

UNIVERSITY COMMITTEE ON PRIVILEGE & TENURE
Minutes of Meeting
Friday, February 28, 2020

I. Chair's Comments/Updates

Nicholas Webster, UCPT Chair

The Chair had members introduce themselves. He said that the committee would need a vice chair next year and asked members to consider serving. He mentioned the graduate student strikes and said that there would possibly be one at Merced.

II. Consent Calendar

A. Approval of the agenda

The agenda was approved.

B. Approval of the November 22, 2019 minutes

The minutes have not been distributed for review as of yet.

III. Senate Bylaw 336 Implementation – Follow Up

Hilary Baxter, Academic Senate Executive Director

Executive Director Baxter said that 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 hearings need to be scheduled. The strategy in placing the analysts at OP is 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. It is important that the campuses unite behind this decision to help ensure its success. The strength of the argument for needing additional resources gets somewhat weakened if it is not uniformly supported. She said that it is also important that UCPT members and analysts have a designated attorney from OGC to help them with their work. It is not clear who is going to assume that role.

The committee discussed problems with scheduling and the potential difficulty of adding one more person to the list of people who would need to be scheduled. There was a suggestion about limiting hearings to four days which was received well.

Members were supportive of the proposal for the two FTEs located at OP. Ms. Baxter noted that it would be good to get the proposal before President Napolitano before she left because she (the President) was invested in facilitating the hearing process.

IV. Consultation with the Attorney Advisor to UCPT

Shondella Reed – Office of the General Counsel

Ms. Reed stated that the workload was very robust at the fall but has slowed down a bit. The first load of hearings under 336 was definitely challenging; there was particular difficulty in scheduling. She questioned what would be good cause for breaching the 60 days, and would that cause withstand a challenge if UC were audited. Whichever party was responsible for the delay would be asked to submit a written argument explaining why it was not able to meet the timeline and the other party would respond to that. She said that the P&T committees are the guards of due process and that documentation is key. She noted that summer break would soon be coming

and that campuses would need to know who would be available for scheduling. The Chair and OGC would determine if a delay is legitimate.

OGC is working to select a new attorney who will be taking on the bulk of the P&T cases. They hope to have that person in place by spring.

V. Consultation with Academic Personnel

Susan Carlson, Vice Provost – Academic Personnel & Programs

Pamela Peterson, Executive Director & Deputy to the Vice Provost – Academic Personnel & Programs

Vice Provost Carlson talked about the new APM 011 policy, which extends academic freedom to non-faculty explicitly for the first time. The mechanism of that has created some confusion. There is concern about the role P&T would play and whether this would be a substantial workload or not. This 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. Committee members expressed some confusion about how to handle these cases. VP Carlson said that she could follow up with guidance at the next meeting. She also said that her office would work with the campuses on cases that need Regental or Presidential decisions. They are seeing more cases about curtailing or revoking emeritus status and are looking to make sure that consistent decisions are being made across campuses. There is a lot more activity than has been seen in the past few years.

VI SVSH in a Clinical Setting

The Chair called attention to the many documents that were included with the agenda packet on this item. A working group was convened last May it was chaired by Josh Adler and Suzanne Taylor. It was a large working group with people from all different aspects of academic life and healthcare institutions.

Chair Webster said that the administration was initially concerned about physician-on-patient transgressions, but that many forms of SVSH can take place in the clinical setting. He said that the definition of clinical care is instrumental to the identification of possible SVSH actions. Is the behavior or treatment it indicated clinically? Also, there are instances where such contact might be OK under the umbrella of a research question, even though it is not necessary for the medical care of that individual. If there is a reported transgression, the Title IX office and the senior medical center official would establish an incident response team. It is composed of a minimum of three people: The Title IX Officer, the most senior medical officer, and the most senior nursing officer or his/her designee. It could also include campus counsel and consultants. The response team should not be under risk management but they could coordinate with risk management. 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. Senate members have paid involuntary leave and non-senate members have paid investigatory leave. Most of these individuals are paid based upon seeing patients, so it is not clear how will they get paid if they are on leave.

In the guidelines to investigating prohibited contact, it is stated very strongly that there will be no alternative resolution. But the APM 115 and 116 allow for alternative resolution. That is a conflict that needs to be addressed before this is finalized.

In the packet there are details of the investigative process: who is notified when, how to get expert opinions, what reports are needed, and the timeline. There is also an investigative template. The Chair went through the enclosures and discussed them. If the Title IX investigation finds that there was a violation, then the chancellor engages a peer review committee for Senate and non-Senate faculty. The chancellor has three years to bring charges once s/he knows about a violation of policy. For Senate faculty, the Chancellor should file charges with P&T within 40 days of seeing the Title IX report. The chancellor can extend for good cause. There is contradictory information as to whether there can be early resolution.

Some facilities are already implementing chaperone policies for sensitive exams, and they want to make it more widespread. Ideally, the chaperones to not report to the physician and also are rotated.

In terms of hiring, at a minimum there will be due diligence to make sure that any hospital group or physicians has not had history of misbehavior. The University wants to implement training for physicians and health care providers in February and March.

VII. Update from Senate Leadership

Kum-Kum Bhavnani, Academic Senate Chair

Mary Gauvain, Academic Senate Vice Chair

Senate Chair Bhavnani said that there is a conflict of interest task force which has been set up by Executive Vice President Carrie Byington for health sciences faculty who were not reporting income from other sources. The task force has two faculty representatives. She said that collaborating does not necessarily mean that funds are being exchanged, but there was a perception that money was going overseas. Chair Bhavnani said that maybe UCORP could address the matter.

DACA – the University needs to start thinking what it will do when the Supreme Court decision comes down. If people need to be deported immediately, would the University be able to teach people at a distance. UCOP is having very preliminary discussions about this.

Working Group on Comprehensive Access - This is the post-Dignity group; there are three Senate representatives on it. The group had to issue a report 90 days after it first met. The working group chair said he would produce a “chair’s report” because a number of committee members would not endorse it. The President put it up on a website and asked for public comment. The President is going to look at all the comments and bring it to Regents in May with a recommendation.

Standardized Testing Task Force – The task force has submitted its report. The report has six recommendations and it is going to go to the Regents in May. Currently, the Senate is gathering comments from the campuses. Council will look at those and make recommendations to the Assembly who will then submit its recommendations to the President. The President will present her conclusions at the May Regents’ meeting; the Regents will then decide what to do about the testing.

Wildcat Strikes at UCSC – The graduate students went on strike and the University issued a statement that graduate students who did not submit their grades would be fired. The Senate wrote a letter asking that both sides get together to talk. The President did not like that statement. Other campuses are joining the strike. UC has filed an unfair labor practice claim against the union saying they should have disciplined the people having the wildcat strike.

Presidential Search – the Chair of the Board of Regents appoints a Special Committee to conduct the presidential search and the Senate is represented by an Academic Advisory Committee of 13

people (10 from the campuses, two at large and the Senate Chair). The Assembly passed a resolution that the precedent was being broken because the Special Committee chair has kept faculty out of their meetings. The whole of the AAC has a meeting with the Special Committee on Monday. They want to announce a name at May Regents.

There is an admissions audit going on by the state auditor. She is looking at UCB, UCLA and UCSD, and the scope is very wide. Ethics and Compliance and the University has been conducting an internal audit and showed to her what has been put right. She is going to look at admissions by exception.

There is a general obligation bond is on the ballot for March 3. It would provide \$2B for physical infrastructure and deferred maintenance.

The Merced Chancellor search has a faculty committee of five; three from the campus, one at-large, and the Chair of the Academic Council. The results of the chancellor search should be announced in May.

A-G requirements - Requirement D is the science requirement. It was called Laboratory Science and then was changed to Science and it was suggested that more sciences should be included such as computer science and that applicants need to take three sciences instead of two. This led to some anxiety on the part of the administration. The Public Policy Institute of CA was asked to do some research because there are more than 20 schools in the state that cannot offer a third science, and it was felt it would affect the URM ratio in the UC. At the Assembly meeting on Feb 12 it was decided to keep the status quo - only two sciences are needed, and three are strongly recommended.

Taskforce of online undergraduate degrees - The University does not have a full-time online undergraduate degree. Last year, Irvine put forward a proposal for totally online degree for transfer students. The proposal was not very strong and was not supported at the division or system level. There Senate chair established a task force to look at the possibility of an online undergraduate degree. It is being chaired by the chair of UCEP and should report back in May/June.

The Senate Chair has also established a taskforce on extending faculty diversity. There are programs for bringing URM faculty in (e.g., UC-HBCU and UC-HSI), but retention is a problem. In March, the Regents are having a session on faculty diversity at the UC. Susan Carlson is presenting and Chair Bhavnani will talk.

Open Access – Chair Bhavnani and one of the University negotiators met informally with the new CEO of Elsevier. The meeting was good.

When Elsevier cut off access, the funding for them was left unspent. The libraries are working to make sure that the unspent funds are used for those who want to publish open access and not subsumed into the larger University budget.

VIII. Roundtable: Reports from the Divisions

Berkeley – The member was not present.

Davis – The member was not present.

Santa Cruz – There is one grievance hearing that was a holdover from last year, and the campus is now scheduling its third disciplinary hearing. The workload has been fluctuating, but manageable. The strike is dominating everything.

UCLA - The campus has had a number of hearings where a person was put on involuntary leave and s/he requested a hearing to see if it is fair. The campus has also had three disciplinary hearings: one was settled, one was deferred, and one was uncontested. The campus has one APM 011 grievance that it is expecting before the deadline. It also had one situation where it had a really complicated case with six days of testimony. It took awhile to write the report and submit it to the chancellor. That would not have been accomplished under the more recent deadlines. It is unclear who has to deal with the hearing report. It is a little contradictory whether the chancellor handles it or whether he can delegate it. The issue with delegating is that it might go back to the person who has been dealing with this case all along.

UCR – The campus is at the final stages of its first disciplinary case under 336. It had a three-day hearing that was related to threats of violence – faculty against faculty. The campus barely made the 336 deadline. There was one issue in this case: early on, the faculty was put on involuntary leave under the emergency procedures. It was done by the designee of the chancellor in consultation with the chair of P&T; that was challenged in court and the faculty won. Should a procedure be spelled out at Council level? The campus has two combined grievances. It also has another one that is a major grievance: last year, there was an investigation that might have led to a disciplinary action but it was settled prior to going to discipline but now the faculty member is coming back with a grievance in spite of the settlement.

UCI – The campus has one imminent but unclear case where the OEOD has asked for an extension because the respondent filed a counter-case. The other two procedural or policy issues are the possible adoption of a policy requiring job candidates who have reached the final round of evaluation to agree to submit a form that would disclose any past disciplinary issues. People felt that the finalist stage is the appropriate place to bring this up. The point is to keep institutions from handing off their bad actors. The other policy has to do with how to handle faculty bullying that is not SVSH. This was being treated not as a disciplinary issue but would be handled by way of merit review: if a faculty member was impossible to work with, s/he never would be on any committees because nobody would agree to work with her/him. In that way, bad behavior could impact the likelihood of getting a merit raise.

UCSC – The campus has had several instances of faculty who were persistent bullies and departments did not do anything about them. They gave them fine merit reviews and then they become much more difficult cases where they were made divisional appointees. A major SVSH case last year was against someone who was never dealt with at the department level. There are so many disincentives for departments to call bad behavior into account. It is often factionalized. It is really hard to codify bullying behavior.

UCSF - The campus has just completed hearings on a senior faculty member who created a company and filed a patent for an invention and neglected to disclose this on his annual disclosure forms and also neglected to inform his chair and the chancellor. Then he also did not include UCSF on the patent filing and after it was assigned to the company and UCSF was cut out of the negotiations and ownership. The campus has completed the hearings on that and is awaiting the final briefs; then it needs to write the report. Everything is on target for that to happen in the required time. The campus also has a grievance that it has been dealing with for nine months. It involves an individual that was complaining that he was removed from his administrative position resulting in salary consequences for him. He did not lose his faculty position. He also had complaints about academic advancement issues that he felt were not being granted also a vague complaint about ageism. The campus had hard time dissecting it all out because there were not specific references to the personnel manual; it looked like it was more direct employment issues. It took awhile to get a response from the administration regarding their view on these events. There may be some merit to the claims around ageism.

UCSB – The campus has completed a hearing and the report should have been submitted this week. There is another hearing being scheduled. Both of these hearings are occurring under the old bylaws, not the revised ones, so the campus is not under the 30/60 day timeline. There is one ongoing grievance; the P&T committee thinks there is room for resolution before bringing it to a hearing. The committee is discussing ways it can meet the 30/60 day deadlines.

UCSD – The campus has no hearings that are scheduled. It has two grievances – one fairly straightforward that had to do with the evaluation for advancement to above-scale. One of the complaints was that an evaluation came forward from CAP to the EVC who then sent it back to CAP and asked them to calibrate this file against another file. A number of members of the committee were not happy with that process. The EVC is fairly new so she might be looking for comparisons but it does seem strange to ask for a particular file.

The second one is much more complicated, with a long list of grievances and policy citations. The grievant filed a document that is largely a lengthy narrative without any citations of specific policies that were violated. There has been a lot of back and forth trying to get specific citations. It is very complicated one and it will take the campus a long time to get through it.

IX For Systemwide Review

Report of the Standardized Testing Task Force AND *Additional Statement*
P&T will not opine.

Proposed New Presidential Policy on Gender Recognition and Lived Name
Committee members are invited to submit comments to Chair Webster who will put the comments together and circulate a letter for review/submission.

Proposed Revised Presidential Policy on Travel Regulations
P&T will not opine.

X. Other Topics/New Business

San Diego UCPT member would like to discuss two topics:

A. APM140-23(a) Non-Senate Academic Appointees/ Grievances, Filing Deadlines

The San Diego member explained the letters he had submitted to the committee. The campus has been having a briefing at every one of its monthly meetings from officials who are involved in the administrative offices who are relevant to P&T. In the course of these briefings, the campus found the grievance process for non-Senate members specifies that the grievant has only 30 days to file a grievance from the time that they know (or could be expected to have known) about the events or action... for Senate members it is three years. The campus felt that something should be done in terms of systemwide policy and the APM to fix that. They recommend that the filing period go from 30 days to six months, which is still a fraction of the timeline for a Senate member. The campus would like UCPT to consider this and if there is broad agreement and then forward it to the administration to see if this could result in an APM change in favor of the non-Senate appointees. Members seemed in favor of this recommendation.

The Vice Chair suggested instead that 140 and 120 and 335 should be brought into alignment because they have been altered individually resulting in discrepancies. He said that UCPT should raise the issue whether the interaction between the bylaws that deal with these grievances should be studied and fixed, which would open up the question of how long people have. He was in favor of a more general letter using this as an example of an inconsistency to bring all of the APMs and policies into alignment.

The committee felt that the items should be dealt with separately, so as not to be treated as if they are reliant on each other.

B. University of California Electronic Communications Policy III(D)(3), Allowable Uses – Restrictions

The second letter has to deal with the electronic communications policy. It came up based on some events that happened on the UCSD campus. The campus is suggesting text to make it more clear that you do not use campus electronic communications to distribute sexually explicit material.

The Chair suggested that the topic be discussed via email and perhaps brought up again at the next meeting.

The committee adjourned 2:26 p.m.

Minutes written by Fredye Harms, Committee Analyst
Attest: Nicholas Webster, Chair