

## UNIVERSITY COMMITTEE ON PRIVILEGE AND TENURE

**Minutes of Meeting**

Friday, November 19, 2021

**I. Welcome/Chair's Comments/Consent Calendar*****Action Taken:*** *The agenda was approved as noticed 10-0-0.***II. Consultation with the Systemwide Title IX Director***Suzanne Taylor, Systemwide Title IX Director*

The Director told the committee that the latest SVSH policy revisions were intended comply with SB 493. She said that revised Title IX regulations are expected from the US Department of Education in May 2022. The DOE provided some useful guidance in the interim. The Director made remarks at the public comment session, and a member of the student advisory board made comments as well. Director Taylor met with officials in the Office of Civil Rights about difficulties UC physicians have encountered in terms of implementing some of the requirements. The committee had a number of questions for the Director, primarily in terms of the healthcare enterprise.

**III. Simultaneous Misconduct Charges and Merit and Promotion Considerations***Julia Simon, Vice Chair*

The Vice Chair explained that the question of how to conduct simultaneous merit and misconduct cases had arisen in at least three instances on her campus. She explained that the Davis administration has taken upon itself to sometimes inform the department chairs, to include information in dossiers, and also would occasionally engage in some “foot dragging” to slow and stall the promotion process. She asked if credible allegations exist regarding serious misconduct, should the administration have the ability to pause a personnel action. Vice Chair Simon also noted that the requirements to put a faculty member on paid administrative leave are quite stringent. She asked if a pause could be placed on a personnel action – a “no fault” pause. She remarked that it is not in the interest of P&T to be ambiguous about this matter; it could result in a grievance. The committee discussed potential ways of dealing with such a situation, such as changes to the APM, involvement (or not) of the campus CAP, the grad council’s willingness to deny a faculty member’s right to teach, or a retroactive “fix.” Demotion of a faculty member who has tenure would require a change to APM 016.

The Chair proposed that a task force be formed to look at options and develop a proposal that it would circulate to the members before the next meeting. The committee agreed, and members Simon and Tucker agreed to serve with the Chair and with Attorney Adviser Meltzer.

**IV. Items for Systemwide Review****A. Proposed Revisions to UC Presidential Policy on Sexual Violence and Sexual Harassment**

Several members expressed concern and confusion over the role of clergy and their role as confidential resources. Another aspect that was questioned was the provision that the complainant can contact a respondent, but that the reverse was not allowed. Members wondered why the “no contact” stipulation would not hold for both parties.

- B. *Proposed Presidential Policy on Abusive Conduct and Bullying in the Workplace*  
Members largely agreed that there was a need for such a policy but expressed considerable concerns about the language of the proposed policy, which they felt was ambiguous in many places. Among other things, the committee wondered to what degree this policy would overlap with Title IX's purview. Members also seemed unclear on how this policy applied to students.

**V. Consultation with the Attorney Adviser to UCPT**

*Josh Meltzer, UC Legal*

The discussion from previous issues ran over, so Mr. Meltzer's time was foreshortened.

Mr. Meltzer was asked if each campus has a designated office for Title IX cases. Mr. Meltzer replied that there is a systemwide Title IX officer and office, and each campus also has a Title IX officer and office. These are people who have professional and relevant experience. One member asked if there is anything to do about serial grievances. That member's campus has an individual who files 150-page grievances, and the member is wondering at what point that behavior become a type of misconduct. Mr. Meltzer responded that P&T has a lot of discretion in how it can handle cases such as this. P&T could stipulate that it was not going to consider any more grievances from that individual for some period of time unless something exceptional arises.

Mr. Meltzer gave an update on the status of Bylaw 336. He said that the University has undertaken its first case under the "preponderance of evidence" standard. However, there are allegations that are not SVSH which will be decided under the "clear and convincing" standard. At this time, there is nothing that is eligible for a streamlined hearing. There have been a number of three-year-rule issues and there are some cases where an issue gets reported but it is unclear how much information has been provided. He noted that there were some delays in hearings when COVID first emerged, but that University personnel quickly adapted and that remote hearings have been going well. Mr. Meltzer said that there had been several hearings over the summer, which had been challenging for faculty, but Zoom made it more manageable. He speculated that the University may want to continue using videoconference technology for things like prehearing conferences.

**VI. Bylaw 336 Timelines**

*Luca Ferrero, Chair*

Attorney Adviser Meltzer reminded the committee that in 2019, the Senate changed Bylaw 336 which dictates various timelines for disciplinary cases. This was largely in response to concern raised in the state auditor's report. Once that was finalized, UCPT expressed concern about the feasibility of the timelines and agreed to revisit the decision in two to three years to see if timelines were being met. He shared that the administration feels that the new timelines are very tight. Members discussed concerns they had about the timelines (e.g., feeling that 90 days might be more attainable than 60). Senate Executive Director Baxter stated that UCPT had done its first round of SVSH data collection in 2020-21, and the state auditors were satisfied with the report. However, the committee still needs to collect and report the information for the systemwide Title IX office. The Chair suggested that the committee also collect data on non-SVSH cases.

## **VII. Roundtable: Reports from the Divisions**

Members reported on P&T matters within their divisions.

## **VIII. Consultation with the Academic Senate Leadership**

*Robert Horwitz, Academic Senate Chair*

*Susan Cochran, Academic Senate Vice Chair*

Senate Chair Horwitz told the committee that the President is taking a tough line on the GSRs organizing; that is going to be contentious. Regarding salaries, the Regents have agreed to a four percent scale increase and a one-and-a-half percent increase to address the equity gap. The Senate Vice Chair added that it was not clear what if the four percent would apply to both regular scale and off-the-scale salaries. CFO Brostrom has put forward a proposal to reduce the employer contribution to the retirement plan by from 15 percent to 14 percent and to use the STIP to augment that reduction. Nothing would change in the valuation of UCRP, but it would allow more funding to flow to the campuses. Some Senate committees were concerned that if the employer contribution was reduced, it might then be difficult to get it reinstated. Accordingly, the Chair pushed for two-year sunset clause. There was some opposition, but it carried.

The Franklin Building in Oakland will no longer be opening on January 3, but will start a rolling opening starting at the end of January and running through April. Chair Horwitz expressed concern that this would send a bad message to the campuses.

Another front opened on the DEI Task Force Report on clinical faculty and one of the findings was that low clinical morale is a function of not being part of the Academic Senate. There will be a discussion about it at Academic Council on Monday. This was the subject of Council vote 10 or 11 years ago.

The California budget is looking extremely good and this is allowing the UC to ask for at least a six percent increase in the ongoing budget and also \$600M for seismic and deferred maintenance and climate work. This passed the Regents and is now going to the governor and the legislature. There is a big push from the legislature for enrollment growth. The University says it can take 20,000 new students: 16,000 undergraduates and four thousand graduates.

The Workgroup on Mitigating the Effects of COVID on Faculty Careers met over the summer and completed the first installation of a report that was sent out a couple of weeks ago by Provost Brown. The Workgroup puts forward in its report that achievement is relative to opportunity (ARO). Faculty with caregiving responsibilities were affected the most and are the focus of the report. The report also put forward recommendations about bridge funding and recognition that some faculty should get teaching relief because they are still under great stress. The committee is trying to figure out how to get the word out to department deans, chairs, and CAPs.

Last year, the Senate leadership gave the faculty a way to mobilize about global climate; that group has met, and it has gotten updates about how they are meeting on campus. Efforts thus far seem successful. The group is working on a memorial to the campuses for a full vote to the Assembly, then to the campuses, and then to the Regents. Separately, the Chair and Vice Chair have been working to make sure that the affiliations of the UC with hospitals that have ethical and religious directives be addressed by a policy that would conform to UC values. There is now

an interim affiliations policy. In the interim, the Chair and Vice Chair have been working through ECAS to make sure that there is a viable mechanism for hospital staff to file complaints without suffering any repercussions.

#### **IX. Faculty Vaccination Compliance**

There is a policy that mandates vaccination for those who are going to be physically present on campuses. Senate members would have to go through UCPT because violating the policy is a form of misconduct under APM C8. There are exemptions (medical, disability, and religious). The committee engaged with the Vice Provost about this issue. Senate Chair Horwitz recommended that UCPT partner with UCEP regarding the issue of what happens when a faculty member claims their pedagogy is better online. Member Smith agreed to meet with Chair Ferrero to develop language for UCEP to consider.

#### **X. Consultation with Academic Personnel and Programs**

*Susan Carlson, Vice Provost, Academic Personnel and Programs*

*Amy K. Lee, Associate Vice Provost, Academic Personnel and Programs*

The Vice Provost commented on the earlier item about vaccine compliance. She said that her office is collecting data on the number of faculty who are out of compliance for the Regents and will be able to share that after Thanksgiving. Data on people who are not masking that will be available.

Vice Provost Carlson called attention to the bullying conduct policy that was on the agenda. She remarked that she is hoping to get UCPT's concerns and suggestions about the policy since it is brand new. A new anti-discrimination policy is also being developed. Currently, the University has separate policies for faculty, staff, and students; the President has asked for the creation of a single policy that will cover all students and employees. The President has convened a very large task force to look into this; Brian Soucek is the faculty representative. Nothing has been developed yet in terms of a new policy, but the group is moving through the major issues to be discussed. There is a considerable discussion about the principle of equity in developing the policy. The issue of standard of evidence in a charge of discrimination is also being discussed. Another issue is if the University would like to have a clearly defined set of responsible employees who would be required to report incidents of discrimination as well as what resources would be needed to deal with issues of discrimination. Once the draft is available, it will go out for systemwide review. The committee had questions for the Vice Provost.

#### **XI. Other Topics/ New Business**

There was no new business.

The meeting adjourned at 3:10 pm.

Minutes prepared by Fredye Harms, Committee Analyst  
Attest: Luca Ferrero, UCPT Chair