



UNIVERSITY COMMITTEE ON PRIVILEGE AND TENURE

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August 19, 2021

TO: DIVISIONAL PRIVILEGE AND TENURE COMMITTEES

**FROM: UNIVERSITY COMMITTEE ON PRIVILEGE AND TENURE,
JORGE HANKAMER, CHAIR**

On February 10, 2021, the Academic Assembly approved a revision to Senate Bylaw 336.F.8 specifying that, whereas the Chancellor or Chancellor's designee normally has the burden of proving allegations in disciplinary cases by clear and convincing evidence, "for allegations of a violation of the University's policy on Sexual Violence and Sexual Harassment [SVSH], the Chancellor or Chancellor's designee has the burden of proving the allegations by a preponderance of the evidence." This change was prompted by the combination of the 2020 Title IX regulations requiring the use of a consistent evidentiary standard for faculty respondents and student respondents for certain SVSH cases, and state law requiring use of the preponderance of the evidence standard in an overlapping set of SVSH cases with student respondents. See 34 C.F.R. § 106.45(b)(1)(vii); Cal. Educ. Code § 67386(a)(3). In drafting this revised bylaw language, it was the University Committee on Privilege & Tenure's ("UCPT") intent that this updated standard of proof apply to all cases alleging SVSH violations in which disciplinary charges were filed by the Chancellor on or after February 10, 2021, the effective date of the bylaw revision, regardless of when the underlying alleged conduct took place or when the Title IX investigations took place.

UCPT therefore is issuing this guidance to confirm that campus Hearing Committees should use the preponderance of the evidence standard for all allegations of a violation of the University's SVSH policy where the charges were filed on or after February 10, 2021, regardless of when the underlying alleged conduct took place or when the Title IX investigations took place.¹ However, in cases where the Hearing Committee finds that the Chancellor or Chancellor's designee has met their burden of proving such allegations by a preponderance of the evidence, and the alleged conduct took place prior to February 10, 2021, the Hearing Committee may, at its sole discretion, separately indicate whether the allegations would also satisfy the clear and convincing evidence standard. Disciplinary recommendations in such cases, however, should be based only on whether the preponderance of the evidence standard is met.

If you have any questions, please consult with your P&T Hearing Committee counsel.

This document has been approved by the University Committee on Privilege and Tenure. This document is intended to provide guidance to campus Privilege & Tenure Committees, and has not been reviewed or adopted by the Academic Council.

¹ Allegations not related to a violation of the SVSH policy continue to be evaluated under the clear and convincing evidence standard.