

UNIVERSITY COMMITTEE ON PRIVILEGE & TENURE
Minutes of Meeting
Friday, February 26, 2021

I. Chair's Comments/Consent Calendar

Jorge Hankamer, UCPT Chair

Action Taken: The agenda was approved; the minutes were approved with corrections, 7-0-0.

II. Consultation with the Systemwide Title IX Director

Suzanne Taylor, Systemwide Title IX Director

The Director had a few questions for the committee about the Task Force report. She asked if it was envisioned as a requirement to restrict the scope of a hearing, and how much discretion would be allowed. The Chair answered that the Task Force was trying to agree on a set of recommended protocols as advice from UCPT to the campuses. It was unclear if the procedures would need to be incorporated into the Bylaws or whether they could remain a set of practices. The Director asked some questions about the categories that would be allowed per the report. For the first category, she wondered if it was a technical opinion if the hearing officer properly applied the definitions in the SVSH policy, and who would provide that opinion. The Chair answered that it was a technical opinion and that the hearing committee would decide based on advice from an attorney. For the second category, the Director wanted to offer some specifics. She said that she thought it would help if the hearing chair were to make a determination at the outset about whether the information that was proposed was unavailable at the time of the Title IX hearing and also whether the information was material and could affect the outcome. The Chair answered that the proposal relies on the fact that - at the prehearing meeting - the chair of the hearing committee has the prerogative of determining what witnesses and evidence would be heard. The committee wants it to be clear that s/he has this authority. The committee and Director discussed the report and related issues with much back-and-forth.

III. Title IX Phase Hearing - Task Force Report

The Chair asked if there was comment or discussion on the Task Force report. He said that if - in the course of the hearing - a hearing committee realizes that it had wanted to ask a question, then it can do so. The hearing committee always has the power to say that it wants to hear from a witness. The Vice Chair added that the committee needed to be mindful of the caveat that a hearing committee cannot make a change to the determination made by Title IX. Member Gill remarked that just as Title IX is enshrined, so is the faculty's right for a hearing. Member Otter congratulated the Task Force on finding a middle ground, but remarked that the report does seem to significantly change the dynamics of the hearing. He said that he did not think the position of the hearing committee is to accept the report by default. Mr. Otter has been involved in SVSH hearings where the hearing committee reached different conclusions from the Title IX report.

Members discussed how hearings were handled on the various campuses. Member Tucker remarked that there seemed to be different managing of the barrier produced by the inertia of the bureaucratic process. The Vice Chair remarked that the job of PT is not to determine if there

has been a violation of Title IX; it is to determine that the violation has been serious. The Chair added that a PT hearing committee could take a case and say that the preponderance standard had been met; the P&T hearing committee might conclude that the Title IX officer made the wrong judgement. This calls into question the assumption that the Title IX result has to be taken as given and not challenged. The Chair added that the next task before the committee was to develop guidelines regarding what kind of questions would rise to the appropriate level, who is determining that decision, and why were those questions not asked before. He said that he believes that the committee can try to lay out a framework defining the circumstance where one would admit a question and where one would not. The committee formed a Task Force of members Tucker, Guthman, Hankamer, Ferrero and Gill to develop guidelines for hearing committee chairs with specific attention to SVSH cases. The Task Force will also consider making changes to Bylaw 336.

IV. Member Item: Possible Amendment to the Title IX Regulations – Graduate Council

Daniel Bikle

Member Bikle asked to get a sense if the group felt that P&T can be bypassed with a decision made by the graduate councils to “boot” an individual out of his/her graduate group when that individual has been charged with an SVSH case, but has not yet had discipline imposed. He remarked that Director Taylor and Attorney Adviser Meltzer were going to look into this question. The Chair noted that this is an area where the impulse is to protect innocent victims from bad behavior can interfere with due process for the accused. The committee discussed the option of paid administrative leave. They also discussed the erosion of faculty rights and the need to protect due process. Mr. Bikle said that the graduate council wants the authority to remove the faculty member from their graduate group and to make it a condition of membership; it is a substantial change. He said that the decision should not just be up to the graduate council but should be something on which P&T can opine.

V. Consultation with the Attorney Advisers to UCPT

Chad Pimentel – Office of the General Counsel

Josh Meltzer - Office of the General Counsel

The committee did not have questions for the attorneys, other than what had already been discussed.

VI. Member Item: Simultaneous Misconduct Charges and Merit and Promotion Considerations

Julia Simon, UC Davis

Member Simon explained that the Davis division had at least two grievances dealing with disciplinary action. In one case the misconduct investigation was opened up in August, but the person decided to go up for tenure and promotion in July. The merit and promotion case was not brought forward until there was some preliminary findings of the investigation. The person found out about it and filed a parallel grievance. Ms. Simon voiced the opinion that there should be a mechanism to put a personnel action on hold in cases such as this. If a faculty member gets tenure and is promoted, and then they are found guilty of the misconduct, the tenure cannot be taken away.

Members discussed the issue with examples from their various campuses. The Chair asked Mr. Meltzer to research the issue and said that it should be placed on the May committee agenda.

VII. Consultation with Academic Senate Leadership

Mary Gauvain – Academic Senate Chair

Robert Horwitz – Academic Senate Vice Chair

The Senate Chair said that the governor released a preliminary budget in January that was not favorable to the UC. However, he later reinstated the University's funding. The final budget is not filed until June. Two parts of the budget seem like overreach: the state wants UC to increase its online courses by 10 percent relative to the 2018-19 number and it also wants UC to develop an additional way to admit transfer students. These decisions should not be scripted for UC; the Provost and the President are very concerned.

The feasibility study, which is the follow up to eliminating the ACT and SAT, is looking at using a test called Smarter Balance. Separately, there is a continuation of discussions with UC Health with Catholic hospitals. Another issue is COVID-19 and the possibility of returning to in-person instruction in the fall. UCFW and UCAADE wrote a letter on the ways faculty are being affected and suggested how they could be supported. Should a vaccine be mandated and how can that be operationalized? Some of the discussions about reopening pertain to faculty's willingness to return to their jobs in-person; there are faculty who want to continue to work remotely.

The Senate Vice Chair told the committee that Human Resources at OP is being restructured. The University has engaged the Mercer Consulting Group to create a plan to take care of the problems people have had with the RASC (Retirement Administration Service Center) and also a plan to treat benefits as a whole package. He added that the President put together two symposia on policing; the second one is in March.

The committee asked the Senate leadership questions about the topics they had raised.

VIII. Consultation with the Academic Personnel

Susan Carlson, Vice Provost – Academic Personnel & Program

The Vice Provost told the committee that she was going to share a preview of policy work that is coming up. In the spring, a committee will be put together to look at discrimination policies; it will include Senate membership. The University has several discrimination policies and there are several kinds of concerns that the committee will be asked to address. The committee would be charged with developing a framework and more consistent policies and procedures. The goals would be to increase consistency, equity, and timeliness of investigations; the committee might create a single policy that would deal with many kinds of respondents.

A second policy revision that is coming looks at the University's outside professional activity policies and issues of conflict of commitment. This is coming from the health sciences. A year or so ago, there was a *Pro Publica* piece about UC faculty in the health sciences and how some of them were not reporting all of their outside activities. Based on that, UC Health put together a committee and made a report to the Regents and a recommendation to have more transparent policies and to increase reporting. Scrutiny is also coming from an internal audit that UC has done on foreign influence. This is about faculty who have substantial affiliations with institutions that are not in the US. The audit will be out soon and will have recommendations. The third policy an anti-bullying policy. As of now, there is no systemwide policy for academics in this arena. This would be a presidential policy.

The committee and the Vice Provost engaged in discussion about her update.

IX. Reports to UCPT from Chancellors in Discipline Cases

The Chair informed the committee that in Bylaws 335 and 336, the section on hearing and post-hearing procedures says that the hearing committee will promptly make its finding of facts and forward these to the to the parties in the case, the chancellor, the chair of the divisional P&T committee and the chair of the systemwide P&T committee. He said he was interested in this because he had an ambition to create a way that P&T hearing committees could refer to decisions that had been made in the past. He asked if divisional committees are complying with this requirement. The committee discussed confidentiality concerns of such a collection versus its utility, and whether the collection would be “searchable.” The Chair proposed that the Bylaw 336 Task Force take this issue on as one of its charges. Member Gill suggested that five years of files be requested from the campuses. The Chair added that – moving forward – such submissions to the systemwide UCPT chair need to also be copied to the systemwide UCPT analyst for recordkeeping.

X. Roundtable: Reports from the Divisions

Members reported on P&T issues from their divisions.

XI. Other Topics/New Business

There was no new business.

The committee adjourned at 3:26 p.m.

Minutes written by Fredye Harms, Committee Analyst
Attest: Jorge Hankamer, UCPT Chair