

UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

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SANTA BARBARA • SANTA CRUZ

Robert L. Powell
Telephone: (510) 987-0711
Fax: (510) 763-0309
Email: Robert.Powell@ucop.edu

*Chair of the Assembly and the Academic Council
Faculty Representative to the Board of Regents
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200*

April 17, 2013

SUSAN CARLSON, VICE PROVOST ACADEMIC PERSONNEL

Dear Susan:

I write to request consideration of a revision of APM 150 (Non-Senate Academic Appointees/Corrective Action and Dismissal). As you know, Senate Bylaw 337 gives non-Senate faculty the right to request a hearing before the Committee on Privilege & Tenure in cases of proposed early termination. After extended review, the University Committee on Privilege & Tenure (UCP&T) concluded that the current provisions in APM 150 do not provide adequate notice to ensure that a non-Senate faculty member subject to early termination fully understands the choices he/she must make and that the timelines in APM 150 do not allow adequate opportunity for the non-Senate faculty member to exercise his/her rights to a Privilege & Tenure proceeding.

At its meeting on March 27, the Academic Council unanimously concurred with UCP&T's recommendation. The proposed amendment clarifies that the non-Senate faculty member has a right to either a P&T process or to a grievance process outlined in APM 140, notifies them that they must choose between these two processes at the outset, and provides adequate time (30 days) for them to make this choice. A corresponding amendment to Bylaw 337 is also proposed.

Council believes that these procedural amendments will provide clarity and due process for non-Senate faculty members subject to an early termination process. Accordingly, Council requests that you initiate the necessary APM revision process.

Sincerely,

A handwritten signature in cursive script that reads "R. L. Powell".

Robert L. Powell, Chair
Academic Council

Cc: Academic Council
Martha Winnacker, Senate Executive Director

Proposed Revisions of APM 150 and Senate Bylaw 337

Background

Senate Bylaw 337 gives non-Senate faculty who are proposed for early termination the right to request a Privilege & Tenure hearing. The administrative procedures applicable in these circumstances are detailed in Section 150 of the APM. UCP&T believes that the provisions of APM 150 do not provide adequate information or time to the non-Senate subject of an early termination action to ensure that the person is able to exercise his/her rights in the Privilege & Tenure context and is fully aware of the requirement that he/she choose between two distinct processes.

UCP&T proposed revisions to APM 150 to accomplish the following: (1) the revision to APM 150-32.c.2 will require adequate notice to allow the subject of early termination time to respond and to be clearly informed that he or she must choose between the two remedies available to him/her (Bylaw 337 or APM 140); (2) the revision to APM 150-32.d establishes realistic timelines to allow the subject to complete a response, including requesting a hearing; (3) the revision to APM 150-32.e extends the timeline and suspends administrative action until the Senate hearing is complete, while also establishing a 90-day period within which the hearing must be completed and establishing posthearing procedures.

Regarding the appropriateness of specifying a timeline for a process in the APM and also providing for exceptions, the committee found a precedent in APM 075.III.B, which addresses termination of a member of the Senate for incompetent performance and in Senate Bylaw 336.B, which governs disciplinary hearings for Senate faculty (relevant text highlighted in bold):

APM 075.III.B.2

The Professor shall have a period of at least 30 calendar days during the time that the University is in session (that is, when regularly scheduled classes are meeting) and the Professor is not on sabbatical leave or other authorized leave that involves his or her absence from the University, to respond (the "Response") to the Request. **If the University is not in session or the Professor is on a sabbatical leave or other authorized leave that involves his or her absence from the University, the Professor shall have a period of at least 90 calendar days to respond to the Request.**

Senate Bylaw 336.B. (prehearing procedure in discipline cases)

2. The accused shall have twenty-one calendar days from the date of the receipt in which to file an answer in writing with the Committee. The Committee shall provide a copy of the answer to the Chancellor or Chancellor's designee. **Upon receipt of a written application, the chair of the Committee may grant a reasonable extension of time for filing of an answer.**

3. The Privilege and Tenure committee shall consider the matter within 21 calendar days after receipt of an answer or, if no answer is received, after the deadline for receipt of an answer. The Committee shall evaluate the case and establish time frames for all subsequent procedures. The committee may refer the case to mediation (SBL 336.C) or appoint a hearing committee (SBL 336.D). As a general guide, a prehearing conference (SBL 336.D.2) shall be scheduled within 30 calendar days and a hearing (SBL 336.D) shall be scheduled within 90 calendar days of the appointment of a hearing committee. The accused shall be given, either personally or by registered mail, at least ten calendar days' notice of the time and place of the hearing. **The Chancellor, Chancellor's designee, or Chair of the Privilege and Tenure Committee may for good reason grant an extension of any of these time limits.**

Changes to APM 150

APM 150-32.c(2) Prior to instituting the dismissal of a non-Senate faculty member, the appointee should be apprised of the opportunity for a hearing before the properly constituted advisory committee of the Academic Senate pursuant to S.O. 103.9. If the appointee is a non-Senate faculty member and the intended action in the written Notice of Intent is dismissal, the appointee shall be informed in writing simultaneously with the Notice of Intent that they have the right to a hearing before a properly constituted advisory committee of the Academic Senate pursuant to S.O. 103.9 except as otherwise provided in a MOU for non-Senate faculty members. The appointee shall also be informed that they are entitled to select only one grievance review mechanism, either APM-140 or an Academic Senate hearing.

APM 150-32.d Response to Written Notice of Intent

The appointee who receives a written Notice of Intent shall be entitled to respond, either orally or in writing, within ~~fourteen (14)~~ thirty (30) calendar days of the date of issuance of the written Notice of Intent. The response, if any, shall be reviewed by the administration. If the appointee has been informed that they have the right to request an Academic Senate hearing as per APM 150-32.c(2) and wishes to exercise this right, they must state that choice in their response to the Notice of Intent. In such a situation, the properly constituted advisory committee of the Academic Senate shall be informed promptly by the administration.

APM 150-32.e Written Notice of Action

(1) If the University determines to institute the corrective action or dismissal following the review of a timely response, if any, from the appointee, and within ~~thirty (30)~~ sixty (60) calendar days of the date of issuance of the written Notice of Intent, the University shall issue a written Notice of Action to the appointee of the corrective action or dismissal to be taken and its effective date. The Notice of Action also shall notify the appointee of the right to grieve the action under APM – 140. The Notice of Action may not include an action more severe than that described in the Notice of Intent. A copy of the Notice of Action shall also be placed in the employee's personnel file(s).

(2) However, if a non-Senate faculty member is entitled to an Academic Senate hearing as per APM 150-32.c(2) and requests the hearing in a timely manner as per APM 150-32.d, the University will determine what corrective action if any to institute only after receiving the recommendation of the Academic Senate hearing committee or after ninety (90) calendar days from the date the appointee's response to the Notice of Intent is received, whichever is earlier. If, however, the responsible Senate officer has informed the Administration in writing that the Senate committee has been unable to convene due to circumstances beyond the control of the non-Senate faculty member and of the committee, the Chancellor or Chancellor's designee may grant an extension. Thereafter, if the University determines to institute the corrective action or dismissal, the written Notice of Action shall be issued within fourteen (14) calendar days of the receipt by the administration of the recommendation of the Academic Senate hearing committee. As per APM 150-32.c(2), the appointee will not have the right to grieve the action under APM 140.

Corresponding Change in Senate Bylaw 337.A

Senate Bylaw 337 A. (second paragraph) No Senate or non-Senate faculty member may be terminated prior to the expiration of an appointment without having an opportunity for a hearing before the Divisional Privilege and Tenure Committee. In termination cases covered by this Bylaw, so long as the faculty member requests a hearing before the end of his or her appointment, in a timely manner as prescribed by the Academic Personnel Manual, the Divisional Privilege and Tenure Committee shall appoint a Hearing Committee and proceed according to Section B below. If the faculty member fails to request a hearing ~~before the end date of the appointment in question,~~ in a timely manner, the faculty member may seek a grievance hearing by grieving the non-reappointment pursuant to Senate Bylaw 335 in the case of Senate faculty or Section 140 of the Academic Personnel Manual in the case of non-Senate faculty.