ~~notice may be taken~~ **the Hearing Committee may take notice** of any judicially noticeable facts **that are commonly known.** Parties present at the hearing shall be informed of matters thus noticed, and each party shall be given a reasonable opportunity to ~~refute such matters~~ **object to the Hearing Committee's notice of such matters.**
6. The Divisional Committee on Privilege and Tenure may, ~~in~~ **at** its discretion, request **the** appointment of a qualified person or persons, designated by the Chair of the University Committee on Privilege and Tenure, **to provide legal advice and/or** to assist in the organization and conduct of the hearing.
7. **At the hearing, the grievant shall bear the burden of proving the validity of the grievance by a preponderance of the evidence.**

8. At the conclusion of the hearing, the Hearing Committee shall promptly make its findings of fact, conclusions supported by a statement of reasons based on the evidence, and recommendation, and forward these to the parties in the case, **the Chancellor, the Chair of the Divisional Committee on Privilege and Tenure, and the Chair of the University Committee on Privilege and Tenure.** The findings, conclusions, recommendations, and record of the proceedings shall be confidential **to the extent allowed by law and UC policy.** The Hearing Committee may, however, **with the consent of the grievant, authorize their release of the findings, conclusions, and recommendations to other individuals or entities, to the extent allowed by law.** ~~with the consent of the complainant in a grievance case, with the consent of the defendant in a disciplinary case, and with the consent of the faculty member involved in an early termination case.~~
9. The hearing shall be recorded. **The Hearing Committee has the discretion to use a certified court reporter (whose cost is borne by the administration) for this purpose,** and the parties and their representatives shall have the right to a copy of the recording **or transcript.** The cost of the copy shall be assumed by the requesting party. (Am 3 May 90)
10. The Hearing Committee may reconsider a case if either party presents, within a reasonable time after the decision, newly discovered facts or circumstances that might significantly affect the previous decision **and that were not reasonably discoverable at the time of the hearing.** (En 25 May 76; Am 3 Dec 80)

#### **E. Grievance Cases Related to Disciplinary Cases**

1. **There are circumstances in which the same set of facts and allegations lead to both a disciplinary matter and a grievance before the Committee. Under these circumstances, when a single hearing is held, the Committee shall make separate reports of findings, conclusions, and recommendations for the grievance and for the disciplinary matter.**
  - a. **When a grievance involves the same set of facts that are the subject of a disciplinary matter, the Committee on Privilege and Tenure may, at its discretion, hold either matter in abeyance while it proceeds with the other. Alternatively, the Committee may, with the consent of the grievant, the accused in the disciplinary matter, and the Chancellor's designee, consider both matters within a single hearing.**
  - b. **When a Senate member facing disciplinary charges files a grievance involving the same set of facts and circumstances as the disciplinary matter, the Committee on Privilege and Tenure has the discretion to consider both matters within a single hearing.**

2. **When a Senate member files a grievance which is based upon the same facts and incidents involved in a prior disciplinary hearing at which the same Senate member was accused of violating the Code of Conduct, the findings and conclusions of the prior disciplinary hearing shall be conclusive.**

### **336. Privilege and Tenure: Divisional Committees -- Disciplinary Cases**

#### **A. Right to a Hearing**

In cases of disciplinary action commenced by the administration against a member of the Academic Senate, ~~or against other faculty members in cases where the right to a hearing before a Senate committee is given by Section 103.9 or 103.10 of the Standing Orders of The Regents (Appendix I),~~ proceedings shall be conducted before a Divisional Privilege and Tenure Committee **(hereafter, the Committee).** Under extraordinary circumstances and for good cause shown, on petition of any of the parties and with concurrence of the other parties, the University Privilege and Tenure Committee may constitute a Special Committee composed of Senate members from any Division to carry out the proceedings. (CC Jun 77) (Am 3 May 90)

#### **B. Prehearing Procedure in Disciplinary Cases**

1. In cases of disciplinary action commenced by the administration against a member of the Academic Senate, ~~or termination of appointment of a member of the faculty in a case where the right to a hearing before a Senate committee is given under Section 103.9 or 103.10 of the Standing Orders of The Regents,~~ proceedings shall be initiated by the appropriate Chancellor **or Chancellor's designee, once probable cause has been established. Procedures regarding the establishment of probable cause are determined by APM 015/016 and Divisional policies.** The complaint ~~charges~~ shall be in writing and shall contain **notice of proposed disciplinary action and** a full statement of the facts underlying the charges. Upon receipt of the complaint ~~charges~~, the Chair of the **Divisional Privilege and Tenure** Committee shall promptly deliver a copy to the defendant **accused faculty member** or send it by registered mail to the defendant's **accused's** last known place of residence. (Am 3 May 90)
2. The defendant **accused** shall have fourteen **twenty-one** calendar days from the date of the receipt in which to file an answer in writing with the committee. **The Committee shall provide a copy of the answer to the Chancellor or Chancellor's designee.** Upon receipt of a written application, the chair of the committee may grant a reasonable extension of time for filing of an answer. (Am 3 May 90)
3. ~~The matter shall first be heard by the committee~~ **The Privilege and Tenure committee shall consider the matter** within 45 **21** calendar days after receipt of an answer or, if no answer is received, after ~~delivery of the complaint~~ **the deadline for receipt of an answer. The Committee shall evaluate the case and establish time frames for all subsequent procedures. The committee may refer the case to mediation (SBL 336.C) or appoint a hearing committee (SBL 336.D). As a general guide, a prehearing conference (SBL 336.D.2) shall be**

**scheduled within 30 calendar days and a hearing (SBL 336.D) shall be scheduled within 90 calendar days of the appointment of a hearing committee.** The defendant **accused** shall be given, either personally or by registered mail, at least ten calendar days' notice of the time and place of the hearing. The Chancellor, **Chancellor's designee**, or Chair of the **Privilege and Tenure** Committee may for good reason grant an extension of any of these time limits. (Am 3 May 90)

4. **No disciplinary action may commence if more than three years have passed between the time when the Chancellor or Chancellor's designee knew or should have known about the alleged violation of the Code of Conduct, and the delivery of the notice of proposed disciplinary action.**

### **C. Early Resolution**

1. **The Chancellor or Chancellor's designee and the accused may attempt to resolve the disciplinary charges informally through negotiations. Such negotiations may proceed with the assistance of impartial third parties, including one or more members of the Committee. A negotiated resolution is permissible and appropriate at any stage of these disciplinary procedures. If a negotiated resolution is reached after written charges are filed, then the Privilege and Tenure Committee should be given notice that the matter has been resolved.**
2. **The disciplinary charges may also be resolved through mediation in cases where such mediation is acceptable to the administration and the accused. With the consent of the administration and the accused, the Committee may assist in the selection of an appropriate mediator. Other relevant parties, including members of the Committee, may participate in the mediation.**
3. **Once charges have been filed with the Committee, the Chair of the Divisional Privilege and Tenure Committee should request that the Chancellor or Chancellor's designee consult with the Committee or its chair prior to the completion of any early resolution.**

### **D. Hearing and Posthearing Procedures (Am 3 Dec 80)**

1. The **Privilege and Tenure Committee** committee shall appoint a Hearing Committee for each **disciplinary case that is not resolved through a negotiated resolution or mediation.** The Hearing Committee may be the Divisional Committee on Privilege and Tenure or may be composed of at least five **should consist of at least three Division members.** members selected from the membership of the Divisional Committee on Privilege and Tenure and an appointed panel of Division members (except as provided in C above). At least two of the members shall be members of the Divisional

Committee on Privilege and Tenure, one of whom shall be chair **the Hearing Committee**. The Committee may not appoint a member of the department or equivalent **administrative** unit of the complainant or grievant **any of the parties** to the Hearing Committee. **Hearing committee members shall disclose to the hearing committee any circumstances that may interfere with their objective consideration of the case and recuse themselves as appropriate.** A quorum for the conduct of the hearing shall consist of a majority **at least half but not less than three members** of the Hearing Committee, including at least one member of the Divisional Committee on Privilege and Tenure. (Am 3 May 90)

- 2. Prior to the formal hearing, the chair of the Hearing Committee shall schedule a conference with the accused, the Chancellor or the Chancellor's designee, and/or their representatives. This conference should attempt to:**
  - a. Determine the facts about which there is no dispute. At the hearing, these facts may be established by stipulation.**
  - b. Define the issues to be decided by the Hearing Committee.**
  - c. Set a time for both sides to exchange a list of witnesses and copies of exhibits to be presented at the hearing. The Hearing Committee has the discretion to limit each party to those witnesses whose names were disclosed to the other party prior to the hearing and to otherwise limit evidence to that which is relevant to the issues before the Hearing Committee.**
  - d. Specify whether prehearing and post-hearing briefs will be submitted by the parties as well as the deadlines for those briefs.**
  - e. Attain agreement about whether any person other than the Chancellor, the Chancellor's designee, the accused, and their representatives may be present during all or part of the hearing.** In order to preserve the confidentiality of the hearing, persons whose presence is not essential to a determination of the facts shall, as a general rule, be excluded from the hearing.
- 3. Each party **The Chancellor's designee, the accused, and/or their representatives** shall be entitled to be present at all sessions of the Hearing Committee when evidence is being received. and to select a representative who may act as counsel. Each party shall have the right **to be represented by counsel**, to present its case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts.**
- 4. The hearing need not be conducted according to the technical legal rules relating to evidence and witnesses. The Hearing Committee may, upon an**

appropriate showing of need by any party or on its own initiative, request files and documents under the control of the administration. ~~In hearings on grievances or early terminations, The identity of sources of personnel evaluations, insofar as they are confidential,~~ **All confidential information introduced into evidence** shall remain so within the Hearing Committee. The Hearing Committee may call witnesses **or make evidentiary requests** ~~not referred to in the complaint or answer~~ **on its own volition. The Hearing Committee also has the discretion to require that all witnesses affirm the veracity of their testimony.**

5. **Prior discipline involving the same accused faculty member may be admitted into evidence if the prior conduct for which the faculty member was disciplined is relevant to the acts alleged in the current disciplinary matter. Under these conditions, prior hearing reports are always admissible.**
6. No evidence other than that presented at the hearing shall be considered by the Hearing Committee or have weight in the proceedings, except that ~~notice may be taken~~ **the Hearing Committee may take notice** of any judicially noticeable facts **that are commonly known.** Parties present at the hearing shall be informed of matters thus noticed, and each party shall be given a reasonable opportunity to ~~refute such matters~~ **object to the Hearing Committee's notice of such matters.**
7. The Divisional Committee on Privilege and Tenure may, ~~in~~ **at** its discretion, request **the** appointment of a qualified person or persons, designated by the Chair of the University Committee on Privilege and Tenure, **to provide legal advice and/or** to assist in the organization and conduct of the hearing.
8. **At the hearing, the Chancellor or Chancellor's designee has the burden of proving the allegations by clear and convincing evidence.**
9. The Hearing Committee shall not have power to recommend the imposition of a sanction more severe than that proposed in the ~~complaint~~ **notice of proposed disciplinary action. In determining the appropriate sanction to recommend, the Hearing Committee may choose to consider previous charges against the accused if those charges led to prior sanctions either after a disciplinary hearing or pursuant to a negotiated or mediated resolution.**
10. At the conclusion of the hearing, the Hearing Committee shall promptly make its findings of fact, conclusions supported by a statement of reasons based on the evidence, and recommendation, and forward these to the parties in the case, **the Chancellor,** the Chair of the Divisional Committee on Privilege and Tenure, and the Chair of the University Committee on Privilege and Tenure. The findings, conclusions, recommendations, and record of the

proceedings shall be confidential **to the extent allowed by law and UC policy.** The Hearing Committee may, however, **with the consent of the accused,** authorize their release **of the findings, conclusions, and recommendations to other individuals or entities, to the extent allowed by law.** ~~with the consent of the complainant in a grievance case, with the consent of the defendant in a disciplinary case, and with the consent of the faculty member involved in an early termination case.~~

11. The hearing shall be recorded. **The Hearing Committee has the discretion to use a certified court reporter (whose cost is borne by the administration) for this purpose,** and the parties and their representatives shall have the right to a copy of the recording **or transcript.** The cost of the copy shall be assumed by the requesting party. (Am 3 May 90)
12. The Hearing Committee may reconsider a case if either party presents, within a reasonable time after the decision, newly discovered facts or circumstances that might significantly affect the previous decision **and that were not reasonably discoverable at the time of the hearing.** (En 25 May 76; Am 3 Dec 80)

#### **E. Relation to Prior Grievance Cases**

**A disciplinary Hearing Committee shall not be bound by the recommendation of another hearing body, including the findings of the Divisional Committee on Privilege and Tenure in a grievance case involving the same set of incidents. However, the Hearing Committee may accept into evidence the findings of another hearing body or investigative agency. The weight to be accorded evidence of this nature is at the discretion of the Hearing Committee and should take account of the nature of the other forum. In any case, the accused faculty member must be given full opportunity to challenge the findings of the other body.**

### **337. Privilege and Tenure: Divisional Committees -- Early Termination Cases**

#### **A. Jurisdiction**

In cases of proposed termination of a Senate or non-Senate faculty member before the expiration of the faculty member's **appointment, or in cases where a tenured faculty member faces termination for incompetent performance, or for other faculty members whose right to a hearing before a Senate committee is given by Section 103.9 or 103.10 of the Standing Orders of The Regents (Appendix I) (hereafter collectively referred to as early termination),** the faculty member may request a hearing before a Divisional Privilege and Tenure Committee. The committee shall then conduct a hearing on the case to determine whether, in its judgment, the proposed early termination is for good cause and has been recommended in accordance with a procedure that does not violate the privileges of the faculty

member. **Resolution of the dispute, either through negotiation or mediation, is permissible and appropriate at any stage of these proceedings.** (Am 3 Dec 80)

**No Senate or non-Senate faculty member may be terminated prior to the expiration of an appointment without having an opportunity for a hearing before the Divisional Privilege and Tenure Committee. If the hearing has not commenced by the end of the faculty member's term of appointment, the faculty member no longer has a right to an early termination hearing pursuant to this bylaw. Instead, the faculty member may seek a grievance hearing by grieving the non-reappointment pursuant to Senate Bylaw 335 in the case of Senate faculty or the Academic Personnel Manual in the case of non-Senate faculty.**

B. **Hearing and Posthearing Procedures**

1. The **Privilege and Tenure Committee** committee shall appoint a Hearing Committee for each **early termination case for which a hearing is requested by a faculty member.** The Hearing Committee may be the Divisional Committee on Privilege and Tenure or may be composed of at least five **should consist of at least three Division members.** members selected from the membership of the Divisional Committee on Privilege and Tenure and an appointed panel of Division members (except as provided in C above). At least two of the members shall be members of the Divisional Committee on Privilege and Tenure, one of whom shall be chair **the Hearing Committee.** The committee may not appoint a member of the department or equivalent **administrative** unit of the complainant or grievant **the faculty member facing early termination** to the Hearing Committee. **Hearing committee members shall disclose to the hearing committee any circumstances that may interfere with their objective consideration of the case and recuse themselves as appropriate.** A quorum for the conduct of the hearing shall consist of a majority **at least half but not less than three members** of the Hearing Committee, including at least one member of the Divisional Committee on Privilege and Tenure. (Am 3 May 90)

2. **Prior to the formal hearing, the Chair of the Hearing Committee shall schedule a conference with both the faculty member and the Chancellor's designee, and/or their representatives. This conference should attempt to:**

- a. **Determine the facts about which there is no dispute. At the hearing, these facts may be established by stipulation.**
- b. **Define the issues to be decided by the Hearing Committee.**
- c. **Set a time for both sides to exchange a list of witnesses and copies of exhibits to be presented at the hearing. The Hearing Committee has the discretion to limit each party to those witnesses whose names were disclosed to the other party prior to the hearing and to otherwise limit evidence to that which is relevant to the issues before the Hearing Committee.**

- d. Specify whether prehearing and post-hearing briefs will be submitted by the parties as well as the deadlines for those briefs.**
- e. **Attain agreement about whether any person other than the Chancellor, the Chancellor's designee, the faculty member, and their representatives may be present during all or part of the hearing.** In order to preserve the confidentiality of the hearing, persons whose presence is not essential to a determination of the facts shall, as a general rule, be excluded from the hearing.
3. Each party **The Chancellor's designee and the faculty member and/or their representatives** shall be entitled to be present at all sessions of the Hearing Committee when evidence is being received and to select a representative who may act as counsel. Each party shall have the right **to be represented by counsel**, to present its case ~~or defense~~ by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts.
4. The hearing need not be conducted according to the technical legal rules relating to evidence and witnesses. The Hearing Committee may, upon an appropriate showing of need by any party or on its own initiative, request files and documents under the control of the administration. ~~In hearings on grievances or early terminations, The identity of sources of personnel evaluations, insofar as they are confidential,~~ **All confidential information introduced into evidence, including the identity of confidential sources of personnel evaluations,** shall remain so within the Hearing Committee. The Hearing Committee may call witnesses **or make evidentiary requests on its own volition.** ~~not referred to in the complaint or answer~~ **The Hearing Committee also has the discretion to require that all witnesses affirm the veracity of their testimony.**
5. No evidence other than that presented at the hearing shall be considered by the Hearing Committee or have weight in the proceedings, except that ~~notice may be taken~~ **the Hearing Committee may take notice** of any judicially noticeable facts **that are commonly known.** Parties present at the hearing shall be informed of matters thus noticed, and each party shall be given a reasonable opportunity to ~~refute such matters~~ **object to the Hearing Committee's notice of such matters.**
6. The Divisional Committee on Privilege and Tenure may, ~~in~~ **at** its discretion, request **the** appointment of a qualified person or persons, designated by the Chair of the University Committee on Privilege and Tenure, **to provide legal advice and/or** to assist in the organization and conduct of the hearing.

7. **At the hearing, the Chancellor's designee has the burden of proving, by clear and convincing evidence, that there is good cause for early termination. In assessing the evidence for good cause, the Hearing Committee may consider evidence regarding whether correct procedures were followed in the case.**
8. At the conclusion of the hearing, the Hearing Committee shall promptly make its findings of fact, conclusions supported by a statement of reasons based on the evidence, and recommendation, and forward these to the parties in the case, **the Chancellor**, the Chair of the Divisional Committee on Privilege and Tenure, and the Chair of the University Committee on Privilege and Tenure. The findings, conclusions, recommendations, and record of the proceedings shall be confidential **to the extent allowed by law and UC policy.** The Hearing Committee may, however, **with the consent of the faculty member, authorize their release of the findings, conclusions, and recommendations to other individuals or entities, to the extent allowed by law.** ~~with the consent of the complainant in a grievance case, with the consent of the defendant in a disciplinary case, and with the consent of the faculty member involved in an early termination case.~~
9. The hearing shall be recorded. **The Hearing Committee has the discretion to use a certified court reporter (whose cost is borne by the administration) for this purpose,** and the parties and their representatives shall have the right to a copy of the recording **or transcript.** The cost of the copy shall be assumed by the requesting party. (Am 3 May 90)

The Hearing Committee may reconsider a case if either party presents, within a reasonable time after the decision, newly discovered facts or circumstances that might significantly affect the previous decision **and that were not reasonably discoverable at the time of the hearing.** (En 25 May 76; Am 3 Dec 80)

## **195. Privilege and Tenure**

- A. Membership shall consist of: One member from each Division normally serving three-year staggered terms and so selected that at least one-half of the members currently serve on or have had previous service on a Divisional Committee on Privilege and Tenure.
- B. Duties.
  1. The committee shall advise the President, the Academic Senate and its Divisions, and the Divisional Privilege and Tenure Committees on general policies involving academic privileges and tenure [see Bylaw 335]. (Am 25 May 76)
  2. The Committee shall constitute special Hearing Committees as provided for in Bylaw 335.C.

3. **The Committee shall maintain statistical records of the grievance, disciplinary, and early termination cases taking place on each of the campuses, as specified in Bylaw 334.B.**

**Justification from UCP&T Chair Blumenthal:**

The Senate's University Committee on Privilege and Tenure (UCP&T) is hereby proposing, for adoption by the Assembly of the Academic Senate, a series of changes to Senate Bylaws 195 and 335. Bylaw 195 is an "establishing" Bylaw that defines the membership and duties of UCP&T. In its current form, Senate Bylaw 335 defines the duties of Divisional Privilege and Tenure (P&T) committees and spells out the procedures to be used in grievance cases, in disciplinary cases, and in early termination cases. In the accompanying legislation, UCP&T proposes to replace Bylaw 335 with Bylaws 334, 335, 336, and 337.

An earlier version of this legislation was discussed by the Academic Assembly at its February meeting. Since that time, UCP&T has received and discussed comments and suggestions from both systemwide committees and from most of the Divisions.

Accordingly, the legislation proposed here is a slightly modified version of the draft discussed by the Assembly in February. In all, UCP&T has worked on this legislation for more than two years. The Committee is also completing work on a revised version of the Faculty Code of Conduct, which is currently out for review and which UCP&T plans to submit to the Assembly for adoption next year. The legislation before you today in no way requires the adoption of an amended Code of Conduct at a later time. The two documents are complementary but not mutually dependent.

What is UCP&T proposing in the way of Bylaws modification? As noted earlier, SBL 335 describes the procedures that P&T committees must use in dealing with grievances, with early termination disputes, and with faculty discipline. Dealing with all of those issues within a single Bylaw and with a single set of procedures has led to a great deal of procedural confusion and to ambiguities regarding the difference between faculty grievances and faculty discipline.

To better understand this, it may be helpful to summarize the three kinds of matters that can come before P&T. A disciplinary action arises when a Senate faculty member is accused of having violated the Faculty Code of Conduct. Such cases must first be investigated by an appointed faculty investigator or committee, and an administrator designated by the Chancellor must determine whether the evidence provides sufficient or probable cause to believe that the accused faculty member has violated the Code of Conduct. If there is such a finding, the faculty member can exercise her/his right to a formal evidentiary hearing before P&T, which then makes a factual determination about whether the Code has been violated and (if so) a recommendation regarding the appropriate sanction.

A second type of case that comes before P&T is a grievance, which is an assertion by a Senate member that his/her rights and privileges have been violated. For example, grievances might concern a procedural error during a personnel review, the denial of some entitled benefit, or the violation of one's academic freedom. In such cases, P&T first determines whether there is prima facie evidence for a violation of rights. If that is present,

P&T then attempts to find an appropriate resolution satisfactory to both the administration and the grievant, and only if such a resolution cannot be achieved, does the P&T committee hold a formal evidentiary hearing on the grievance. In grievances, P&T does not assign fault, but rather determines what kind of equitable remedy is appropriate for an aggrieved faculty member.

Lastly, an early termination hearing may occur when a faculty member faces termination prior to the completion of their normal contractual period. P&T is mandated to hold such hearings for both Senate and non-Senate faculty by Regental Standing Orders 103.9 and 103.10. While such cases have been quite rare within the UC system, they are not unheard of. It is also worth noting that a full P&T hearing is the last formal step prior to judgment on termination under UC's new policy on incompetent performance, codified in APM-075.

The legislation being proposed by UCP&T for adoption by the Assembly includes a separate Bylaw for each of the three kinds of cases: discipline, grievance, and early termination. By placing each set of procedures in a separate Bylaw, we hope to minimize confusion and clarify the differences in procedure used in each type of situation. Admittedly, the resulting Bylaws are considerably longer (and more repetitive) than the current Bylaw 335, but this seems a small price to pay for the ensuing clarity. After all, the overwhelming majority of cases fall into just one of these categories, and any party will just need to read about the procedures relevant to that single category. However, UCP&T has also included specific language dealing with situations involving both discipline and grievance in order to give guidance to P&T committees regarding their options in dealing with such complicated situations.

The existing Bylaw 335 describes in some detail the procedures that a P&T Hearing Committee must follow in conducting a formal hearing. However, the Bylaw does not specify who has the burden of proof at such a hearing or what level of proof is required, an omission that many P&T members found astonishing. It is analogous to having a criminal trial without assigning to the district attorney the burden of proving guilt beyond a reasonable doubt. The proposed Bylaws clearly specify both the burden and the level of proof required at a hearing. In disciplinary cases against a faculty member, the administration will bear the burden of proving a violation of the Faculty Code of Conduct by clear and convincing evidence. In grievance hearings, the grievant will be required to prove a violation of her/his rights and privileges by a preponderance of the evidence. Finally, in early termination cases, the administration will be required to provide clear and convincing evidence that there is good cause for the termination. This last requirement is consistent with both Regental Standing Orders and AAUP guidelines.

Under UC's system of shared governance, Divisional P&T committees are empowered to hold hearings, but their findings and recommendations are only advisory to the Chancellor, or in certain cases, to the President or the Regents. In the vast majority of cases on the various campuses, the Chancellors' decisions have been fully in accord with the recommendations of P&T, which would otherwise be obligated to report the existence of disagreements to their Divisions. The proposed new Bylaw 334 explicitly incorporates an important new agreement reached last year between the Senate and the President's office. In the event that a Chancellor disagrees with the findings of a hearing conducted under P&T's auspices, the Chancellor will meet with the P&T chair, and at the chair's discretion,

with the whole P&T committee in order to resolve the differences prior to a final decision by the Chancellor. Language to this effect is already incorporated in the new APM-075, and UCP&T proposes to include such language in the Bylaws so that this procedure applies to all types of cases under P&T's jurisdiction.

Another of the changes being proposed deserves mention. Because discipline and grievance cases are relatively rare and always treated as confidential, P&T committees and even UCP&T do not have a good perspective on the nature or disposition of these cases. It would be useful to know how many cases there are, whether the number is increasing or decreasing, what kinds of Code of Conduct violations are being prosecuted, what sanctions are appropriate for each type of violation, and whether different campuses generate different types or numbers of cases. To help answer these questions, the proposed Bylaws require Divisional P&T committees to provide general, non-confidential information on their caseloads to UCP&T, which will maintain a database. At this time, UCP&T is attempting to clarify the exact type of information it will be requesting annually from the campuses.

In order to ensure fairness in the conduct of hearings, UCP&T is also proposing to establish a statute of limitations on the imposition of discipline and on the consideration of grievances. The proposed Bylaws constrain P&T committees to consider a notice of proposed disciplinary action only if less than three years have passed since the administration knew or should have known of the alleged violation of the Faculty Code. A similar limit is proposed for grievances.

In addition to these major changes, UCP&T has also included language involving smaller changes to the Bylaws. While it is impractical to mention them all, I shall list a number of these other changes:

- The goals and procedures of the prehearing conference are specifically set forth in the three bylaws. Similarly, in all three types of cases, we have included specific language which encourages an early resolution through negotiation or mediation.
- The references to Regental Standing Orders 103.9 and 103.10, which deal with early termination, are removed from the disciplinary bylaw and placed in Bylaw 337 dealing with early termination, where they really belong.
- Currently, a hearing may be re-opened if there are newly discovered facts or circumstances that might have affected the outcome. Because it is desirable for the University in general and for P&T in particular to have a hearing be final and conclusive, the proposed bylaws retain the option of re-opening the hearing, but only if the newly discovered facts were not reasonably discoverable at the time of the hearing.
- The early procedures in grievances are more clearly spelled out. In particular, the issue of whether there is a prima facie case (assuming the allegations are all true) is separated from the issue of whether a preliminary investigation indicates that there are reasonable grounds for believing that the allegations are true. In the interest of efficiency, at this early stage the revised bylaw does not call for an informal hearing, but rather allows the P&T committee to seek additional evidence either personally or in written form from all parties (including the grievant). Of course, in such cases, there may be a formal hearing later.

- The proposed Bylaws give the P&T Hearing Committee the right to use a certified court reporter to record a hearing. Currently, recording procedures vary among the campuses.
- In disciplinary hearings, the Bylaws include a new section allowing the introduction of evidence (and hearing transcripts) regarding previous disciplinary cases involving the faculty member if the alleged misconduct is similar to those earlier cases. Each case should be decided on its own merits, but this addition allows the Hearing Committee to consider patterns of behavior and to take account of previous Code violations in recommending a sanction.

Since the Assembly first discussed these proposed Bylaws in February, UCP&T has made a number of changes in response to the comments received by the committee. These changes include the following:

1. 335.B.5 First sentence, remove “(with authority to offer a remedy)”
2. 335.C.1 Third sentence, change “grievance was filed,” to “grievance is filed,”
3. 335.E.1. Second sentence, add comma “conclusions, and recommendations”
4. 336.B.1. First sentence, delete “in accordance with APM 015 and applicable local campus procedures.” add new second sentence: “Procedures regarding the establishment of probable cause are determined by APM 015/016 and Divisional policies.”
5. 336.C.1 Fourth sentence, change “charges were filed” to “charges are filed”
6. 337.A. Third sentence, delete “an early”. Begin sentence: “Resolution of the dispute....”
7. 337.B.7. Second sentence, delete “the appropriateness of the earlier procedures followed in the case” and replace with “whether correct procedures were followed in the case.”
8. 335.B.1 Second sentence, strike “committee” and insert “panel”
9. 336.D.1 First sentence. Insert “(SBL 336.D.1)” right after the words “hearing committee”
10. 337.A. Add new second paragraph
11. ADDITIONAL LANGUAGE TO BE INSERTED IN 335.D.1, 336.D.1, 337.B.1 (inserted just before the last sentence in the paragraphs and just after the sentence about not appointing a member of the same department): “Hearing committee members shall disclose to the hearing committee any circumstances that may interfere with their objective consideration of the case and recuse themselves as appropriate.”
12. REVISION TO 336.B.3: The Privilege and Tenure Committee shall consider the matter within 21 calendar days after receipt of an answer or, if no answer is received, after the deadline for receipt of an answer. The Committee shall evaluate the case and establish time frames for all subsequent procedures. The Committee may refer the case to mediation (SBL 336.C) or appoint a hearing committee (SBL 336.D). As a general guide, a prehearing conference (SBL 336.D.2) shall be scheduled within 30 calendar days and a hearing (SBL 336.D) shall be scheduled within 90 calendar days of the appointment of a hearing committee. The accused shall be given, either personally or by registered mail, at least ten calendar days’ notice of the time and place of the hearing. The Chancellor, Chancellor’s designee, or Chair of the Privilege and Tenure Committee may for good reason grant an extension of any of these time limits. (Am 3 May 90).

13. REVISION TO 337.A, SECOND PARAGRAPH, FINAL SENTENCE:  
“Instead, the faculty member may seek a grievance hearing by grieving the non-reappointment pursuant to Senate Bylaw 335 in the case of Senate faculty or the Academic Personnel Manual in the case of non-Senate faculty.”

Let me comment briefly on a few of these changes. Changes (10) and (13) clarify what is already in the Standing Orders of the Regents, namely that early termination cannot occur prior to a hearing, even if the hearing is unavoidably delayed. However, once a non-tenured faculty member's term of appointment ends, it is irrelevant to hold an early termination hearing (since the termination is no longer early). In that case, the faculty member retains the right to grieve his/her non-reappointment. Change (11) places a statement in the bylaws dealing with conflicts of interest or other conflicts which might affect a Hearing Committee members ability to render an impartial judgment. Finally, change (12) attempts to incorporate a set of aspirational deadlines for the conduct of disciplinary hearings. Most such cases involve very considerable delay, and this revision establishes a non-mandatory time frame for the conduct of disciplinary cases.

These revisions are all incorporated in the legislation before you. UCP&T therefore urges the adoption of these revised Bylaws.