

**UNIVERSITY COMMITTEE ON PRIVILEGE AND TENURE
ANNUAL REPORT 2000-2001**

TO THE ASSEMBLY OF THE ACADEMIC SENATE:

The Universitywide Committee on Privilege and Tenure (UCP&T) met four times during the 2000-2001 academic year, continuing and finally concluding the work of translating the 1997 Report of the Task Force on Disciplinary Procedures into modifications to Senate Bylaws. Corresponding revisions to APM-015, Faculty Conduct and Administration of Discipline are being advanced by Administration (in close consultation with UCP&T). UCP&T also proposed revisions to its establishing bylaw, SB 195, to allow statistical record keeping of grievance, disciplinary and early termination cases. UCP&T wishes to acknowledge the hard work and commitment of its administrative consultants, Carole Rossi, University Counsel; and Sheila O'Rourke, Executive Director—Academic Compliance and Special Assistant to the Provost.

**Proposed Revisions to Senate Bylaws 335, 195
Proposed New Senate Bylaws 334, 336, 337**

At the May 23, 2001 meeting of the Academic Assembly, after lengthy discussion and with the adoption of two relatively minor amendments, the Assembly overwhelmingly approved UCP&T's proposed revisions to Senate Bylaws. The committee's discussions on Bylaw revisions began four years ago in response to the 1997 Report of the Task Force on Disciplinary Procedures, a systemwide report that proposed a number of changes in the way that faculty discipline is administered at UC.

In its earlier version Senate Bylaw 335 defined the duties of Divisional Privilege and Tenure (P&T) committees and spelled out the procedures to be used in grievance, disciplinary, or early termination cases. However, 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. The legislation proposed by UCP&T and adopted by the Assembly resulted in a separate Bylaw for each of the three kinds of cases: discipline, grievance, and early termination. Placing each set of procedures in a separate Bylaw minimizes confusion and clarifies the differences in procedure used in each type of situation.

Burden of proof. Former Bylaw 335 described in some detail the procedures that a P&T Hearing Committee must follow in conducting a formal hearing. However, the Bylaw did not specify who had the burden of proof at such a hearing or what level of proof is required, an omission that is analogous to having a criminal trial without assigning to the district attorney the burden of proving guilt beyond a reasonable doubt. The revised Bylaws now clearly specify both the burden and the level of proof required at a hearing.

In the event of Chancellors' disagreement with P&T findings. Under UC's system of shared governance, P&T committees 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, the Chancellors' decisions have been fully in accord with the recommendations of P&T. 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 already is incorporated in the new APM-075.

Statistical record keeping. 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. A revision to Bylaw 195 requires P&T committees to provide general, non-confidential information on their caseloads to UCP&T, so that a database may be maintained. The 2001-02 UC&T will continue to work to clarify the exact type of information it will be requesting annually from the campuses.

Statute of limitations. In order to ensure fairness in the conduct of hearings, a statute of limitations is now in effect on the imposition of discipline and on the consideration of grievances. UCP&T's revisions to 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 in effect for grievances.

A variety of smaller changes to the Bylaws were proposed by UCP&T and adopted by the Assembly, including the following:

- Prehearing conference goals and procedures are set out.
- Specific language encouraging early resolutions is incorporated.
- The option of re-opening hearings is retained, but only if the newly discovered facts were not reasonably discoverable at the time of the hearing.
- Early procedures in grievances are more clearly spelled out.
- The proposed Bylaws give the P&T Hearing Committee the right to use a certified court reporter to record a hearing.
- 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.

Proposed Revisions to APM-015—Faculty Conduct and Administration of Discipline

In an effort paralleling UCP&T's examination of Senate Bylaws, a joint faculty/administrative working group was established in 1999 to draft modifications to APM-015. The APM, of course, is an administrative document, and UCP&T's role is to

consult on proposed revisions. The Faculty of Code of Conduct, however, which is incorporated into APM-015, is a Senate document. The Academic Council and the Academic Assembly both must approve revisions to the Faculty Code of Conduct, while The Board of Regents holds final authority for approval of any revisions to APM-015.

Early in the 2001-2001 academic year, UCP&T will bring forward proposed changes to APM-015 for adoption by the Assembly. UCP&T anticipates setting out in the revisions in two separate APM sections: 015 and 016. APM 015 is the Faculty Code of Conduct, while APM 016 is the University Policy on Faculty Conduct and the Administration of Discipline (both of which currently are contained solely within APM 015).

Respectfully submitted,

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