

**UNIVERSITY COMMITTEE ON PRIVILEGE AND TENURE
2019-20 Annual Report**

TO THE ASSEMBLY OF THE ACADEMIC SENATE:

Under Senate Bylaw 195, the University Committee on Privilege and Tenure Met three times in 2019-20.

- A. Membership shall be determined in accordance with Bylaw 128. The Vice Chair shall be chosen in accordance with Bylaw 128.D. (Am 28 May 2003)
- B. Duties. Consistent with [Bylaw 40](#) the committee shall: (Am 23 May 01; Am 28 May 2003)
 - 1. 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 334](#)]. (Am 25 May 76; EC 28 May 2003)
 - 2. Constitute special Hearing Committees as provided for in Bylaw 336.A. (EC 28 May 2003)
 - 3. Maintain statistical records of the grievance, disciplinary, and early termination cases taking place on each of the campuses, as specified in [Bylaw 334.B](#) . (EC 28 May 2003)

Topics of Note During the 2019-20 Year

Senate Bylaw 336 Implementation

Bylaw 336 was reviewed last year in the winter and spring, the Senate adopted the changes, and then it was implemented. There was concern on the part of the Senate and on the campuses that the stated timelines would be challenging and that a good faith effort toward meeting them needed to be carefully and assiduously documented. Care also needed to be shown to ensure due process.

A small Bylaw 336 workgroup determined that the best way to support the campuses with the implementation of the bylaw is to have two FTE analysts in the Office of the General Counsel. They will work with the campuses and the OGC attorneys to help support all of the logistics and the steps involved when P&T hearings need to be scheduled. The strategy in placing the analysts at OP is that that they can provide a systemwide resource that can promote consistency, can help with the tracking of cases, and can provide expertise and institutional memory for all campuses.

New APM 011 Policy

There is a new APM 011 policy, which extends academic freedom to non-faculty explicitly for the first time. There is concern about the role P&T would play in this process and whether this would be a substantial workload or not. The effect of this policy will be assessed in three years to see how many cases were filed, what the workload was, and whether there needs to be some adjustment in the policy. P&T would receive a grievance if a non-faculty academic appointee thought that his/her academic freedom had been abridged in something related to teaching or research. If it were found not to be under the umbrella of academic freedom, but under the language of 011, then it would go through the APM 140 process.

SVSH in a Clinical Setting

A working group was convened last May on this topic; it was comprised of people from all different aspects of academic life and healthcare institutions.

The UC was an early leader in having an SVSH policy but it was very focused on the University's identity as an educational institution; the circumstances that surround a patient care environment were not adequately covered. The President therefore commissioned a large working group to develop UC's own formal policy for SVSH in the clinical setting.

The administration was initially concerned about physician-on-patient transgressions, but that many forms of SVSH can take place in the clinical setting. If there is a reported transgression, the Title IX office and the senior medical center official would establish an incident response team. There will be an initial assessment done by the Title IX Office to see if there is an immediate concern about patient safety – if there is, there can be non-contact orders, the physician can be removed from the clinic, etc. In the case of a SVSH claim, physicians can be placed on temporary administrative reassignments. Guidelines and clinical directives have been finalized for implementation by the UC healthcare systems.

Evidentiary Standards

On May 6, 2020, the U.S. Department of Education issued new Title IX regulations requiring schools around the country use the same evidentiary standard in all sexual violence and sexual harassment cases covered by the regulations regardless of the respondent's affiliation with the University (i.e., student, faculty or staff). August 14, 2020, is the effective date of the regulations.

The regulation creates a conflict in evidentiary standards in the University's adjudication of sexual harassment cases. The Academic Senate in Bylaw 336 requires the Chancellor or Chancellor's designee to prove the allegations by "clear and convincing evidence" in faculty privilege and tenure disciplinary hearings. On the other hand, in Title IX sexual violence arena the preponderance standard is used in all cases during the investigation/determination of responsibility phases and stage, and is also used at the adjudication stage in matters involving student respondents. California law requires this standard for students.

In order to adhere to the Senate Bylaw while also conforming with institutional policies and in recognition of both California and Federal law, the UC Privilege and Tenure Committee advised that Divisional P&T hearing committees should implement the following procedures for sexual harassment cases covered by the Department of Education's regulations:

1. In its Bylaw 336.F.2 prehearing notification to the parties, the chair of the hearing committee should advise the parties that evidence presented will be weighed under both the "clear and convincing" and "preponderance of the evidence" standards.
2. In its consideration of the case and deliberations, the hearing committee should evaluate the evidence under both the "clear and convincing" and "preponderance of the evidence" standards.
3. In its findings of fact, conclusions, statement of reasons, evidence and recommendation, the hearing committee should write its report with analysis under both under both the "clear and convincing" and "preponderance of the evidence" standards. However, if the hearing committee determines that the clear and convincing standard is satisfied, a separate analysis under the preponderance standard is not necessary. Rather, the hearing committee can simply indicate that since the clear and convincing standard is met, the preponderance standard is necessarily satisfied.

By applying both standards of proof in its deliberations and recommendations, the hearing committee's recommendations (whether in favor or against discipline, and with regard to the proposed sanctions) will facilitate the Chancellor's final decision making process, and will be in accordance with UC policy and applicable laws.

Acknowledgements

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Respectfully submitted,

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