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SANTA BARBARA • SANTA CRUZ

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

April 25, 2019

## JANET NAPOLITANO, PRESIDENT UNIVERSITY OF CALIFORNIA

#### Re: Assembly Approval of Revisions to Senate Bylaw 336

Dear Janet,

Robert C. May

Telephone: (510) 987-0711

Email: robert.may@ucop.edu

At its April 10, 2019 meeting, the Assembly of the Academic Senate, on the recommendation of the Academic Council and following a systemwide Senate review, endorsed the attached set of revisions to Academic Senate Bylaw 336 (Privilege and Tenure: Divisional Committees - Disciplinary Cases). During the systemwide review, all ten Senate divisions and two systemwide committees submitted comments, which are also attached for your reference.

The revisions respond to Board of Regents Chair Kieffer's June 2018 request to the Senate to implement several California State Auditor recommendations related to improving UC's responses to sexual violence and sexual harassment (SVSH) complaints. Specifically, the CSA recommended further defining Senate bylaws to require that 1) hearings on SVSH complaints against faculty respondents be scheduled before the Senate Privilege and Tenure (P&T) Committee no more than 60 days after the Chancellor files charges, unless an extension is granted for good cause; and that 2) P&T issue its recommendation to the Chancellor no more than 30 days after a hearing concludes.

In a July 2018 <u>letter to Chair Kieffer</u>, 2018-19 Council Chair White conveyed the Senate's commitment to implement the recommendations. A Senate working group led by the University Committee on Privilege and Tenure (UCPT) was formed to create a policy and to respond to Chair Kieffer's request in a timely manner. The resulting <u>proposed revisions to SBL 336</u> were released for systemwide Senate review in December 2018.

The revisions to SBL 336 approved by the Assembly address the Auditor's recommendations by significantly compressing and streamlining divisional P&T processes and timelines. They also include a clause allowing extensions for "good cause," defined as "material or unforeseen circumstances related to the complaint and sufficient to justify the extension sought." In addition, while the Auditor's recommendations pertain only to disciplinary cases involving SVSH, SBL 336 defines a uniform procedure for handling all alleged violations of the faculty code of conduct, irrespective of their nature.

The Senate believes the revisions meet the Auditor's mandate, while preserving robust policies and procedures that allow for a fair evaluation of charges, ensure the rights of all members of the University community, and finalize discipline decisions promptly and with integrity.

Nevertheless, it is important to emphasize that the Academic Senate remains very concerned about some elements of the revisions insofar as they relate to the Auditor's mandate itself. In particular, many believe that the compressed timelines are neither realistic nor feasible, especially those requiring five business days for the formation of the P&T hearing committee, and two business days after hearing dates are fixed for P&T to reach and communicate its decisions on prehearing matters. During the systemwide review, many faculty urged more flexibility to account for other obligations that will make it difficult or impossible for faculty to join or effectively serve on a P&T hearing committee bound by these limitations.

The Senate understands that implementation of the revisions will require a major change in the P&T Committee culture and a significant education and socialization effort on campuses. To that end, UCPT is developing an additional guidance document for campuses that elaborates on appropriate review criteria and timeframes, circumstances that constitute "good cause" for an extension, what is meant by "material circumstances," and how to interpret "sufficient to justify," among other matters. We believe a flexible definition of "good cause" is needed; however, we understand that good cause will apply only to circumstances that truly impact the ability to properly participate in preparation for the hearing, or the hearing itself.

I also wish to emphasize that the changes will necessitate that Academic Senate offices be provided with additional resources to successfully implement the new protocols and timelines. On that issue, the Academic Council has endorsed a letter from UCPT (also attached) outlining these needs in more detail. UCPT anticipates that the revisions will result in a larger number of hearings and generate additional expenses for hearing facilities and staff. P&T committees will need to expand, and P&T members will need to be compensated for additional work, including work during the summer. We hope to secure commitments from the systemwide administration concerning funding to cover future costs associated with this work.

The Senate intends to monitor the implementation of the policy and review outcomes in 2-3 years to determine its effectiveness.

Finally, I want to express my deep appreciation to UCPT Chair Adebisi Agboola, and to Cynthia Vroom, the University Counsel assigned to UCPT, for their leadership and guidance during this process.

Please do not hesitate to contact me if you have additional questions.

Sincerely,

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Robert C. May, Chair Academic Council

Encl (2)

cc: UCPT Chair Agboola Provost Brown Vice Provost Carlson Academic Council Senate Directors

# 336. Privilege and Tenure: Divisional Committees -- Disciplinary Cases (En 23 May 01) – Approved Revisions (CHANGES TRACKED)

(https://senate.universityofcalifornia.edu/bylaws-regulations/bylaws/blpart3.html#bl336)

### <u>A.</u> Right to a Hearing

In cases of disciplinary action commenced by the administration against a member of the Academic Senate, or against other faculty members in cases where the right to a hearing before a Senate committee is given by Section 103.9 or 103.10 of the Standing Orders of The Regents (Appendix I), proceedings shall be conducted before a Divisional <u>Committee on Privilege and TenurePrivilege and Tenure Committee</u> (hereafter, the Committee). Under extraordinary circumstances and for good cause shown, on petition of any of the parties and with concurrence of the other parties, the University <u>Committee on Privilege and TenurePrivilege and Tenure Committee</u> and <u>Committee on Privilege and TenurePrivilege and Tenure Committee</u> (hereafter, the Committee of the other parties, the University <u>Committee on Privilege and TenurePrivilege and Tenure Committee</u> may constitute a Special Committee composed of Senate members from any Division to carry out the proceedings.

## A.B. Time Limitation for Filing Disciplinary Charges

The Chancellor is deemed to know about an alleged violation of the Faculty Code of Conduct when it is reported to any academic administrator at the level of department chair or above or, additionally, for an allegation of sexual violence or sexual harassment when the allegation is first reported to the campus Title IX Officer. The Chancellor must file disciplinary charges by delivering notice of proposed disciplinary action to the respondent no later than three years after the Chancellor is deemed to have known about the alleged violation. There is no limit on the time within which a complainant may report an alleged violation. (Am 9 March 05) (Am 14 Jun 17)

**B.**<u>C.</u> Prehearing Procedure in Disciplinary Cases

- In cases of disciplinary <u>chargesaction filedcommenced</u> by the administration against a member of the Academic Senate, or termination of appointment of a member of the faculty in a case where the right to a hearing before a Senate committee is given under Section 103.9 or 103.10 of the Standing Orders of The Regents, <u>disciplinary chargesproceedings</u> shall be <u>filedinitiated</u> by the appropriate Chancellor or Chancellor's designee, once probable cause has been established. Procedures regarding the establishment of probable cause are determined by APM 015/016 and Divisional policies. The <u>disciplinary</u> charges shall be in writing and shall contain notice of proposed disciplinary <u>sanctionsaction</u> and a full statement of the facts underlying the charges.
  - a. The Chancellor or Chancellor's designee shall deliver the disciplinary charges to the Chair of the Committee on Privilege and Tenure, with a copy to the accused faculty member. If practicable, the Chancellor or Chancellor's designee shall deliver the disciplinary charges at an in-person meeting with the Chair of the Committee on Privilege and Tenure and the accused faculty member. If this is not practicable, the Chancellor or Chancellor's designee shall deliver the disciplinary charges to the Chair of the Committee on Privilege and Tenure electronically, with a copy to the accused sent electronically to the accused's official University email account and a courtesy copy by overnight delivery service to the accused's last known place of residence. The accused will be deemed to have

received the disciplinary charges when they are sent to the accused's official University email account.

b. Along with a copy of the charges, the Chancellor or Chancellor's designee shall provide written notice to the accused of (i) the deadline for submitting an answer to the disciplinary charges (section C.2 below), and (ii) the deadline for commencing the hearing (section E.1 below).

Upon receipt of the charges, the Chair of the Divisional Privilege and Tenure Committee shall promptly deliver a copy to the accused faculty member or send it by registered mail to the accused's last known place of residence.

- 2. The accused shall have <u>1421</u> calendar days from the date of <u>the</u>-receipt <u>of the</u> <u>disciplinary charges</u> in which to file an answer in writing with the Committee <u>on</u> <u>Privilege and Tenure</u>. The Committee <u>on Privilege and Tenure</u> shall immediately provide a copy of the answer to the Chancellor or Chancellor's designee. <del>Upon</del> <del>receipt of a written application, the chair of the Committee may grant a reasonable extension of time for filing of an answer and shall immediately notify the Chancellor or Chancellor's designee of the extension. (Am 14 Jun 17)</del>
- 3. Within five business days after receiving the disciplinary charges, the Chair of the Committee on Privilege and Tenure shall contact the accused, the Chancellor or Chancellor's designee and/or their representatives in writing in order to schedule the hearing.
  - a. The Chair shall offer a choice of dates for the hearing and instruct the parties to provide their availability on the given dates within 14 calendar <u>days.</u>
  - b. Within five business days after receiving the information requested in section 3.a from the parties, the Committee on Privilege and Tenure will schedule the hearing and notify the accused, the Chancellor or Chancellor's designee and/or their representatives in writing of the date(s). The accused shall be given either in person or by email or overnight delivery service, at least ten calendar days' notice of the time and place of the hearing.
  - c. All parties must give priority to the scheduling of a hearing and cooperate in good faith during the scheduling process. A hearing shall not be postponed because the accused faculty member is on leave or fails to appear.

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 suggest mediation (SBL 336.C.2) or appoint a hearing committee (SBL 336.D). All parties are expected to give priority to scheduling of the hearing. A hearing shall not be postponed because the faculty member is on leave or fails to appear. As a general guide, a prehearing conference (SBL 336.D.2) shall be scheduled (though not necessarily held) within 30 calendar days and a hearing (SBL 336.D) shall be scheduled (though not necessarily held) within 90 calendar days of the

appointment of a hearing committee. Ideally, a hearing should be scheduled within 90 days of the date on which the accused faculty member was notified of the intent to initiate a disciplinary proceeding. 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. (Am 14 Jun 17)

The Chancellor is deemed to know about an alleged violation of the Faculty Code of Conduct when it is reported to any academic administrator at the level of department chair or above or, additionally, for an allegation of sexual violence or sexual harassment, when the allegation is first reported to the campus Title IX Officer. The Chancellor must initiate related disciplinary action by delivering notice of proposed action to the respondent no later than three years after the Chancellor is deemed to have known about the alleged violation. There is no limit on the time within which a complainant may report an alleged violation. (Am 9 March 05) (Am 14 Jun 17)

- D. Early Resolution
  - 2. Negotiation:
  - The Chancellor or Chancellor's designee and the accused may attempt to resolve the disciplinary charges through negotiations. A negotiated resolution is permissible and appropriate at any stage of these disciplinary procedures. Such negotiations may proceed with the assistance of impartial third parties, including one or more members of the Committee on Privilege and Tenure. However, such negotiation shall not extend any deadline in this Bylaw. If such negotiation takes place after the charges have been filed, timelines for completing the hearing process may be extended to accommodate such negotiations only if the Chancellor or Chancellor's designee, the Chair of the Committee on Privilege and Tenure, and the accused faculty member agree. (Am 14 Jun 17)

<u>Such negotiations may proceed with the assistance of impartial third</u> <u>parties, including one or more members of the Committee.</u>

a. A negotiated resolution is permissible and appropriate at any stage of these disciplinary procedures. If a negotiated resolution is reached after <u>disciplinary</u>written charges are filed, then the Chancellor or Chancellor's designee is encouraged to consult with the chair of the Committee on Privilege and Tenure prior to finalizing the settlement and should inform the <u>Committee on Privilege and Tenure</u>Privilege and Tenure Committee if the matter is resolved. (Am 14 Jun 17)

#### Mediation:

The disciplinary charges may also be resolved through mediation in cases where such mediation is acceptable to the administration and the accused. With the consent of the administration and the accused, the Committee may assist in the selection of an appropriate mediator. Other relevant parties, including members of the Committee, may participate in the mediation.

2. If a negotiated resolution is reached after disciplinary charges are filed, then the Chancellor or Chancellor's designee is encouraged to consult with the Chair of the Committee on Privilege and Tenure prior to finalizing the settlement. The Chair of the Committee on Privilege and Tenure should make a request for such a <u>consultation oOnce disciplinary</u> charges have been filed with the Committee <u>on</u> <u>Privilege and Tenure</u>. The Chancellor or Chancellor's designee should inform the <u>Committee on Privilege and Tenure if the matter is resolved</u>. , the Chair of the <u>Divisional Committee on Privilege and Tenure</u>Privilege and Tenure Committee should request that the Chancellor or Chancellor's designee consult with the <u>Committee or its chair prior to the completion of any early resolution</u>.

- E. Time Frame for Hearing Process in Disciplinary Cases
  - 1. The hearing shall begin no later than 60 calendar days from the date disciplinary charges are filed with the Committee on Privilege and Tenure.
  - 2. Any deadline in this Bylaw may be extended by the Chair of the Committee on Privilege and Tenure or the Chair of the Hearing Committee, but only for good cause shown, requested in writing in advance. Good cause consists of material or unforeseen circumstances sufficient to justify the extension sought. A request to delay the start of the hearing beyond the 60 days mandated by this Bylaw must include adequate documentation of the basis for the request.
  - 3. <u>Within three business days of receiving an extension request, the Chair of the</u> <u>Committee on Privilege and Tenure or the Chair of the Hearing Committee shall</u> <u>notify the accused, the Chancellor or Chancellor's designee, and/or their</u> <u>representatives in writing of the approval or denial of the request. If the request is</u> <u>approved, the notification shall include the reason for granting it, the length of the</u> <u>extension, and the projected new timeline.</u>
- C.F. Hearing and Post-hearing Procedures
  - The Chair of the Committee on Privilege and Tenure Privilege and Tenure
     Committee shall appoint a Hearing Committee for each disciplinary case in which disciplinary charges have been filed that is not resolved through a negotiated resolution or mediation. The Hearing Committee must include at least three should consist of at least three Division members.
    - a. A majority of the Hearing Committee members shall be current or former members of the Committee on Privilege and Tenure, and the Chair of the Hearing Committee shall be a current member of the Committee on Privilege and Tenure. In exceptional circumstances, the Hearing Committee may include one member from another Divisional Academic Senate.
    - b. The Chair of the Committee on Privilege and Tenure may not appoint a member of the department or equivalent administrative unit of any of the parties to the Hearing Committee.
    - c. Hearing Committee members shall disclose to the Hearing Committee any circumstances that may interfere with their objective consideration of the case and recuse themselves as appropriate.

d. A quorum for the conduct of the hearing shall consist of a majority-of the Hearing Committee, including at least one member of the Committee on Privilege and Tenure.

At least two of the members shall be members of the Committee on Privilege and Tenure, one of whom shall chair the Hearing Committee. The Committee may not appoint a member of the department or equivalent administrative unit of any of the parties to the Hearing Committee. Hearing Committee members shall disclose to the Hearing Committee any circumstances that may interfere with their objective consideration of the case and recuse themselves as appropriate. A quorum for the conduct of the hearing shall consist of at least half but not less than three members of the Hearing Committee, including at least one member of the Committee on Privilege and Tenure.

2. Within two business days after the hearing has been scheduled the Chair of the Hearing Committee shall notify the accused, the Chancellor or the Chancellor's designee, and/or their representatives in writing of the Hearing Committee's decisions on the following prehearing matters:

Prior to the formal hearing, the chair of the Hearing Committee shall schedule a conference with the accused, the Chancellor or Chancellor's designee, and/or their representatives. This conference should attempt to:

a. The Hearing Committee's initial determination of the issues to be decided at the hearing. The Chair of the Hearing Committee shall invite the parties to inform the Committee of any other issues they believe to be important. The final determination of the issues to be decided shall be made by the Hearing Committee.

Determine the facts about which there is no dispute. At the hearing, these facts may be established by stipulation.

- b. The deadline for the parties to determine the facts about which there is no dispute. At the hearing, these facts may be established by stipulation. Define the issues to be decided by the Hearing Committee.
- c. The deadline for both sides to exchange a list of witnesses and copies of exhibits to be presented at the hearing. The Hearing Committee has the discretion to limit each party to those witnesses whose names are disclosed to the other party prior to the hearing and to otherwise limit evidence to that which is relevant to the issues before the Hearing Committee.

Set a time consistent with the timelines laid out in 336.B.3 for both sides to exchange a list of witnesses and copies of exhibits to be presented at the hearing. The Hearing Committee has the discretion to limit each party to those witnesses whose names were disclosed to the other party prior to the hearing and to otherwise limit evidence to that which is relevant to the issues before the Hearing Committee. (Am 14 Jun 17)

- <u>d. WSpecify whether prehearing and post-hearing briefs will be submitted by the parties and, if so, the deadline for submitting those briefs.</u> as well as the deadlines for those briefs.
- e. WAttain agreement about whether any person other than the Chancellor, the Chancellor's designee, the accused, and their representatives, may be present during all or part of the hearing. In order to preserve the confidentiality of the hearing, persons whose presence is not essential to a

determination of the facts shall, as a general rule, be excluded from the hearing.

After the prehearing letter has been sent, the Chair of the Hearing Committee may at his or her discretion schedule a conference with the accused, the Chancellor or Chancellor's designee, and/or their representatives, to resolve any questions concerning items (a) through (e) above. Such a conference should take place as soon as possible. The scheduling of such a conference shall not result in an extension of the hearing date.

- 3. The Chancellor or Chancellor's designee, the accused, and/or their representatives shall be entitled to be present at all sessions of the Hearing Committee when evidence is being received. Each party shall have the right to be represented by counsel, to present its case by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts.
- 4. The hearing need not be conducted according to the technical legal rules relating to evidence and witnesses. The Hearing Committee may, upon an appropriate showing of need by any party or on its own initiative, request files and documents under the control of the administration. All confidential information introduced into evidence shall remain so within the Hearing Committee. The Hearing Committee may call witnesses or make evidentiary requests on its own volition. The Hearing Committee also has the discretion to require that all witnesses affirm the veracity of their testimony and to permit witnesses to testify by videoconferencing. (Am 14 Jun 17)
- 5. Prior discipline imposed on the same accused faculty member after a hearing or by negotiation may be admitted into evidence if the prior conduct for which the faculty member was disciplined is relevant to the acts alleged in the current disciplinary matter. Under these conditions, prior hearing reports and records of negotiated settlements are always admissible. (Am 14 Jun 17)
- 6. No evidence other than that presented at the hearing shall be considered by the Hearing Committee or have weight in the proceedings, except that the Hearing Committee may take notice of any judicially noticeable facts that are commonly known. Parties present at the hearing shall be informed of matters thus noticed, and each party shall be given a reasonable opportunity to object to the Hearing Committee's notice of such matters.
- 7. The Divisional Committee on Privilege and Tenure may, at its discretion, request the appointment of a qualified person or persons, designated by the Chair of the University Committee on Privilege and Tenure, to provide legal advice and/or to assist in the organization and conduct of the hearing.
- 8. At the hearing, the Chancellor or Chancellor's designee has the burden of proving the allegations by clear and convincing evidence.
- **9.** The Hearing Committee shall not have power to recommend the imposition of a sanction more severe than that proposed in the notice of proposed disciplinary

action. In determining the appropriate sanction to recommend, the Hearing Committee may choose to consider previous charges against the accused if those charges led to prior sanctions either after a disciplinary hearing or pursuant to a negotiated or mediated resolution.

- 10. TAt the conclusion of the hearing, the Hearing Committee shall\_promptly make its findings of fact, conclusions supported by a statement of reasons based on the evidence, and recommendation., These shall be forwardedand forward these to the parties in the case, the Chancellor or Chancellor's designee, the Chair of the Divisional Committee on Privilege and Tenure, and the Chair of the University Committee on Privilege and Tenure, not more than 30 calendar days after the conclusion of the hearing. The conclusion of the hearing shall be the date of the Committee's receipt of (a) the written transcript of the hearing; or (b) if posthearing briefs are permitted, the post-hearing briefs from the parties in the case, whichever is later... The findings, conclusions, recommendations, and record of the proceedings shall be confidential to the extent allowed by law and UC policy. The Hearing Committee may, however, with the consent of the accused, authorize release of the findings, conclusions, and recommendations to other individuals or entities, to the extent allowed by law.
- 11. The hearing shall be recorded. The Hearing Committee has the discretion to use a certified court reporter (whose cost is borne by the administration) for this purpose, and the parties and their representatives shall have the right to a copy of the recording or transcript. The cost of the <u>court reporter as well as other costs</u> associated with the hearing will be borne by the administration.copy shall be assumed by the requesting party.
- 12. The Hearing Committee may reconsider a case if either party presents, within a reasonable time after the decision, newly discovered facts or circumstances that might significantly affect the previous decision and that were not reasonably discoverable at the time of the hearing.

#### D.G. Relation to Prior Grievance Cases

A disciplinary Hearing Committee shall not be bound by the recommendation of another hearing body, including the findings of the Divisional Committee on Privilege and Tenure in a grievance case involving the same set of incidents. However, the Hearing Committee may accept into evidence the findings of another hearing body or investigative agency. The weight to be accorded evidence of this nature is at the discretion of the Hearing Committee and should take account of the nature of the other forum. In any case, the accused faculty member must be given full opportunity to challenge the findings of the other body.

# (https://senate.universityofcalifornia.edu/bylaws-regulations/bylaws/blpart3.html#bl336)

# 336. Privilege and Tenure: Divisional Committees -- Disciplinary Cases (En 23 May 01) – Approved Revisions (CLEAN)

A. Right to a Hearing

In cases of disciplinary action commenced by the administration against a member of the Academic Senate, or against other faculty members in cases where the right to a hearing before a Senate committee is given by Section 103.9 or 103.10 of the Standing Orders of The Regents (Appendix I), proceedings shall be conducted before a Divisional Committee on Privilege and Tenure (hereafter, the Committee). Under extraordinary circumstances and for good cause shown, on petition of any of the parties and with concurrence of the other parties, the University Committee on Privilege and Tenure may constitute a Special Committee composed of Senate members from any Division to carry out the proceedings.

B. Time Limitation for Filing Disciplinary Charges

The Chancellor is deemed to know about an alleged violation of the Faculty Code of Conduct when it is reported to any academic administrator at the level of department chair or above or, additionally, for an allegation of sexual violence or sexual harassment when the allegation is first reported to the campus Title IX Officer. The Chancellor must file disciplinary charges by delivering notice of proposed disciplinary action to the respondent no later than three years after the Chancellor is deemed to have known about the alleged violation. There is no limit on the time within which a complainant may report an alleged violation. (Am 9 March 05) (Am 14 Jun 17)

- C. Prehearing Procedure in Disciplinary Cases
  - 1. In cases of disciplinary charges filed by the administration against a member of the Academic Senate, or termination of appointment of a member of the faculty in a case where the right to a hearing before a Senate committee is given under Section 103.9 or 103.10 of the Standing Orders of The Regents, disciplinary charges shall be filed by the appropriate Chancellor or Chancellor's designee, once probable cause has been established. Procedures regarding the establishment of probable cause are determined by APM 015/016 and Divisional policies. The disciplinary charges shall be in writing and shall contain notice of proposed disciplinary sanctions and a full statement of the facts underlying the charges.
    - a. The Chancellor or Chancellor's designee shall deliver the disciplinary charges to the Chair of the Committee on Privilege and Tenure, with a copy to the accused faculty member. If practicable, the Chancellor or Chancellor's designee shall deliver the disciplinary charges at an in-person meeting with the Chair of the Committee on Privilege and Tenure and the accused faculty member. If this is not practicable, the Chancellor or Chancellor's designee shall deliver the disciplinary charges to the Chair of the Committee on Privilege and Tenure electronically, with a copy to the accused sent electronically to the accused's official University email account and a courtesy copy by overnight delivery service to the accused's last known place of residence. The accused will be deemed to have

received the disciplinary charges when they are sent to the accused's official University email account.

- b. Along with a copy of the charges, the Chancellor or Chancellor's designee shall provide written notice to the accused of (i) the deadline for submitting an answer to the disciplinary charges (section C.2 below), and (ii) the deadline for commencing the hearing (section E.1 below).
- 2. The accused shall have 14 calendar days from the date of receipt of the disciplinary charges in which to file an answer in writing with the Committee on Privilege and Tenure. The Committee on Privilege and Tenure shall immediately provide a copy of the answer to the Chancellor or Chancellor's designee. (Am 14 Jun 17)
- 3. Within five business days after receiving the disciplinary charges, the Chair of the Committee on Privilege and Tenure shall contact the accused, the Chancellor or Chancellor's designee and/or their representatives in writing in order to schedule the hearing.
  - a. The Chair shall offer a choice of dates for the hearing and instruct the parties to provide their availability on the given dates within 14 calendar days.
  - b. Within five business days after receiving the information requested in section 3.a from the parties, the Committee on Privilege and Tenure will schedule the hearing and notify the accused, the Chancellor or Chancellor's designee and/or their representatives in writing of the date(s). The accused shall be given either in person or by email or overnight delivery service, at least ten calendar days' notice of the time and place of the hearing.
  - c. All parties must give priority to the scheduling of a hearing and cooperate in good faith during the scheduling process. A hearing shall not be postponed because the accused faculty member is on leave or fails to appear.
- D. Early Resolution
  - 1. The Chancellor or Chancellor's designee and the accused may attempt to resolve the disciplinary charges through negotiation. A negotiated resolution is permissible and appropriate at any stage of these disciplinary procedures. Such negotiations may proceed with the assistance of impartial third parties, including one or more members of the Committee on Privilege and Tenure. However, such negotiation shall not extend any deadline in this Bylaw. (Am 14 Jun 17)
  - 2. If a negotiated resolution is reached after disciplinary charges are filed, then the Chancellor or Chancellor's designee is encouraged to consult with the Chair of the Committee on Privilege and Tenure prior to finalizing the settlement. The Chair of the Committee on Privilege and Tenure should make a request for such a consultation once disciplinary charges have been filed with the Committee on

Privilege and Tenure. The Chancellor or Chancellor's designee should inform the Committee on Privilege and Tenure if the matter is resolved.

- E. Time Frame for Hearing Process in Disciplinary Cases
  - 1. The hearing shall begin no later than 60 calendar days from the date disciplinary charges are filed with the Committee on Privilege and Tenure.
  - 2. Any deadline in this Bylaw may be extended by the Chair of the Committee on Privilege and Tenure or the Chair of the Hearing Committee, but only for good cause shown, requested in writing in advance. Good cause consists of material or unforeseen circumstances sufficient to justify the extension sought. A request to delay the start of the hearing beyond the 60 days mandated by this Bylaw must include adequate documentation of the basis for the request.
  - 3. Within three business days of receiving an extension request, the Chair of the Committee on Privilege and Tenure or the Chair of the Hearing Committee shall notify the accused, the Chancellor or Chancellor's designee, and/or their representatives in writing of the approval or denial of the request. If the request is approved, the notification shall include the reason for granting it, the length of the extension, and the projected new timeline.
- F. Hearing and Post-hearing Procedures
  - 1. The Chair of the Committee on Privilege and Tenure shall appoint a Hearing Committee for each case in which disciplinary charges have been filed. The Hearing Committee must include at least three members.
    - a. A majority of the Hearing Committee members shall be current or former members of the Committee on Privilege and Tenure, and the Chair of the Hearing Committee shall be a current member of the Committee on Privilege and Tenure. In exceptional circumstances, the Hearing Committee may include one member from another Divisional Academic Senate.
    - b. The Chair of the Committee on Privilege and Tenure may not appoint a member of the department or equivalent administrative unit of any of the parties to the Hearing Committee.
    - c. Hearing Committee members shall disclose to the Hearing Committee any circumstances that may interfere with their objective consideration of the case and recuse themselves as appropriate.
    - d. A quorum for the conduct of the hearing shall consist of a majority of the Hearing Committee, including at least one member of the Committee on Privilege and Tenure.
  - 2. Within two business days after the hearing has been scheduled the Chair of the Hearing Committee shall notify the accused, the Chancellor or the Chancellor's designee, and/or their representatives in writing of the Hearing Committee's decisions on the following prehearing matters:

Prior to the formal hearing, the chair of the Hearing Committee shall schedule a conference with the accused, the Chancellor or Chancellor's designee, and/or their representatives. This conference should attempt to:

a. The Hearing Committee's initial determination of the issues to be decided at the hearing. The Chair of the Hearing Committee shall invite the parties to inform the Committee of any other issues they believe to be important. The final determination of the issues to be decided shall be made by the Hearing Committee.

Determine the facts about which there is no dispute. At the hearing, these facts may be established by stipulation.

- b. The deadline for the parties to determine the facts about which there is no dispute. At the hearing, these facts may be established by stipulation. Define the issues to be decided by the Hearing Committee.
- c. The deadline for both sides to exchange a list of witnesses and copies of exhibits to be presented at the hearing. The Hearing Committee has the discretion to limit each party to those witnesses whose names are disclosed to the other party prior to the hearing and to otherwise limit evidence to that which is relevant to the issues before the Hearing Committee.
- d. Whether prehearing and post-hearing briefs will be submitted by the parties and, if so, the deadline for submitting those briefs, as well as the deadlines for those briefs.
- e. Whether any person other than the Chancellor, the Chancellor's designee, the accused, and their representatives, may be present during all or part of the hearing. In order to preserve the confidentiality of the hearing, persons whose presence is not essential to a determination of the facts shall, as a general rule, be excluded from the hearing.

After the prehearing letter has been sent, the Chair of the Hearing Committee may at his or her discretion schedule a conference with the accused, the Chancellor or Chancellor's designee, and/or their representatives, to resolve any questions concerning items (a) through (e) above. Such a conference should take place as soon as possible. The scheduling of such a conference shall not result in an extension of the hearing date.

- 3. The Chancellor or Chancellor's designee, the accused, and/or their representatives shall be entitled to be present at all sessions of the Hearing Committee when evidence is being received. Each party shall have the right to be represented by counsel, to present its case by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts.
- 13. The hearing need not be conducted according to the technical legal rules relating to evidence and witnesses. The Hearing Committee may, upon an appropriate showing of need by any party or on its own initiative, request files and documents under the control of the administration. All confidential information introduced into evidence shall remain so within the Hearing Committee. The Hearing Committee may call witnesses or make evidentiary requests on its own volition. The Hearing Committee also has the discretion to require that all witnesses affirm

the veracity of their testimony and to permit witnesses to testify by videoconferencing. (Am 14 Jun 17)

- 14. Prior discipline imposed on the same accused faculty member after a hearing or by negotiation may be admitted into evidence if the prior conduct for which the faculty member was disciplined is relevant to the acts alleged in the current disciplinary matter. Under these conditions, prior hearing reports and records of negotiated settlements are always admissible. (Am 14 Jun 17)
- 15. No evidence other than that presented at the hearing shall be considered by the Hearing Committee or have weight in the proceedings, except that the Hearing Committee may take notice of any judicially noticeable facts that are commonly known. Parties present at the hearing shall be informed of matters thus noticed, and each party shall be given a reasonable opportunity to object to the Hearing Committee's notice of such matters.
- 16. The Divisional Committee on Privilege and Tenure may, at its discretion, request the appointment of a qualified person or persons, designated by the Chair of the University Committee on Privilege and Tenure, to provide legal advice and/or to assist in the organization and conduct of the hearing.
- 17. At the hearing, the Chancellor or Chancellor's designee has the burden of proving the allegations by clear and convincing evidence.
- 18. The Hearing Committee shall not have power to recommend the imposition of a sanction more severe than that proposed in the notice of proposed disciplinary action. In determining the appropriate sanction to recommend, the Hearing Committee may choose to consider previous charges against the accused if those charges led to prior sanctions either after a disciplinary hearing or pursuant to a negotiated or mediated resolution.
- 19. The Hearing Committee shall make its findings of fact, conclusions supported by a statement of reasons based on the evidence, and recommendation. These shall be forwarded to the parties in the case, the Chancellor or Chancellor's designee, the Chair of the Divisional Committee on Privilege and Tenure, and the Chair of the University Committee on Privilege and Tenure, not more than 30 calendar days after the conclusion of the hearing. The conclusion of the hearing shall be the date of the Committee's receipt of (a) the written transcript of the hearing; or (b) if post-hearing briefs are permitted, the post-hearing briefs from the parties in the case, whichever is later. The findings, conclusions, recommendations, and record of the proceedings shall be confidential to the extent allowed by law and UC policy. The Hearing Committee may, however, with the consent of the accused, authorize release of the findings, conclusions, and recommendations to other individuals or entities, to the extent allowed by law.
- 20. The hearing shall be recorded. The Hearing Committee has the discretion to use a certified court reporter for this purpose, and the parties and their representatives shall have the right to a copy of the recording or transcript. The cost of the court reporter as well as other costs associated with the hearing will be borne by the administration.

21. The Hearing Committee may reconsider a case if either party presents, within a reasonable time after the decision, newly discovered facts or circumstances that might significantly affect the previous decision and that were not reasonably discoverable at the time of the hearing.

#### G. Relation to Prior Grievance Cases

A disciplinary Hearing Committee shall not be bound by the recommendation of another hearing body, including the findings of the Divisional Committee on Privilege and Tenure in a grievance case involving the same set of incidents. However, the Hearing Committee may accept into evidence the findings of another hearing body or investigative agency. The weight to be accorded evidence of this nature is at the discretion of the Hearing Committee and should take account of the nature of the other forum. In any case, the accused faculty member must be given full opportunity to challenge the findings of the other body. BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

Adebisi Agboola Chair, University Committee on Privilege and Tenure Email: <u>agboola@math.ucsb.edu</u> Academic Senate University of California 1111 Franklin Street, 12th Floor Oakland, California 94607-5200

February 12, 2019

### **ROBERT MAY, CHAIR ACADEMIC COUNCIL**

#### Re: Additional resources required in order to implement the proposed revisions to SBL 336

Dear Chair May:

This letter is a follow-up to the memo that Executive Director Hilary Baxter sent to us in the Fall. Its purpose is to describe some of the additional resources that will be required in order to implement the proposed revisions to <u>Senate Bylaw (SBL 336)</u> successfully, and to explain some of the reasons for these needs.

I. BACKGROUND

In June 2018, the California State Auditor (CSA) released an audit report entitled "The University of California Office of the President: It Must Take Steps to Address Issues With Its Response to Sexual Harassment Complaints." The report was accepted by President Napolitano, and the Board of Regents has directed the Academic Senate to implement the CSA Recommendations by July 2019. The CSA report recommends that the Academic Senate revise its bylaws (i.e., SBL 336) concerning the Committee on Privilege and Tenure procedures for handling disciplinary cases as follows:

- (a) A hearing should be required to begin no later than 60 calendar days after charges have been filed by the Chancellor, unless an extension is granted for good cause. The notion of "good cause" should be defined.
- (b) A hearing committee should be required to deliver its report to the Chancellor no later than 30 calendar days after the conclusion of the hearing, and the phrase "conclusion of the hearing" should be precisely defined.

An ad-hoc Work Group was convened by the Academic Senate leadership over the summer of 2018 to develop concrete proposals for revising the bylaws in order to comply with the CSA recommendations. [The members of this group were Adebisi Agboola (Chair), Shane White, Robert May, Kum-Kum Bhavnani, Jorge Hankamer, Andrea Green Rush, Nancy Lane, Katja Lindenberg, Dan Hare, Hilary Baxter, and Cynthia Vroom, with Suzanne Taylor (UC Title IX Officer) acting as a Consultant.] It must be pointed out at once that it very quickly became quite clear that implementing the CSA recommendations would require major changes to the operating

procedures currently followed by Divisional Committees on Privilege and Tenure.

The ad-hoc Work Group developed a set of proposals which were presented to the University Committee on Privilege and Tenure (UCPT) in October 2018. After further discussion, a final set of revisions to SBL 336 [covering all disciplinary cases, not just those involving sexual violence sexual harassment (SVSH)] was approved by UCPT in November 2018. The revised bylaws were sent out for systemwide review in December 2018, and are expected to be in place by July 2019.

## II. ASSOCIATED ADDITIONAL COSTS

Implementing the new timeframes mandated by the CSA recommendations will impose significant additional costs on Divisional Academic Senate Offices that cannot be absorbed by current budgets. Some of the reasons for this are as follows:

- (a) In order to comply with the requirement that Privilege and Tenure (P&T) hearings must begin no later than 60 days after charges have been filed, Senate offices will need to begin preparations for a hearing as soon as charges have been received. More cases will proceed to a hearing (or will at least incur many of the expenses associated with holding a hearing) than previously, because it will no longer be possible to resolve these cases via Early Resolution given the new, compressed timeframes. Senate Offices will require additional resources in order to be able to cope with this increase in the number of hearings.
- (b) It is in general quite difficult to reserve rooms on campuses for the length of time required for a disciplinary hearing, as well as for other needed support; usually separate arrangements have to be made. The new, shorter timeframes for scheduling and beginning hearings mean that Senate offices will be forced to reserve more expensive facilities (either on or off campuses) when free or less expensive options are unavailable on required dates. The increased expenses associated with such facilities also include fees for audio-visual equipment, information technology (IT) support, and other onsite accommodations required for hearings.
- (c) Meeting the new requirements will impose a significant increase in the workload of Senate office staff in several ways, even if the number of hearings does not increase (which is extremely unlikely). This is because the new procedures involve a number of critical new steps that will require increased time and attention from Senate Executive Directors and from P&T Analysts. These steps include:
  - i. identifying and training a larger number of faculty to serve on hearing committees than is currently the case;
  - ii. for each potential hearing, consulting widely amongst a "hearing pool" of faculty in order to determine those available to serve on a hearing committee within the limited dates imposed by the 60-day deadline;
  - iii. implementing more rigorous practices in order to ensure compliance.

Senate offices will require additional staff support in order to fulfill these responsibilities. Each division will require a minimum of 0.5-1.0 FTE to be required at an appropriate classification. We also point out that as the Merced Senate Office is severely understaffed, they will require at least 2.0 additional FTE in order to be able to handle any P&T cases at all.

(d) The CSA recommendations make no allowances for the summer months, when a large number of faculty are away from campus conducting research. This means that there will be cases in which some members of a divisional P&T "hearing pool" will be need to return to campus in order to participate in a hearing that takes place outside their paid appointment time. While a number of campuses already have arrangements whereby faculty serving on administrative efforts during such periods are paid summer ninths, hourly stipend or other local convention, it is essential that such arrangements be extended to all campuses in order to ensure compliance with the timeframes mandated by the CSA recommendations during the entire year.

#### **III. RECOMMENDATION**

It is very difficult to give even an estimate in advance of the actual costs of covering the items above, because this depends in part upon the number of cases that will arise, and this number cannot be predicted in advance. It is however, essential that these costs be met if the CSA recommendations are to have any chance at all of being successfully implemented.

It is therefore absolutely critical that systemwide and campus administrations make a firm commitment to cover costs associated with this work. Such a commitment must include support both for modest but critical investment in divisional office staff over the next six months to prepare for disciplinary process changes as well as a standing agreement to cover future costs associated with the conduct of hearings.

Please let me know if you have any questions.

Sincerely,

Adebisi Agboola Chair, UCPT

Enclosure

cc: Kum-Kum Bhavnani, Academic Council Vice Chair Hilary Baxter, Academic Senate Executive Director UCPT members

# MEMO – Resource Needs to Support New P&T Timeframes

**To:** UCPT Chair Adebisi Agboola and Academic Council Chair Robert May **From:** Hilary Baxter

**Background**: In response to findings in a California State Audit report, UC Board of Regents Chair George Kieffer has called upon the Academic Senate to revise its bylaws regarding the Privilege & Tenure process for SVSH cases as follows:

- require disciplinary hearing be scheduled to begin within 60 calendar days from the date the Chancellor files charges with the committee (unless extended for "good cause"); and
- require the hearing committee issue its recommendations to the Chancellor within 30 calendar days of concluding the hearing.

The Senate is currently in the process of crafting draft bylaw revisions through the University Committee on Privilege and Tenure (UCPT) that will soon be sent for systemwide review. Work is on pace to complete approval of the bylaw revisions for implementation as of July 2019.

<u>Costs arising from implementation of new P&T timeframes</u>: To those unfamiliar with planning and logistics for disciplinary hearings, why initiating hearings within a shorter timeframe leads to additional expenses is at least unclear and perhaps even suspect. However, Senate directors who staff, assist with, and/or oversee these hearings report all of the following as examples of additional costs likely to arise as a result of the new timeframes. There is significant concern that already strained divisional office budgets cannot absorb added expenses, including some modest but necessary staffing improvements. That UCPT proposes new timeframes apply to all disciplinary cases—not just SVSH complaints—only adds to concern over resource needs.

- More hearings: Under current bylaw provisions, early resolution discussions in some cases persist longer than 60 calendar days from the filing of charges. While such resolution may be sought even after a hearing has commenced, Senate offices will need to prepare for and conduct hearings for those cases that otherwise would have avoided the formal process given a longer window prior to start of a hearing. That is, more cases are expected to proceed to hearing—or at least the incurring of additional expenses related to scheduling as well as beginning a hearing—given a truncated period for early resolution.
- Increased expenses for hearing facilities, requisite IT support, and other accommodations: Campus facilities are in constant use and it can be a challenge to reserve rooms for disciplinary hearings as well as arrange for other needed support during those events. While some divisions have access to dedicated space for Senate meetings, that space is rarely free for the length of time required for hearings; separate arrangements are typically required. A shorter timeframe and firm deadline for beginning hearings will require Senate offices to book more expensive facilities on or off campuses when free or less expensive options are not available on the date(s) needed.

The possibility of greater expenses extends to fees for audio-visional equipment, IT support, or other onsite accommodations required for hearings.

- Additional staff to manage workload: The expectation that a greater number of cases will proceed to hearing as well as various strategies contemplated to ensure P&T processes comport with the new requirements mean greater workload for the divisional offices. In addition to the likelihood of more hearings, the effort required for each will include critical new steps that entail increased time and attention from Senate directors and analysts staffing P&T committees. Specifically, they will need (1) to identify and train a larger group of faculty to be ready to serve on hearing committees; (2) to consult a widely among those in the "hearing pool" to secure a subset available for limited date options within the 60-day window; and (3) to implement more rigorous monitoring practices to ensure compliance. Directors on every campus are very concerned about how to meet additional workload in these areas *even* in the highly unlikely event there is no increase in the number of cases that go to a hearing. All but one campus will need some additional staff support to successfully fulfill new P&T process demands.
- Compensation for faculty on less than full year appointments: Because the timeframe provisions make no allowance for summer months when many faculty are away from campus, there will be cases when members of respective divisional P&T "pools" will need to return to campus to participate in a disciplinary hearing outside their paid appointment time. A number of campuses have arrangements whereby faculty serving on administrative efforts during such periods are paid summer ninths, hourly stipend or other local convention. A similar arrangement must be made to ensure a timely start for hearings and completion of committee recommendations—regardless of the season.

**Proposal to meet resource needs**: The challenge for estimating additional funds needed to cover items above after adoption of new P&T timeframes is that, notwithstanding some basic staffing reinforcement, the amount depends largely on how many disciplinary cases will come forward. Past experience offers some guidance, though there have been occasional unexpected flurries of activity, including those involving SVSH complaints.

Rather than attempt to calculate a fixed figure or possible range of expanded funding required, the consensus among directors is to <u>secure a commitment from the systemwide and campus</u> <u>administrations</u> to cover costs associated with this work. <u>The commitment must include</u> <u>support both for modest but critical investment in divisional office staff over the next six months</u> <u>to prepare for disciplinary process changes and a standing agreement to cover henceforth costs</u> <u>associated with incurred for the conduct of hearings</u>. These costs cannot be predicted with accuracy and therefore not built into annual budgets for divisional offices; beyond directors' general efforts to act with fiscal prudence, they are not subject to Senate control.

1) **Investment in divisional office staff**: (Still under development; range of additional staff requested is 0.5-1.0 FTE to be hired at an appropriate classification. Some campuses yet

to weigh in. Merced is a special case where significant understaffing for existing assignments mean that 2 more FTE are required to handle *any* P&T cases. For a few divisions, the best course is to reclassify staff as needed for P&T work, realign some committee assignments, and backfill with a full or part-time analyst to do other work. The uncertain, sporadic nature of P&T is understood; directors will manage staff accordingly to balance hearing demands with routine work & long term projects,)

- 2) **Standing commitment to cover costs**: Building on an existing Senate bylaw provision that requires the administration bear hearing court reporter costs as well as the current practice of paying faculty summer ninths for mandatory University work "off-season," directors propose the following two bylaw revision options:
  - a) Amend Bylaw 336(D)(11):

The hearing shall be recorded. The Hearing Committee has the discretion to use a certified court reporter <del>(whose cost is borne by the administration) for this purpose, and the parties and their representatives shall have the right to a copy of the recording or transcript. The cost of the copy shall be assumed by the requesting party of the court reporter as well as other costs associated with the hearing will be borne by the administration.</del>

b) Keep 336 (D)(11) unchanged but add a subsection: Bylaw 336 (D)(13)
 The administration shall provide Senate offices with sufficient resources to ensure disciplinary cases are handled in keeping with timeframes specified in Section 336 (B)(1) and (E)(10). Relevant costs include hearing room rental, IT support, audio-visual equipment & other accommodations, faculty time in summer months, etc.

If the first option is preferred, the guidance document planned as a supplement to the primary bylaw changes could include a section enumerating examples of hearing costs the administration would cover. Either of the above would formalize at the system level a Universitywide commitment by the administration to provide divisional Senate offices sufficient operational support and resources to conduct P&T work. The aim is to ensure the offices have the funding and staff to successfully implement new timeframes set forth as a Regental and administrative priority. Amendments by UCPT or UCRJ are, of course, welcome. If approved, a proposed revision could go forward as a package for systemwide review with the other recommended changes to incorporate new timeframes.

**Final Thoughts:** At this point in time, the Senate must set an explicit expectation that P&T costs will increase and that, while difficult to predict, the administration must comment to covering these additional expenses. The directors are keenly aware of the stakes involved and of the external scrutiny to follow implementation of changes requested by Regent Kieffer at the California State Auditor's request. They simply want to ensure sufficient resources for the Academic Senate to successfully carry out these new process imperatives.



320 STEPHENS HALL UNIVERSITY OF CALIFORNIA

March 12, 2019

ROBERT MAY Chair, Academic Council

Subject: Proposed amendments to Academic Senate Bylaw 336

Dear Robert,

On February 25, 2019, the Divisional Council (DIVCO) of the Berkeley Division considered the proposal cited in the subject line, informed by commentary of our divisional committees on Faculty Welfare (FWEL), Privilege and Tenure (P&T), and Rules and Elections (R&E). Given the extent of the commentary, including specific textual suggestions, the reports are appended in their entirety.

DIVCO appreciates both the seriousness of sexual violence/sexual harassment (SVSH) complaints, and the inadequacies of UC processes and procedures that led to the California State Auditor's (CSA) recommendations, and ultimately to the proposal under consideration. We believe that campuses should do a better job responding to, investigating, and adjudicating complaints in a timely fashion. That said, DIVCO and the reporting committees identified a number of serious concerns about the proposed bylaw revisions.

While the proposal reflects the Regents' and President's directive to the Senate, we believe that the CSA recommendations should not have been accepted and imposed on the Senate *without consultation*. As a result, it is clear that the Regents' and President have committed the Senate to an untenable position. We believe the Senate should not agree to codify unrealistic timelines and expectations in its bylaws.

Each of the reporting committees raise substantive concerns that the proposed timeline and scheduling expectations will erode the due process rights of accused faculty members, and potentially undermine the credibility of the proceedings in the appeal process. The P&T report describes in detail its concern about the timeline and scheduling—concern informed by its experience conducting disciplinary proceedings. R&E takes exception to the narrow framing of the grounds for granting extensions, that is, "material or unforeseen circumstances related to the complaint and sufficient to justify the extension sought." R&E points out:

A refusal to grant an extension could lead to a due process violation if the defendant does not have enough time to assemble his or her defense, such as retaining counsel, securing witnesses, analyzing the facts and law, etc. The proposed deadline here, combined with a standard that could be seen to restrict the granting of extensions, could cause such a due process problem.

We believe the integrity of the disciplinary process should guide reform of our procedures—and by extension, our bylaws. We agree that the Senate should commit to a reasonable timeframe and process for adjudicating SVSH disciplinary cases, but we believe our procedures should be grounded in a commitment to fairness to complainants, as well as due process for the accused.

Accordingly, we recommend (using the delivery of the charges to P&T as a starting point) that the Senate adopt a 30-day timeline for holding a pre-hearing conference, as described in the current bylaw, and a 120-day timeline to begin the hearing. We find the 30-day timeline after completion of the hearing for the panel to submit its recommendation to the chancellor to be reasonable.

We support greater flexibility with respect to the definition of "good cause" for the purpose of granting extensions to the timeline. We agree with FWEL and P&T that the application of the proposed timeline and process to all disciplinary proceedings compounds these serious issues by extending their negative effects to non-SVSH cases. We agree with P&T:

The proposed revisions to the timing and process appear so untenable, however, that <u>we are loathe to extend them</u>, as do the proposed Bylaws, to non-SVSH disciplinary actions for which they have not been mandated.

In sum, DIVCO believes that the Senate should not adopt this untenable position. Instead, the Regents and the President should work with the Senate to develop a reasonable and informed response to the CSA recommendations.

Sincerely,

Park a for

Barbara Spackman Chair, Berkeley Division of the Academic Senate Cecchetti Professor of Italian Studies and Professor of Comparative Literature

Encls. (3)

 cc: Terrence Hendershott, Kenneth Polse, and Sheldon Zedeck, Co-chairs, Committee on Faculty Welfare
 Marianne Constable, Chair, Committee on Privilege and Tenure
 David Milnes, Chair, Committee on Rules and Elections
 Andrea Green Rush, Executive Director staffing the Committee on Privilege and Tenure Sumei Quiggle, Associate director staffing the Committee on Rules and Elections Sumali Tuchrello, Senate Analyst, Committee on Faculty Welfare



February 20, 2019

#### CHAIR BARBARA SPACKMAN Academic Senate

# *Re:* FWEL Comments Regarding Proposed Revisions to SV/SH Investigation and Adjudication Frameworks for Faculty and to Senate Bylaw 336

Dear Chair Spackman,

The Faculty Welfare Committee met on January 28 and discussed the proposed revisions to the Sexual Violence/Sexual Harassment Investigation and Adjudication Frameworks for Faculty and to Senate Bylaw 336. Our first set of concerns involve the implementation of the decision to apply the procedures for disciplinary cases involving Sexual Violence/Sexual Harassment (SV/SH) to all alleged violations of the faculty code of conduct, irrespective of the nature of the violation in question. We do not question the recommendation of the UC Privilege and Tenure (UCPT) committee that it is best to have a uniform procedure because "there would be quite serious difficulties involved in administering two different sets of procedures." UCPT, Senate Bylaw 336-Reasons for Proposed Revisions (December 11, 2018), at p. 2.

Most of our concerns could be addressed by modifying Bylaw 336.E.2 to give the Chair of the Committee on Privilege and Tenure (P&T) or the Hearing Committee broader discretion to extend a deadline. In addition, we think the language giving P&T the power to suggest mediation should be reinstated for cases in which an extension of the deadline makes mediation feasible. Both changes in Bylaw 336 are intended to cover cases that do not involve an SV/SH violation and in which the accused did not have fair warning of the need to obtain a lawyer or other representation before the disciplinary charge was filed with P&T.

The proposed revisions to Bylaw 336 shortens the time period in which an accused must file an answer from 21 days to 14 days from the date the accused receives the disciplinary charge (Bylaw 336.C.2). New Bylaw 336.C.3 requires the Chair of P&T to contact the accused within five business days after receiving the charge in order to schedule a hearing, and that the accused provide available dates within 14 calendar days after this. New Bylaw 336.E.1 requires that the hearing begin no later than 60 calendar days from the date the disciplinary charge is filed. New Bylaw 336.F.2 requires that within two business days after the hearing is scheduled, the P&T committee establish a case plan for the hearing. This is described as a prehearing letter. New Section 336.F.10 requires that



the Hearing Committee submit its findings of fact and conclusions within 30 calendar days after the conclusion of the hearing.

These short deadlines make a great deal of sense when the disciplinary charge involves a SV/SH violation because the SV/SH Investigative Process ensures that the accused will have had formal notice of a charge and an opportunity to respond. As a practical matter, this means the accused will have had a fair warning of the need to obtain a lawyer or other representation, if the accused contests the charge or wants assistance and advice to try to negotiate a favorable resolution. The timeframe of the SV/SH investigative process also provides the lawyer, or other representative, an opportunity to investigate the case. Our concern is that there may be cases in which the filing of a disciplinary charge with P&T is the first time an accused receives fair warning of the need to hire a lawyer or other representative. These deadlines do not give the accused in such a case a reasonable period to obtain a lawyer or other representative, and they do not give the lawyer or representative a reasonable opportunity to investigate the case.

Bylaw 336.E.2 allows the Chair of the Committee on P&T or the Hearing Committee to extend any deadline for "good cause shown." But good cause is defined narrowly to consist only of "material or unforeseen circumstances related to the complaint and sufficient to justify the extension sought." This language would stretch to cover the case of concern to us if the filing of the charge can be treated as an "unforeseen circumstance." But this is not a natural or obvious reading of the rule. Our concern could be dealt with by adding a statement that "good cause" includes the absence of fair warning a disciplinary charge could be filed. It would be unnecessary to change the rule in Bylaw 336.D.1 that "negotiations shall not extend any deadline in this Bylaw." An extension granted because of the absence of fair warning a disciplinary charge could be filed would provide an opportunity for negotiation without a special rule. The deleted paragraph on mediation could then be reinstated perhaps with a proviso that this is feasible only when the deadline has been extended for good cause.

The committee discussed two other sets of concerns in relation to SV/SH and faculty welfare. First, the resources for faculty who are victims rather than perpetrators are much less developed than the resources available for students. Currently, the person a faculty member would most likely to turn to, that is the Faculty Ombudsperson in the Academic Senate, is not considered a confidential resource and does not receive equivalent training in response to that received by the similar resource staff for students and staff. This could be remedied without creating an entire new bureaucracy, by training the Faculty Ombudsperson on SV/SH prevention and intervention tools as part of their overall training, and by making them a confidential resource. This is a fundamental issue of faculty welfare, and we hope the University will respond to it seriously.



The last issue raised during the meeting was the question of the classroom. Currently, faculty, as mandated reporters, are required to report incidents of SV/SH among students, in any context in which the faculty learn about such incidents, except in a "public" context such as a Take Back the Night rally or during research. In the interest of protecting the classroom as a place for intellectual development and inquiry, we would like the University to provide a similar carve-out from the faculty's obligation to act as mandated reporters for information received in the course of classroom discussion. This serves as a way of protecting the University's most vital educational functions from faculty's other obligations.

Sincerely,

Terrence Hendershott, Co-Chair Ken Polse, Co-Chair Sheldon Zedeck, Co-Chair

TH/KP/SZ/st



320 STEPHENS HALL UNIVERSITY OF CALIFORNIA

February 7, 2019

#### BARBARA SPACKMAN Chair, Berkeley Division of the Academic Senate

Subject: Committee on Privilege and Tenure commentary on the proposed Bylaw 336 revisions

Dear Barbara,

The Committee on Privilege and Tenure discussed the proposed Bylaw revisions. Those revisions, as you know, speed up the timeline for P&T hearings regarding disciplinary charges, in SVSH and other cases. The revisions come about as a result of the UC President's and UC Regents' acceptance of recommendations by the State Auditor.

We understand the seriousness of SVSH complaints and misconduct and the need for campuses to respond to any such incidents in a timely and responsible manner. We are cognizant of the inadequacies in campus responses that led the State of California to make particular recommendations. We fear that the strict and rapid timeline to which the President and the Regents have committed us, to which our Bylaws must now conform, may be a setup for failure. The integrity of the disciplinary process and the proper functioning of the University must drive revisions in this area, as in others.

P&T disciplinary hearings are formal proceedings in which the administration brings charges against a Senate faculty member, and the P&T panel (consisting of at least three Senate members) serves as neutral adjudicators. Typically, all parties, including P&T, are represented by counsel, and typically all parties attend the entire proceeding. Recent hearings have lasted three to four days.

# I. Timeline and Scheduling Problems

Although beginning a hearing within 60 calendar days of when charges are filed may sound reasonable, it is not. The proposed Bylaws establish the following (variously using business and calendar days):

### DAY 0 - charges filed

5 (bus days) - P&T offers choice of scheduled dates
14 (cal days) - respondent must answer charges
19 (approx cal days = 5 bus + 14 cal) - parties must answer re: dates
26 (5 more bus days) - P&T must schedule hearing
28 - (2 bus days) P&T sends pre-hearing letter; assume receipt on day 30
40 - first possible day of a hearing (allowing for minimum of 10 calendar days to prepare)

<u>This timeline is incompatible with the academic calendar.</u> A hearing on charges filed July 1, 2019, for instance, the first day that this revision goes into effect, would have to begin between Aug 12 and 30. P&T would have to know by July 8 or 9 (counting 4th of July as non-business day) the full-day availability for hearings (of up to four or five days) and with optional dates, of three hearing panel members for late August, to make scheduling offers to the parties. Likewise charges filed in October would require beginning within five or six weeks, in late November or December, and so forth.

While faculty can of course clear their calendars, establishing through the Bylaws from the start a narrow period in which a hearing must begin is problematic. Faculty must still give priority to their teaching and research and, given various professional obligations, cannot necessarily clear blocks of time in any given two-week period. P&T committee members generally begin their terms at the beginning of Fall, when a mandatory orientation meeting occurs, and many hold nine-month appointments, so cannot be available just anytime.

We further note an <u>ambiguity or loophole in timing</u>: although the Bylaws establish that a hearing "concludes" after the hearing transcript is received (usually two weeks after the actual hearing is held) or after the post-hearing briefs are received (usually two weeks after that), whichever is later, the Bylaws are silent as to what happens once a hearing "begins" within the 60 days. Under these terms, we can envision a hearing that "begins" on a day during the 60 day period and spreads its remaining days over several weeks. Our sense is that it would be preferable to explicitly lengthen the timeframe within which a hearing may begin, so that P&T has the flexibility to hold the hearing as efficiently and as soon as possible, rather than -- as the revisions provide -- scheduling immediately but holding the hearing over an extended period of time (i.e., one day a month for four months).

As to the panelists submitting their report within 30 (calendar) days after the hearing concludes, the academic calendar may again make this difficult for reasons indicated above. Further, as the additional burdens and pressures placed on faculty taking on this important service become known, we anticipate that <u>fewer faculty members will be willing to serve</u>. (P&T does have some ideas about how to make such service more feasible; these include: jury pools whose members could hold particular days each month, to be released if not used; three-year terms on P&T in which members would rotate in and out of hearing service, with possible course relief during (or to make up for time in) year- of hearing service; etc.)

On a final practical note, the compressed schedule requires <u>additional and</u> <u>unpredictably fluctuating staff time and resources</u> for coordinating and communicating

with the hearing panel and other parties in the case, as well as managing logistics, including, distribution of confidential materials, renting rooms and A/V equipment, securing court reporting services and so on, on very short timelines.

<u>The new schedule also, importantly, has *due process implications*</u>. Rushing a case to a hearing and rushing to produce a panel report are not conducive to a full and fair hearing of evidence, which requires preparation, planning and coordination by and among both parties and the panel members -- which counsel for any losing respondents will no doubt point out on appeal. Alternatively, should the process be fair, yet take longer than what the Bylaws mandate, the Senate can be accused of being out of compliance with its own rules (for more discussion of this last point, see below, II.2 and II.3).

# **II. Additional Substantive Issues**

1. Extension to other disciplinary charges. We recognize the justice of treating like cases alike and the cumbersomeness of creating two tracks of disciplinary proceedings, one for SVSH and one for all else. The proposed revisions to the timing and process appear so untenable, however, that we are loathe to extend them, as do the proposed Bylaws, to non-SVSH disciplinary actions for which they have not been mandated.

2. Senate role and authority. We fear that once the requirements are adopted, the failure of P&T hearing panels to meet them will reflect badly on the Academic Senate and will <u>ultimately undermine the Senate's role and authority in disciplinary cases</u>. (In our more cynical moments, some of us even wonder whether the possibility of diminishing the role of the Senate in matters of faculty conduct may even be something that the UC administration has considered, in capitulating as it has to external recommendations.)

The institutional division of labor revealed in the set of proposed documents we have been sent over the last year reinforces our sense of a <u>shift in influence and decisionmaking away from the Senate</u> and even to some degree away from the campus' academic administration <u>to the Title IX office</u>. The proposed change to the SVSH Investigation and Adjudication Framework (which P&T members received but did not have time to discuss explicitly) makes one change to the SVSH disciplinary process of relevance to our faculty and underscores this point. At present, after Title IX issues its report following a formal investigation, the report goes to a Peer Review Committee who advises the Chancellor or her/his designee (Ch-designee), at our campus, the Vice Provost for the Faculty or VPF, as to appropriate action. (Before 2017, and as is still the case for non-SVSH charges, a faculty investigative committee carried out this role.) The revised Adjudication Framework now requires, in addition, that the Ch-designee (or VPF) consult with the Title IX officer "on how to resolve the matter."

As we mentioned in Fall 2018, in commenting on the then-proposed Presidential Policy on SVSH, the period granted to the Title IX office, whose staff is dedicated to such matters, to deal with complaints is relatively long. *After* initial assessment and the possibility of alternative dispute resolution, the Title IX office has 60 business (not calendar) days to conduct its Formal Investigation which ultimately results in a determination or finding of whether there is probable cause or whether under a

"preponderance of the evidence," it is "more likely than not" that misconduct occurred), after which the Ch-designee (or VPF) has 40 business days to bring charges. By contrast, the Bylaw 336 revision before us restricts the timing of a P&T hearing (which must begin within 60 calendar days and be reported within 30 calendar days of its conclusion) that is staffed by faculty, who have other competing professional obligations and who must make recommendations based on a higher "clear and convincing" standard. P&T's inability to refer to mediation (as per 12/11/18 UCPT letter) and the impossibility of extending hearing deadlines to accommodate negotiations once charges are brought further constrains P&T's role.

3. Assessment and self-study. The CA State Auditor's report recommended that the Senate carry on an annual review and that UCOP "enforce a more prompt adjudication process" if the process takes longer than the Senate's "written requirements" as to "exact time frames" (p. 26). This particular recommendation does not appear in the Bylaw revisions and, as we have pointed out above, we doubt that the Bylaw's proposed time frames can be met -- or enforced. P&T thus suggests, in the spirit of making the best of an unfortunate situation, that rather than waiting for external assessment or audit of compliance by UCOP or the State of California as to how well the Divisional Senates and committees are satisfying the Bylaw requirements, the Senate or Council <u>proactively include in the revised Bylaws additional provisions to the effect that the Academic Council monitor its (or our) own performance.</u> Council should be required, within a particular timeframe, to submit to the Assembly a report assessing how well the revised Bylaws are working and to use such study, if necessary, as a basis for recommending that Bylaw 336 requirements be recalibrated.

# **III. Drafting Issues**

1. 336 B. "Time Limitation" In the context of the rest of the paragraph, the last sentence of the paragraph ("There is no limit on the time within which a complainant may report an alleged violation") appears to apply to both SVSH and non-SVSH allegations. We think it actually came about in 2017 amendments that concerned only SVSH.

2. 336 D. 2. seems to repeat in other words 336 D.1.b. Need to clarify difference between 336.D.1, negotiated settlement, and how or whether D.2. refers to mediation, given UCPT 12/11/18 letter, point II. iv. f, regarding mediation.

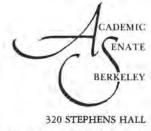
3. 336 E.2. definition of good cause as "material or unforeseen circumstances related to the complaint and sufficient to justify the extension sought" is too narrow ("related to the complaint") and does not offer much guidance.

I hope this is helpful to the DIVCO discussions. If you have questions, please let me know.

Sincerely,

M Cable

Marianne Constable Chair, Committee on Privilege and Tenure Professor of Rhetoric



UNIVERSITY OF CALIFORNIA

February 20, 2019

BARBARA SPACKMAN Chair, Berkeley Division

## Re: Proposed revisions to Senate Bylaw 336 (Privilege and Tenure Divisional Committees – Disciplinary Cases)

Dear Chair Spackman,

The Committee on Rules and Elections considered the proposed revisions to SB 336, which would shorten the timelines for disciplinary hearings. Our comments follow, but first we must state that the Senate has not been given enough time to fully consider such an important change. This is a matter on which faculty Senate input, including comment by a wide swath of the faculty as a whole, is called for under the principle of shared governance. The short turn-around time for comments on this proposal seems to call that principle into question.

Overall, we had strong reservations about whether the proposed deadlines would be feasible and fair, given the complexity of managing legal processes. The shorter deadlines, when combined with the strict standard for granting extensions, could affect the due process rights of the accused faculty member. According to our committee's legal expert, the requirement of a speedy trial, once thought to be a benefit to the defendant, is now seen as a benefit to the prosecution, so courts are usually generous in granting extensions (continuances) to the defense. This proposal allows an extension only for "good cause," which is defined as "material or unforeseen circumstances related to the complaint and sufficient to justify the extension sought." Material and unforeseen circumstances are not defined, but it appears to be a higher standard than the one used in California courts. See, for example, the California rule here: https://www.courts.ca.gov/cms/rules/index.cfm?title=three&linkid=rule3\_1332. It is customary for judges to grant continuances merely when both parties agree, and lawyers usually consent to them for reasons that include the convenience of lawyers and the parties, rather than a "material or unforeseen circumstance." A refusal to grant an extension could lead to a due process violation if the defendant does not have enough time to assemble his or her defense, such as retaining counsel, securing witnesses, analyzing the facts and law, etc. The proposed deadline here, combined with a standard that could be seen to restrict the granting of extensions, could cause such a due process problem.

This is our chief concern, but we note several other questions and ambiguities found within the policy, to which we call attention and urge careful consideration.

1. The *recommendation* of the CSA has been transmuted into a *requirement*. Is there room for

modification?

- 2. Resolution of SVSH cases can take years. Is it wise to eliminate the pre-hearing conference and one-third of the time for filing of an initial response, in order to save a relatively meager measure of time at this crucial stage? Has expert advice concerning the value of a pre-hearing conference been obtained?
- 3. Has the principle of balancing rights of all parties (accuser, accused, university, public) been given due consideration? Is the benefit to some parties of the relatively small seven-day speedup in C2 commensurate with potential harm to the interests of the accused?
- 4. What role does the initial answer of the accused play? Is it merely an acknowledgement of notification, a formal plea, or a more substantive response? Is it admissible as evidence during the hearing itself? Is 14 days an adequate period for preparation of an answer?
- 5. Point B states that there is no limit on the time elapsed between an incident and the filing of a complaint. Is this philosophically consistent with the 14-day timeframe of C2?
- 6. The language in point C1 is garbled. Does "termination of employment" refer to commencement of proceedings whose completion *could* result in such termination? Here one reads "the appropriate Chancellor", elsewhere simply "the Chancellor".
- 7. The sentence "In case of charges filed by the administration . . . , charges shall be filed by the Chancellor . . . " in C1 is difficult to understand.
- 8. Perhaps there could be an indication of what is meant by "the administration" in C1. More substantively, is some review by the Chancellor intended here, or is the Chancellor simply to act on the administration's decision?
- 9. The phrase "once probable cause has been established" suggests a presumption that probable cause will necessarily be established, and moreover, that it will be established *after* the filing of charges by the administration. Better might be something along the lines of "The chancellor [or the administration] will follow APM-015/016 and divisional policies in determining whether probable cause exists for disciplinary action. If . . . then . . . "
- 10. Is there a timeframe for the finding of probable cause?
- 11. Are the delivery requirements of part C1a adequate? Faculty are not required to read University email daily. An in-person meeting would not be available if the accused were traveling (and consequently more likely not to read email regularly and not to receive correspondence sent to the last known place of residence).
- 12. In point (b) in B3, "personally" should be "in person". In "electronic mail or overnight delivery", "or" should be "and".
- 13. Also in B3, is the hazy notion of "giving priority" enforceable?
- 14. The policy that a hearing will not be postponed if the accused fails to appear does not contemplate legitimate hardship.
- 15. Point D1 is concerned with potential negotiations between Chancellor and accused and states that no deadline is to be extended to facilitate such negotiations. Does this place the CSA report's *recommended* timeframe before the goals of justice and efficacy? Ongoing (in the assessment of the Chancellor) progress towards negotiated settlement should be grounds for some extension, in the best interest of all parties.
- 16. Is the Chancellor required to engage in good faith negotiations if the accused requests it? One can imagine circumstances in which the Chancellor might decline to do so, provoking a challenge to the integrity of the proceedings. It might be wise to address this question explicitly.

- 17. In D1a, "third parties" should be "other parties". Should "impartial" be dropped, since partial parties might be welcome and useful in some cases? It could be indicated whose consent is required for such participation.
- 18. In D2, "early" should be "negotiated".
- 19. In D2, it makes no sense to require that the chair formally request something of the Chancellor in every case. It should simply be blanket policy that the Chancellor should consult with the Committee or its chair prior to finalization of negotiated resolution.
- 20. F2a does not indicate *how* the parties will determine those facts not disputed. (This is an agenda item for a pre-hearing conference under the current bylaws.) Have experts on legal hearings and/or mediation been consulted on these procedures?
- 21. After F2e one reads "... shall not result in an extension of the hearing date", but is it not stated elsewhere in the document that any deadline is open to extension?
- 22. Point F4 states that certain legal rules of procedure need not be followed. Something of an affirmative nature should be included—perhaps assigning authority and responsibility to the chair of the Hearing Committee. Perhaps "the technical legal rules" should be "formal legal rules" or "formal legal procedures" or something of the sort.
- 23. Point F10 in the tracked copy is not quite consistent with F10 in the clean copy. The first sentence of F10 could be cleaned up.
- 24. F8 assigns a prosecutorial role to the Chancellor (or designee). The role of the Hearing Committee could be likewise clarified, here or elsewhere. This role seems to be to examine, to uncover, and to weigh evidence, but not to prosecute.

Sincerely,

Din & Min lines

David Milnes Chair, Committee on Rules and Elections

DM/scq



SANTA BARBARA • SANTA CRUZ

DAVIS DIVISION OF THE ACADEMIC SENATE ONE SHIELDS AVENUE DAVIS, CALIFORNIA 95616-8502 (530) 752-2220 academicsenate.ucdavis.edu

March 13, 2019

**Robert May** Chair, Academic Council

RE: Proposed Revisions to Senate Bylaw 336

Dear Robert:

The proposed revisions to Senate Bylaw 336 were forwarded to all standing committees of the Davis Division of the Academic Senate. Three committees responded: Academic Personnel Oversight (CAP), Faculty Welfare, and Privilege and Tenure (P&T) Investigative.

Enclosed, P&T and Faculty Welfare provide a detailed list of recommendations and concerns. The Davis Division appreciates the opportunity to comment.

Sincerely,

Kistin H. Lagettuta

Kristin H. Lagattuta, Ph.D. Chair, Davis Division of the Academic Senate Professor, Department of Psychology and Center for Mind and Brain

Enclosed: Davis Division Committee Responses

c: Hilary Baxter, Executive Director, Systemwide Academic Senate Michael LaBriola, Principal Policy Analyst, Systemwide Academic Senate Edwin M. Arevalo, Executive Director, Davis Division of the Academic Senate

#### To: Kristin Lagattuta, Chair, Davis Division of the Academic Senate

Date: March 04, 2019

Re: Faculty Welfare Committee Response to the Request for Consultation: Proposed Revisions to Systemwide Senate Bylaw 336

The Faculty Welfare Committee reviewed the RFC: Proposed Revisions to Systemwide Senate Bylaw 336 and raised some questions about revised bylaws. The revised bylaws do not account for if the Chair of UCPT or the Chancellor is the accused.

In Section E.2, the committee raises the question of what happens if the two chairs disagree on whether good cause has been shown. Also, if the deadline has not been extended by a request received by one of the chairs, can the party appeal to the other chair? The committee feels that the power should rest with the Hearing Chair once that individual has been named.

To: Kristin Lagattuta, Chair, Davis Division of the Academic Senate

Date: February 15, 2019

Re: Privilege & Tenure Investigative Subcommittee Response to the Request for Consultation on the Proposed Revisions to Systemwide Senate Bylaw 336

The Committee on Privilege and Tenure has a general concern that although stream-lining the process is desirable, the 60 day deadline (from the filing of charges to scheduling a hearing) seems unrealistic, particularly in view conflicting schedules of lawyers, witnesses and panel members. We are concerned that "good cause" extensions will often be necessary.

A very specific issue about the timeline concerns an apparent overlap: The accused has 14 days to respond under 336.C.2, but the chair must begin the process of scheduling a hearing 5 days after receipt of the charges under 336.C.3. This may result in significant work for the chair in cases where a hearing is not necessary. Perhaps scheduling should begin after the receipt of the reply to avoid unnecessary work.

We are concerned about the notification procedures and especially about ensuring that the faculty member is aware of the proceedings. 336.C.1.a. could be modified in cases where faculty are notified via email that a return receipt acknowledgment be included.

In the case of 9-month faculty appointments, we question the feasibility of notifying faculty and proceeding to a hearing during the summer months.

We have some concerns about the preference for written pre-hearing communications and wish to allow the chair significant leeway in determining when a pre-hearing conference call would be efficacious and warranted. Specifically, we note that written communications tend to favor the administration and that conference calls enable the accused some introduction to procedures.

In 336.D. Early Resolution, we are concerned that the shortening of the deadlines effectively results in the Committee on Privilege and Tenure no longer being able to recommend returning to mediation. Under the proposed language, mediation is cast as a delay tactic when in fact it is sometimes warranted. We recommend that Privilege and Tenure be allowed to recommend mediation even after charges have been filed.



March 7, 2019

Robert May, Academic Council 1111 Franklin Street, 12<sup>th</sup> Floor Oakland, CA 94607-5200

#### RE: Systemwide Review of Proposed Revisions to Senate Bylaw 336

Dear Chair May,

On our campus, the Committee on Privilege and Tenure (CPT) and the Council on Faculty Welfare, Diversity, and Academic Freedom (CFW) reviewed the proposed revisions to Senate Bylaw 336, with CPT serving as the lead reviewing body. The Cabinet discussed the Councils' comments on the proposed revisions at our March 5, 2019 meeting and endorsed (with one abstention) forwarding the Councils' comments to the Academic Council.

Attached please find the Councils' individual responses. In summary, concern was expressed about the mandated 60 calendar day limit to initiate a hearing (specifically that it could undermine a fair and deliberative process) and whether all of the intermediate deadlines would be feasible especially in the event that a party not under CPT's direct control failed to comply.

The Irvine Division appreciates the opportunity to comment.

Sincerely,

inde Cohen

Linda Cohen, Chair Academic Senate, Irvine Division

Enclosures: CPT response dated 2/6/19 CFW response dated 2/14/19

C: James Steintrager, Chair Elect, Academic Senate, Irvine Division Hilary Baxter, Executive Director, Academic Senate Kate Brigman, Executive Director, Academic Senate, Irvine Division Laura Gnesda, Analyst, Academic Senate, Irvine Division





February 6, 2019

#### LINDA COHEN, CHAIR ACADEMIC SENATE, IRVINE DIVISION

#### RE: Systemwide Senate Review of Proposed Revisions to Senate Bylaw 336

In regards to the proposed revision of Senate Bylaw 336, the Committee on Privilege and Tenure would like first to state its overriding concern about the mandated 60 calendar day limit to initiate a hearing. While the Committee understands this to be a Regential mandate, it believes nevertheless that such a short timeline risks undermining its ability to provide a fair and deliberative process. The Committee also questions whether all of the intermediate deadlines are feasible to meet in all cases and questions what will happen if one or more of the parties that are not under the Committee's direct control fails to comply. The Committee hopes that these intermediate deadlines will be considered aspirational guidelines that do not trigger the requirement for a formal request to exceed based on good cause, as long as they are not unreasonably exceeded and the time is made up elsewhere in the process so that the 60-day mandate is still met.

In addition to these general concerns, the Committee submits a number of specific comments and suggested revisions:

- 1. Section B. Time Limitation for Filing Disciplinary Charges, states that "The Chancellor is deemed to know about an alleged violation of the Faculty Code of Conduct when it is reported to any academic administrator at the level of department chair or above, or, additionally, for an allegation of sexual violence or sexual harassment, when the allegation is first reported to the campus Title IX Officer." The use of the word "additionally" is confusing, and makes the intent of this statement unclear. Revising this language to state that the Chancellor is deemed to know about an alleged violation either when an academic administrator at the level of department chair or above or, for an allegation of sexual violence or sexual harassment, when the allegation is first reported to the campus Title IX Officer would be helpful.
- 2. Section C.2. states "The accused shall have 14 calendar days from the date of receipt of the disciplinary charges in which to file an answer in writing with the Committee on Privilege and Tenure. The Committee on Privilege and Tenure shall immediately provide a copy of the answer to the Chancellor or Chancellor's designee." The redlined version of the Bylaw incorrectly refers to the Committee in this section as the "Committee *in* Privilege and Tenure." Reviewers expressed concern that this 14 day timeline may not provide sufficient time for the accused to consult with legal counsel.
- 3. Section C.3.a. states "The Chair shall offer a choice of dates for the hearing and instruct the parties to provide their available dates within 14 calendar days." The Committee's understanding

of the intent of this language is that the parties will select only from the choices offered by the Chair. As written, this language seems to invite the parties to offer any availability. What will happen if the parties do not select a common date from among the choices offered, or if one or more parties select none of the dates offered by the Chair? Will the hearing commence without acceptance of a date by one or more parties?



4. Section C.3.c. is missing punctuation at the end of the final sentence.

5. Section D includes a few confusing redundancies. For example, D.1 certainly implies that a negotiated settlement is permissible at any time in the process; it is unnecessary to restate this in D.1.b. Similarly, D.1.b admonishes the Chancellor's Designee to consult with the Chair of CPT prior to finalizing a settlement, while D.2 places the burden on the CPT Chair to request such consultation, should a settlement be reached. In addition, Section D.1.a. states "Such negotiations may proceed with the assistance of impartial third parties, including one or more members of the Committee." The language here is unclear. Bylaw 336 refers to both the Committee on Privilege and Tenure and a Hearing Committee. It should probably be understood that the "Committee" referred to in this section must be the Committee to mediate, but it would be helpful to make this language more precise. Alternatively, the document could be revised to refer to a "Hearing Panel," rather than a "Hearing Committee" to eliminate any possibility for confusion.

Cleaner language for Section D might be:

- D. Early Resolution
  - 1. The Chancellor or Chancellor's designee and the accused may attempt to resolve disciplinary charges through negotiations. A negotiated resolution is permissible and appropriate at any stage in the disciplinary procedures. Such negotiations may proceed with the assistance of impartial third parties, including one or more members of the Committee on Privilege & Tenure.
  - 2. The Chancellor or Chancellor's designee must inform the chair of CPT if a negotiated resolution is reached after formal charges are filed and is encouraged to consult with the chair prior to finalizing the settlement. It is the responsibility of the chair of CPT to make a request for such consultation to the Chancellor or Chancellor's designee at the time that charges are delivered (Section C.1).
- 6. In discussing Section E. Time Frame for Hearing Process in Disciplinary Cases, the Committee expressed concern about the feasibility of beginning a hearing within 60 calendar days, and noted that extending this timeline to 90 days would address a number of logistical issues.
- 7. Section E.2. states that "Any deadline in this Bylaw may be extended by the Chair of the Committee on Privilege and Tenure or the Chair of the Hearing Committee, but only for good cause shown, requested in writing in advance. Good cause consists of material or unforeseen circumstances sufficient to justify the extension sought. A request to delay the start of the hearing beyond the 60 days mandated in this Bylaw must include adequate documentation of the basis for the request." Given the extreme pressure to minimize delays, the Committee recommends strengthening this statement to read "Good cause consists of material or unforeseen circumstances of sufficient impact to prevent a fair hearing without the extension." The Committee also suggests clarifying who is permitted to request a delay. Could the Chair of a Hearing Committee, for example, both request and grant an extension if appropriate?
- 8. Section F.1. details the composition of a Hearing Committee. There was significant concern expressed both at the suggestion of using former members of the Committee on Privilege and Tenure to serve on Hearing Committees and with the potential to have Hearing Committees with as few as three members. Given the mandated timeline from the Regents, it will be a challenge to constitute Hearing Committees as required by the revised Bylaw. The Committee does not have any proposed solutions at this time, but wishes to register these concerns.
- 9. Section F.2. lists a number of Hearing Committee decisions that must be communicated to the accused, the Chancellor or Chancellor's designee, and/or their representatives. These decisions include (in Section F.2.b.) "The deadline for the parties to determine the facts about which there is

no dispute. At the hearing, these facts may be established by stipulation." What process will be used to determine the facts? Will the Chair of the Hearing Committee provide all parties with an initial list of facts for review?

Thank you for the opportunity to comment.

Sincerely,

Donald Felt Series

Donald Senear, Chair Committee on Privilege and Tenure

C: Kate Brigman, Executive Director, Academic Senate Julie Kennedy, CPT Analyst Laura Gnesda, Senate Analyst



Academic Senate Council on Faculty Welfare, Diversity & Academic Freedom 307 Aldrich Hall Irvine, CA 92697-1325 (949) 824-7685 www.senate.uci.edu

February 14, 2019

## LINDA COHEN, CHAIR ACADEMIC SENATE – IRVINE DIVISION

# Re: Bylaw 336 (Privilege and Tenure: Divisional Committees – Disciplinary Cases)

At its meeting on February 12, 2019, the Council on Faculty Welfare, Diversity, and Academic Freedom (CFW), discussed the Committee on Privilege and Tenure (CPT)'s revisions to Bylaw 336. These revisions came about after the release of an audit report by the California State Auditor (CSA). The Board of Regents then directed the Academic Senate to implement CSA recommendations by July 2019. These changes include a revision of Senate Bylaw 336.

CFW members shared the concern that the intermediate deadlines may not be feasible to meet in all cases and questioned what may happen if one or more of the parties that are not under the Committee's control fail to comply.

Ultimately, members found no issues with the CPT revisions, and voted unanimously to endorse the CPT revisions to Bylaw 336.

Sincerely,

Janz-

James Danziger, Interim Chair Council on Faculty Welfare, Diversity, and Academic Freedom

C: Kate Brigman, Executive Director Academic Senate



March 13, 2019

Robert May Chair, Academic Council

## RE: Systemwide Senate Review: Proposed Revisions to Senate Bylaw 336 and Proposed Revisions to SVSH Academic Frameworks

Dear Chair May:

The Executive Board of the UCLA Academic Senate discussed the proposed revisions to Senate Bylaw 336 and the proposed revisions to SVSH Academic Frameworks at its meeting on March 7, 2019. The Executive Board solicited comments from standing committees of the Senate, as well as the Faculty Executive Committees, to maximize faculty feedback; the individual responses received are attached.

In this response, we offer our insights into both the proposed revisions to Bylaw 336 and to the proposed revisions to SVSH investigation and adjudication framework for Senate and non-Senate faculty.

#### Proposed Revisions to Senate Bylaw 336

The UCLA Division of the Academic Senate welcomes the opportunity to comment on the suggested revisions to Senate Bylaw 336. These revisions, as your office has pointed out, respond to the recommendations made in the July 2018 California State Audit report on the additional steps that UCOP must take to address longstanding issues with the university's response to sexual harassment complaints. Before we go any further, we must say that we were surprised to learn that in your presentation to the UC Regents on September 26, 2018, you apparently confirmed that the Academic Senate accepted the CSA's recommendation that that the timeframe for disciplinary hearings must begin within sixty calendar days once the Chancellor files a charge and that the hearing committee must issue its recommendation to the Chancellor within thirty calendar days once the hearing has been concluded. We assume that this is an error, since any Senate agreement to these recommendations would of course be taken to a discussion and vote through our systemwide Academic Assembly. We would very much appreciate some clarification on what you said on this matter at the September 26, 2018 UC Regents meetings.

We have identified some serious drawbacks to the revisions that appear in the final redlined document dated December 11, 2018.

In 336.C.2, we are told that "the accused shall 14 calendar days from the receipt of the disciplinary charges in which to file an answer in writing with the Committee on Privilege and Tenure." We know from experience that this timeline is simply too short.

336.D.1 involves the deletion of the opportunity for disciplinary charges also to "be resolved through mediation in cases where mediation is acceptable to the administration and the accused." The cover letter from December 11, 2018 indicates that this deletion has been made because "the deadlines

[i.e. the recommended deadlines] under which P&T will be required to operate" indicate that "it will no longer be possible for P&T to suggest that a case be referred to mediation after charges have been filed." This suggested revision is regrettable because mediation is often the most productive path toward early resolution in many different disciplinary cases. Cf. APM-015 B.4: "There should be provision for early resolution of allegations of faculty misconduct before formal disciplinary proceedings are instituted. Procedures should be developed for mediation of cases where mediation is viewed as acceptable by the Chancellor and the faculty member accused of misconduct."

This latter point highlights the problems involved in revising Bylaw 336 solely with SVSH cases in mind. Disciplinary cases are of course not restricted to SVSH.

Further, we noted on the SVSH policy that the administration acknowledged the CSA recommendations as recommendations and not as commands in extending their own time limits. We believe the Senate should take the same approach, especially since the OCR's agreement (which is binding) directs the University to create timelines that are not only prompt but also reasonable. For that reason, the references to "calendar days" in the proposed revisions to Bylaw 336 should be changed to "business days," since it will be very difficult for P&T committees to conduct their business in such a short space of time.

#### Proposed Revisions to SVSH Academic Frameworks

Section IV.D needs attention. Several high-profile court cases have made it clear that it is not desirable for a Title IX officer who had conducted an investigation and made a finding should not be involved in consultations about the best methods for resolving the case, especially when resolution entails sanctions or discipline. There needs to be a separation of interests between the investigator's role in the Title IX office and the body that that recommends corrective or disciplinary measures. The peer review committee should have the authority to make the recommendations in consultation with the Academic Personnel Office.

Sincerely,

Joseph Bristow Chair, UCLA Academic Senate, 2018-2019

cc: Hilary Baxter, Executive Director, Systemwide Academic Senate Sandra Graham, Immediate Past Chair, UCLA Academic Senate Michael Meranze, Vice Chair/Chair-Elect, UCLA Academic Senate Michael LaBriola, Principal Policy Analyst, Systemwide Academic Senate Linda Mohr, Chief Administrative Officer, UCLA Academic Senate March 13, 2019

To: Joe Bristow, Academic Senate Chair

From: Sheryl Kataoka Juni / Local Privilege & Tenure Chair

#### Re: Proposed Revisions to Bylaw 336

Dear Chair Bristow,

The Privilege & Tenure Committee, as the committee responsible to not only conduct disciplinary hearings but also all Senate grievances, has several recommendations about the proposed revisions.

**RECOMMENDATION ONE:** There should be a second period of comment after considering all of the comments from campuses. Anything less falls short of full consultation.<sup>1</sup>

As the bylaw that governs the faculty disciplinary process, Bylaw 336 is a critical part of Senate Faculty rights. The very short time to review and comment on extensive revisions to an important bylaw is very concerning. The correct version of the proposed revisions was only posted on December 11, 2018—just as the Fall quarter /semester was ending. For Senate committees in the midst of their normal duties, this has created an extremely short deadline for divisional committee and divisional leadership review. The P&T Committee currently is handling 4-5 grievance cases and is preparing for a grievance formal hearing next month. This leaves little time for a full discussion.

In the last two years the UC system, with full Senate consultation, has already extensively revised Sexual Violence and Sexual Harassment (SVSH) policy, Bylaw 336, and the Faculty Code of Conduct (APM-015). Each of those revisions went through two rounds of revisions to allow for incorporation of comments before taking a vote.

**RECOMMENDATION TWO:** There should be a full discussion about what constitutes a "reasonably prompt timeframe" for the disciplinary procedure that affects faculty tenure rights.

<sup>&</sup>lt;sup>1</sup> In a March 2, 2010 letter to the UC President Yudof, Academic Council Chair Henry C. Powell provided a useful admonition about the nature of consultation in shared governance: "While preliminary communication with Senate leaders always is appreciated, <u>consultation with *ad hoc* bodies or selected individuals in leadership positions</u> within the Senate is not a substitute for consulting with Senate committees and divisions."<sup>1</sup> [emphasis added]

The taskforce has helpfully started the conversation about revisions, but revisions proposed by a small group and then presented to the newly formed 18-19 UCPT committee and approved by "a majority" of UCPT members should not substitute for an appropriate period of consultation with all Senate committees and divisions.

- (1) The CSA recommendation regarding the SVSH investigation timeframe was not followed to the letter. They considered the complaint about too many extensions and <u>expanded</u> the timeframe for investigations to read 60 to 90 days with requests for extensions after <u>90</u> days, even though the CSA audit report stated that 60 days should be the timeframe.
- (2) The Senate has both the right and the responsibility to discuss and determine exactly what constitutes a reasonably prompt timeframe in the full context of Privilege & Tenure's scope of responsibilities.<sup>2</sup> The CSA audit only addressed Senate disciplinary hearings in the context of allegations of SVSH policy violations.
- (3) A "reasonably prompt" timeframe for the Senate should be considered in light of the fact that in all of the proposed revisions to create a more timely process, the timeframe for the administrative process is now 100-130 *business* days (20-26 weeks), while the proposed timeframe for the Senate process from delivery of charge, to holding a hearing, to production of a findings report is 90 *calendar* days, or 12 weeks.<sup>3</sup>

## **RECOMMENDATION THREE:** When establishing a reasonably prompt timeframe for disciplinary procedures, the following should be considered:

- (1) Use "calendar" days rather than "business" days. As noted above, the Senate has a right and a responsibility to make sure the timeframe is reasonable. An unreasonable timeframe with result in more chaos, more appeals, and a lack of due process for all parties. The taskforce presumably felt bound to the use of "calendar" days as necessary as it is both the language in the present version as well as the language in the CSA report. However, for an exact timeframe, "calendar" days is not reasonable for an Academic Senate process. Even more than the administrative offices involved in the SVSH processes, the Senate depends on faculty review committees and has less administrative support. A timeframe that does not account for weekends and holidays is simply not administratively reasonable for the Senate, even with additional administrative support. That one change making the timeframe 60 business days from the notice of the charge and a report produced in 30 business days after the end of the hearing—would provide a more reasonable timeframe.
- (2) *A* "*reasonably prompt*" *timeframe will be one that is administratively workable*. The proposed revisions create an administratively challenging and confusing timeframe with "calendar days"

<sup>&</sup>lt;sup>2</sup> President Napolitano (Response to CSA, May 31, 2018) "Privilege and Tenure proceedings—and any associated timeframes—are governed by the faculty bylaws and associated procedures, which can only be changed by the Academic Senate. . . . More recently, I asked the Senate to provide recommendations on how to define a reasonably prompt timeframe to complete the Privilege and Tenure process. Such a timeframe would address the concerns previously identified by my office, which are now echoed in CSA's findings."

The Board of Regents Compliance and Audit Committee called for exact time frames (Response to CSA, May 31 2018), but did not specify what these should be:

<sup>&</sup>quot;We agree with the recommendation and will ensure that the Academic Senate further define its bylaws with written requirements for the Privilege and Tenure Committee to specify exact time frames for completing the phases of the disciplinary process...."

<sup>&</sup>lt;sup>3</sup> See Appendix A for a table showing the whole timeframe for SVSH processes.

for the overall timeframe and responses, but "business days" marking deadlines to schedule a hearing and make notifications.<sup>4</sup> In addition, unlike the Title IX Office, Senate hearings are not conducted by staff dedicated to only that purpose. Provisions that provide "2 business days" and "5 business days" for different turn-arounds indicate that the tight timeframe is not reasonable. See Appendix B.

- (3) A "reasonably prompt" timeframe <u>should not eliminate mediation</u> as a provision of Bylaw 336. The cover letter accompanying the request for review states that the new deadlines mean "it will no longer be possible for P&T to suggest that a case be referred for mediation after charges have been filed." This should be a red flag that there needs to be a more robust discussion of the meaning of "reasonably prompt." It may be acceptable to remove mediation as a possibility in cases of SVSH, but that could be handle by adding an exception clause. It is perfectly appropriate in all other cases for the Privilege & Tenure Committee to play a role in resolving a disciplinary matter by mediation if all parties agree. <u>There are times when the Senate may be exactly the body</u> to recommend mediation. UCLA P&T Committee has used mediation as an important tool in resolving non-Title IX disciplinary cases. A "reasonably prompt" timeframe would be one that would not eliminate this important committee role.
- (4) A "reasonably prompt" timeframe should include a more robust discussion of <u>all</u> the responsibilities of the Privilege & Tenure Committee. P&T is also responsible for responding to grievances and other disciplinary matters. It is not reasonable to set a timeframe without consideration of what allows the committee to be responsive to other matters during the timeframe.
- (5) A "reasonably prompt" timeframe should have followed a full discussion of whether the appropriate Senate response to the CSA recommendations should be a guidelines document or bylaw revisions. During their June 27, 2018 Academic Council meeting, members suggested that the examination of the CSA recommendations should include consideration of "a guidance document rather than a bylaw change." It is still possible to pass the proposed changes as a guidance document for SVSH disciplinary cases while continuing the discussion.

#### On behalf of Committee members:

Avanidhar Subrhmanyam; Norweeta Milburn; Vilma Ortiz; Patricia Johnson; Barry O'Neill; Sherod Thaxton

/mmo

<sup>&</sup>lt;sup>4</sup> See Appendix B for an example of a mapping of the timeframe as presented in the proposed revisions.

| PHASE  | ADMINISTRATION   | SENATE   |
|--|--|--|
| ONE<br>Initial Assessment<br>(Pre-investigation)                     | <ul> <li>a. Preliminary assessment (no timeline)</li> <li>b. Alternative Resolution #1 (if agreed by parties): 30-60 business days</li> <li>(SVSH policy revised)</li> </ul> |  |
| TWO<br>Investigation   | 60-90 business days<br>(SVSH policy <i>revised</i> )   |  |
| THREE<br>Notice of outcome   | At end of investigation<br>(SVSH policy <i>revised</i> )   |  |
| FOUR<br>Decision regarding sanctions<br>Part A: Administration       | Alternative Resolution #2<br>40 business days for Chancellor to resolve<br>or file charge with Academic Senate*  |  |
| ADMINISTRATION<br>TOTAL TIME COUNTED<br>TOWARDS<br>PROMPT RESOLUTION | 100-130 business days ( <u>not counting</u><br>initial assessment) =<br>20-26 weeks  |  |
| FOUR<br>Decision regarding sanctions<br>Part B: Senate               |  | <ul> <li>Proposed:</li> <li>60 calendar days from time of charge filed to start of hearing.</li> <li>30 calendar days from end of hearing to production of findings report.</li> </ul> |
| SENATE<br>TOTAL TIME COUNTED<br>TOWARDS<br>PROMPT RESOLUTION         |  | 90 calendar days = 12 weeks  |

#### APPENDIX A Proposed Timeframe for SVSH Process

| Day Number   | Action  | Comments   |
|--|---|--|
| Day 1  | Charges are delivered to P&T and<br>to the accused with request for a<br>response.                              |  |
| + 5 business days  | Chair of P&T contacts accused &   |  |
| Day 6-8  | Chancellor in writing to schedule a hearing, offering a choice of dates.  |  |
| + 14 calendar days from Day 1<br>Day 15                  | Response to charges due from the accused.   |  |
| + 14 calendar days from "hearing<br>letter"<br>Day 20-22 | Scheduling Response due from<br>parties with choices of dates   | Little room for conflict in dates.<br>Three weeks from the date of the<br>notices of charges, the accused has  |
| + 5 business days<br>Day 25-27                           | Committee on Privilege & Tenure<br>will schedule the hearing.   | to answer the charges and find an<br>attorney with availability in the<br>following five weeks. Three weeks<br>from the date of the notice of<br>charges, P&T must compose a<br>faculty hearing committee with<br>matching availability. |
| + 2 business days  | Chair of the Hearing Committee to   | Assumes constant availability of   |
| Day 27-29  | notify the parties as to the issues,<br>deadlines for facts not in dispute,<br>witness and evidence lists, etc. | Hearing Committee Chair  |
| Day 60   | Hearing must begin  |  |
| [hearing days]   |   |  |
| Day 90   | Deliberation report and<br>recommendation must be delivered<br>to the Chancellor.                               |  |

#### APPENDIX B Proposed Timeline for P&T Disciplinary Hearing

March 5, 2019

Professor Joseph Bristow Chair, UCLA Academic Senate

Re: System-wide Review of Proposed Revisions to Senate Bylaw 336 and Proposed Revisions to SVSH Academic Frameworks

Dear Chair Bristow,

The Committee on Diversity, Equity, and Inclusion reviewed the proposed revisions to Senate Bylaw 336 and Proposed Revisions to SVSH Academic Framework at its March 4th meeting and expressed significant concerns about the recommendations set forth in the revisions to Senate Bylaw 336. CODEI members are in favor of creating a uniform procedure for handling alleged violations, but we are not in favor of the proposed time frames to handle these procedures. The recommended revisions will put an unnecessary strain on members of P&T by significantly increasing the committee's workload.

CSA's revision that requires P&T to begin a hearing no later than 60 calendar days after charges have been filed is cumbersome on faculty involved. In addition, the requirement that P&T to make recommendation on a case within 30 calendars days is unreasonable. These revisions will make it difficult for P&T to review cases carefully. We suggest that the Committee on Privilege and Tenure are provided additional resources to handle disciplinary cases if the Academic Council and the Office of the President accept these recommended revisions.

Further, the revision to reduce the amount of days the accused has to file a response in writing to the Committee on Privilege and Tenure is unwarrantable. The reduction from 21 days to 14 days to respond to a compliant does not provide enough time for the respondent to receive external legal consultation.

Finally, we oppose the revision to remove the option of informal mediation. Mediation is relatively inexpensive, swift and settlements reached in mediation are more agreeable to both parties than hearing findings.

Thank you for the opportunity to review and comment. If you have any questions, you are welcome to contact me at <u>agomes@mednet.ucla.edu</u> or the Committee on Diversity, Equity, and Inclusion analyst, Annie Speights at <u>aspeights@senate.ucla.edu</u> or ext. 53853.

Sincerely,

Automette Somo mD

Antoinette Gomes, Chair, Committee on Diversity, Equity and Inclusion

cc: Members of the Committee on Diversity, Equity, and Inclusion
 Linda Mohr, CAO, Academic Senate
 Valeria Dimas, Executive Assistant
 Annie Speights, Committee Analyst, Committee on Diversity, Equity and Inclusion



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Graduate School of Education & Information Studies Moore Hall, Box 951521 Los Angeles, California 90095-1521

To: Joseph Bristow, Chair Academic Senate

Date: March <sup>1st</sup>, 2019

RE: Revisions to Senate Bylaw 336 proposed by UCPT

Dear Senate Chair Bristow,

The GSE&IS FEC recently discussed the revisions to Senate Bylaw 336 proposed by UCPT. While the initiative shown by the committee is admirable, it has, by its own admission, vastly exceeded its mandate to update bylaws to reflect the CSA report recommendation. Having streamlined policies where Title IX issues are handled the same as other issues could have certain advantages, but there is no strong rationale provided by the committee for applying the same sets of policies and procedures to all types of cases. Fast decisions are not always synonymous with efficient or good decisions, and a lengthier process with more substantial deliberation and multiple avenues of recourse can have considerable advantages for both parties in various types of disputes, particularly where people's lives and careers may be resting in the balance. Removing the option of spoken hearings was a matter flagged as being of particular concern, since (a) there are often points raised in these hearings that are not adequately reflected in written case files, and (b) some parties in these disputes may be better able to incorporate or frame information in advantageous ways in written case files than others, creating an unfair playing field. Removing the option to refer cases to mediation was another concern raised, when in many cases this may actually be the better option. Why rule it out because of an unnecessarily tight and strictly self-imposed deadline?

The GSEIS FEC appreciates the opportunity to weigh in on this issue and looks forward to additional information and discussion as needed.

Sincerely,

Richard Desjardins Chair, GSEIS Faculty Executive Committee

March 5, 2019

Professor Joseph Bristow Chair, UCLA Academic Senate

Re: System-wide Review of Proposed Revisions to Senate Bylaw 336 and Proposed Revisions to SVSH Academic Frameworks

Dear Chair Bristow,

The Faculty Welfare Committee reviewed the Proposed Revisions to Senate Bylaw 336 and proposed revisions to SVSH Academic Framework at its March 5th meeting. We thank you for the opportunity to respond to the revisions, and appreciate the time CSA has taken to identify ways to strengthen our shared governance process. Unfortunately, we are concerned with the proposed timeframes for handling disciplinary procedures. The recommendations set forth in CSA's report will put an unnecessary burden on all parties involved in disciplinary cases.

The revisions to SVSH framework and Senate Bylaw 336 requires P&T to begin a hearing no later than 60 calendar days after charges have been filed is troublesome for faculty accused of a violation of the Faculty Code of Conduct. Unfortunately, 60 days is not enough time for the Committee on Privilege and Tenue to notify the accused of all proposed sanctions, seek legal counsel, and identity dates to hold a hearing. In addition, the revision to reduce the amount of days the accuser has to file a response in writing to the Committee on Privilege and Tenure seems to be an apparent violation of one's due process. The reduction from 21 days to 14 days to respond to a compliant seems feasible but we can imagine probably scenarios.

Finally, members noted that we must continue to be mindful of the University's shared governance system. Privilege and Tenure proceedings and associate time frames are governed by the faculty bylaw, and amendments should only be changed by the Academic Senate. It is our belief that the rights of all faculty must be respected and that discipline must be based on the principles of fairness, transparency, and due process.

Sincerely,

Julie M

Julie Bower Chair, Committee on Faculty Welfare

cc: Members of the Committee on Faculty Welfare Linda Mohr, CAO, Academic Senate Valeria Dimas, Executive Assistant Annie Speights, Committee Analyst, Committee on Faculty Welfare

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OFFICE OF THE ACADEMIC SENATE KURT SCHNIER, CHAIR senatechair@ucmerced.edu

MARCH 12, 2019

**ROBERT MAY, CHAIR, ACADEMIC COUNCIL** 

#### **RE: PROPOSED REVISIONS TO SENATE BYLAW 336**

Dear Robert:

The proposed revisions to Senate Bylaw 336 were distributed for comment to standing committees and school executive committees of the Merced Division of the Academic Senate. The following eight committees provided comments or otherwise endorsed the revisions: the Committee on Academic Planning and Resource Allocation, the Committee on Research, the Committee on Rules and Elections, the Committee for Diversity and Equity, the Committee on Faculty Welfare and Academic Freedom, Graduate Council, the Committee on Privilege and Tenure, and Undergraduate Council. Committee comments are enclosed. The remaining committees appreciated the opportunity to opine but declined to comment.

At its March 4, 2019 meeting, Divisional Council endorsed the proposed revisions. Members, however, noted that the shortened and less flexible timeline for adjudicating cases has significant resource implications both for the Senate Office, which will need sufficient staff to ensure cases proceed according to proscribed timelines, and for faculty teaching and research, as the need to initiate hearings on time may necessitate the identification of substitute instructors on relatively short notice. Members urge that both these resource needs be accounted for in the planning for implementing the revised bylaw.

Members also encourage the Senate to consider addressing the following committee comments:

- P&T notes that the Merced Division currently lacks sufficient senior faculty and P&T experience to meet the stipulation in 336.F.1.a, which limits hearing committees to one person not from that division. The issue would be particularly acute if multiple cases were before the Division simultaneously, particularly given the new timeline for adjudicating cases. It could also seriously impede UC Merced's ability to identify an appropriately prepared panel, with ramifications for the rights of accused faculty and for completing hearings in keeping with the newly established timeline.
- Regarding the decision that email may constitute delivery of the charges, (336.C.1), P&T and UGC noted that faculty who conduct field work in places where they truly have no access to email may be disadvantaged by this policy change, particularly given the newly shortened timeline for filing with P&T a response to charges and for the entire process as a whole. Members hope this potential situation will be considered as the policy is finalized and procedures are developed.
- Regarding 336.C.3.a., CRE seeks clarification regarding the process by which hearing dates are identified. As CRE understands, this is a two-part process, where Part A concerns gathering potential hearing dates

and Part B concerns scheduling hearings themselves. CRE felt that clearer directions are needed, such as "The Chair has to offer two or more choices for hearing dates and will instruct the parties that their availability must be provided to the Chair within 14 calendar days."

- Regarding 336.E.2., CRE seeks clarification regarding who may initiate a request for extending a hearing deadline.
- CoR noted that an additional revision to the bylaw may be needed in light of the National Science Foundation's (NSF) new SVSH policy<sup>1</sup>.
- CoR also noted that 336.A. Right to a Hearing reads "In cases of disciplinary action commenced by the administration against a...". In the remainder of the bylaw, revisions have been made to replace the term "action commenced" with "charge filed".
- D&E desired explanation for the removal of the pre-hearing conference, which has been replaced by correspondence.
- FWAF recommended there be a process by which both the individual making the accusation and the accused can submit names of individuals they believe cannot serve on the Hearing Committee without bias.
- UGC encouraged more specificity regarding what constitutes "good cause" (336.E.2).

The Merced Division hopes these comments are helpful, and thanks you for the opportunity to opine.

Sincerely,

Kurt Schnier, Chair Divisional Council

CC: Divisional Council Hilary Baxter, Executive Director, Systemwide Academic Senate Laura Martin, Executive Director, Merced Senate Office

Encl (7)

<sup>&</sup>lt;sup>1</sup> NSF's policy states:

<sup>•</sup> Upon implementation, the new term and condition will require awardee organizations to notify NSF of any findings/determinations of sexual harassment, other forms of harassment, or sexual assault regarding an NSF funded PI or co-PI.

<sup>•</sup> Notifications must be submitted by an authorized organizational representative within 10 business days from the date of the finding/determination, or the date of the placement of a PI or co-PI by the awardee on administrative leave or the imposition of an administrative action, whichever is sooner.

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ACADEMIC SENATE, MERCED DIVISION COMMITTEE ON ACADEMIC PLANNING AND RESOURCE ALLOCATION JESSICA TROUNSTINE, CHAIR jtrounstine@ucmerced.edu UNIVERSITY OF CALIFORNIA, MERCED 5200 NORTH LAKE ROAD MERCED, CA 95343

#### February 8, 2019

- To: Kurt Schnier, Chair, Division Council
- From: Jessica Trounstine, Chair, Committee on Academic Planning and Resource Allocation (CAPRA)

yes honsting

Re: Revisions to Senate Bylaw 336

CAPRA has reviewed the proposed revisions to Senate Bylaw 336.

This bylaw change is being proposed to comply with a report by the California State Auditor regarding how the UC responds to Sexual Harassment complaints. The bylaw changes would specify the timing of a hearing on a sexual assault charge, and the timing for a report on that hearing to be submitted to the Chancellor.

From a resource allocation standpoint, tightening requirements for a hearing would impact to some extent faculty time and teaching. This is because a hearing could take a week or longer and there is generally not leeway for the various faculty on the P&T committee to teach during a hearing. Therefore, faculty or their dean would need to find a replacement, sometimes on short notice.

This observation is simply a resource-related comment about the bylaw, and does not mean that CAPRA is advocating against the proposed bylaw change.

cc: Senate Office

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ACADEMIC SENATE, MERCED DIVISION COMMITTEE ON RULES AND ELECTIONS (CRE) CHRISTOPHER VINEY, Chair cviney@ucmerced.edu UNIVERSITY OF CALIFORNIA, MERCED 5200 NORTH LAKE ROAD MERCED, CA 95343 (209) 228-7930

February 25, 2019

#### TO: KURT SCHNIER, SENATE CHAIR

FROM: CHRISTOPHER VINEY, CRE CHAIR

#### Re: <u>Revisions to Senate Bylaw 336</u>

At its February 13, 2019 meeting, the Committee on Rules and Elections discussed the proposed revisions to *Senate Bylaw 336*. Members raised several concerns regarding information in the text that may need revision to better address the auditor's suggestions in the revised bylaw document and ensure clarity about this important process:

- Item B (specifically, the time limitation for filing disciplinary charges on page 13 of the document) As written, three years to deliver a notice of disciplinary action seems arbitrary. More information as to why three years was chosen as an appropriate timeframe for communication about disciplinary action is needed to justify what is perhaps a too lengthy time period for everyone involved in the process.
- Item C. 3. a. The choice of dates for hearings (page 6 of the original document; page 2 of the redlined copy) This revision seeks to establish a time limit on the process of choosing dates for initial complaint hearing procedures. CRE feels that this item needs more detail regarding the implicit action, as written directions are unclear. Does the Chair of the UCOP Committee for Privilege and Tenure need to notify all parties and schedule a hearing date within 14 days, or does a decision of potential dates need to be offered? As CRE understands, this is a two-part process, where Part A concerns gathering potential hearing dates and Part B concerns scheduling hearings themselves. Clearer directions are needed, such as "The Chair has to offer two or more choices for hearing dates and will instruct the parties that their availability must be provided to the Chair within 14 calendar days."
- Item E.2. On extending hearing deadlines (Page 8 of the pdf, page 4 of the redlined copy) CRE members were unsure regarding where a request could originate. Would it be from the committee, or from the party that is accused? Please clarify.

Detailed information about these concerns will clarify roles, as well as the grey areas where unclear procedures can produce a poor carriage of justice for everyone involved in the adjudication process.

Members of CRE thank you for the opportunity to opine on these proposed Bylaw revisions.

Copy: CRE Members Senate Office

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ACADEMIC SENATE, MERCED DIVISION COMMITTEE ON RESEARCH MICHAEL SCHEIBNER, CHAIR mscheibner@ucmerced.edu UNIVERSITY OF CALIFORNIA, MERCED 5200 NORTH LAKE ROAD MERCED, CA 95343 (209) 228-4369

February 25, 2019

| To: Kurt Schnier, Chair, Division Council | To: | Kurt Schnier, Chair, Division Council |  |
|---|-----|---------------------------------------|--|
|---|-----|---------------------------------------|--|

From: Michael Scheibner, Chair, Committee on Research (COR)

Re: Proposed Revisions to Senate Bylaw 336

CoR reviewed the proposed revisions to Senate Bylaw 336 and offers the following comments.

If Senate Bylaw 336 is intended to outline the procedure by which findings/determinations are made/finalized before administrative action is taken, an additional revision to the bylaw may be needed in light of the National Science Foundation's (NSF) new SVSH policy (see attached fact sheet from NSF website).

The first sentence under Senate Bylaw 336 "A. Right to a Hearing" reads: "In cases of disciplinary action commenced by the administration against a...". In the remainder of the bylaw, revisions have been made to replace the term "action commenced" with "charge filed".

NSF's policy states:

- Upon implementation, the new term and condition will require awardee organizations to notify NSF of any findings/determinations of sexual harassment, other forms of harassment, or sexual assault regarding an NSF funded PI or co-PI.
- Notifications must be submitted by an authorized organizational representative within 10 business days from the date of the finding/determination, or the date of the placement of a PI or co-PI by the awardee on administrative leave or the imposition of an administrative action, whichever is sooner.

We appreciate the opportunity to opine.

cc: Senate Office

Encl: (1)

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**Fact Sheet** 

## NSF: Next steps against harassment



#### Credit and Larger Version

#### September 19, 2018

For more information, see NSF's press release.

#### What NSF is doing:

The National Science Foundation (NSF) will release a term and condition requiring awardee organizations to report findings of sexual harassment. It will be posted in the Federal Register Sept. 21, 2018 and go into effect Oct. 21, 2018.

#### Why NSF is doing this:

As the primary funding agency for fundamental science and engineering research in the United States, NSF is committed to promoting safe, productive research and education environments for current and future scientists and engineers.

NSF will not tolerate harassment, including sexual or sexual assault within the agency, at awardee organizations, field sites, or anywhere NSF-funded science and education is conducted.

NSF considers the Principal Investigator (PI) and any co-PI(s) identified on an NSF award to be in positions of trust. The PI, any co-PI(s), and all personnel supported by an NSF award must comport themselves in a responsible and accountable manner during the award period of performance whether at the awardee institution, online, or outside the organization, such as at field sites or facilities, or during conferences and workshops.

#### Who this affects:

The 2,000 U.S. institutions of higher education and other organizations that receive NSF funds are responsible for fully investigating complaints and for compliance with federal non-discrimination laws, regulations, and executive orders.

The reporting requirement currently applies to PIs and co-PIs. The term and condition affects PIs or co-PIs who receive awards or funding amendments on or after the Oct. 21 date of implementation. However, it covers conduct by those PIs or co-PIs that may have occurred prior to them receiving those awards.

NSF does not consider this a final step. This is a part of our continued efforts. NSF expects all award personnel to act in a respectful and professional manner at all times.

#### New notification requirements:

Upon implementation, the new term and condition will require awardee organizations to notify NSF of any findings/determinations of sexual harassment, other forms of harassment, or sexual assault regarding an NSF funded PI or co-PI.

The new term and condition also will require the awardee to notify NSF if the PI or co-PI is placed on administrative leave or if the awardee has imposed any administrative action on the PI or any co-PI relating to any finding/determination or an investigation of an alleged violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault. Finally, the award term and condition specifies the procedures that will be followed by NSF upon receipt of a notification.

Notifications must be submitted by an authorized organizational representative within 10 business days from the date of the finding/determination, or the date of the placement of a PI or co-PI by the awardee on administrative leave or the imposition of an administrative action, whichever is sooner.

The new term and condition will be effective for any new award, or funding amendment to an existing award, made on or after the effective date.

NSF will consider in its review of each notification submitted:

- 1. Safety and security of personnel supported by the NSF award;
- 2. Overall impact to the NSF-funded activity;
- 3. Continued advancement of taxpayer investments in science and scientists; and
- 4. Whether the awardee has taken appropriate action to ensure the continuity of science and that continued progress under the funded project can be made.

NSF has developed an electronic capability for submission of the required notifications that will be available on NSF's harassment page. The information will go directly to the Office of Diversity and Inclusion.

Upon receipt and review of the information provided, NSF will consult with the authorized organizational representative, or designee. Based on the results of this review and consultation, the Foundation may, if necessary, assert its programmatic stewardship responsibilities and oversight authority to initiate the substitution or removal of the PI or any co-PI, reduce the award funding amount, or where neither of those previous options is available or adequate, to suspend or terminate the award.

#### **Definitions:**

For purposes of the term and condition, the following definitions apply:

**Sexual harassment**: May include but is not limited to gender or sex-based harassment, unwelcome sexual attention, sexual coercion, or creating a hostile environment, as set forth in organizational policies or codes of conduct, statutes, regulations, or executive orders.

**Other Forms of Harassment**: Non-gender or non-sex-based harassment of individuals protected under federal civil rights laws, as set forth in organizational policies or codes of conduct, statutes, regulations, or executive orders.

**Finding/Determination**: The final disposition of a matter involving sexual harassment or other form of harassment under organizational policies and processes, to include the exhaustion of permissible appeals exercised by the PI or co-PI, or a conviction of a sexual offense in a criminal court of law.

Administrative Leave/Administrative Action: Any temporary/interim suspension or permanent removal of the PI or co-PI, or any administrative action imposed on the PI or co-PI by the awardee under organizational policies or codes of conduct, statutes, regulations, or executive orders, relating to activities, including but not limited to the following: teaching, advising, mentoring, research, management/administrative duties, or presence on campus.

-NSF-

Media Contacts Sarah Bates, NSF, (703) 292-7738, sabates@nsf.gov

Related Websites NSF sexual harassment: https://nsf.gov/harassment The National Science Foundation (NSF) is an independent federal agency that supports fundamental research and education across all fields of science and engineering. In fiscal year (FY) 2018, its budget is \$7.8 billion. NSF funds reach all 50 states through grants to nearly 2,000 colleges, universities and other institutions. Each year, NSF receives more than 50,000 competitive proposals for funding and makes about 12,000 new funding awards.

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ACADEMIC SENATE, MERCED DIVISION COMMITTEE FOR DIVERSITY AND EQUITY CLARISSA NOBILE, CHAIR <u>cnobile@ucmerced.edu</u> UNIVERSITY OF CALIFORNIA, MERCED 5200 NORTH LAKE ROAD MERCED, CA 95343 (209) 228-7930

February 4, 2019

To: Kurt Schnier, Chair, Division Council

#### From: Clarissa Nobile, Chair, Committee for Diversity and Equity (D&E)

#### Re: Proposed Revisions to Senate Bylaw 336

The Committee for Diversity and Equity reviewed the Proposed Revisions to Senate Bylaw 336 via email.

As noted in UCPT Chair Agboola's letter, the proposed revisions to Senate Bylaw 336 were first developed by an ad-hoc workgroup convened by the Academic Senate in response to an audit report issued by the California State Auditor (CSA) that recommended the Academic Senate, specifically the Committee on Privilege and Tenure revise Bylaw 336 with regard to the handling of disciplinary cases and when hearings should be scheduled (no later than 60 calendar days) after charges have been filed by the Chancellor. It was also recommended that the hearing committee submit its report to the Chancellor no later than 30 calendar days after the hearing. Following the review of the proposed changes by the ad-hoc group convened by the Academic Senate, it was decided that there is no reason that these changes should only be made to SVSH cases, and are now being recommended for any alleged violation of the faculty code of conduct.

D&E highlights and seeks clarification for the following points in sections e and f (page 3 of Chair Agboola's memo) and Bylaw sections 336.D.1.b and 336 F.2, respectively:

- a) In the proposed revisions, a pre-hearing conference is replaced by a correspondence (electronic and overnight letter to the accused faculty);
- b) Under the revised procedures, the Committee on Privilege and Tenure "will no longer be able to suggest that a case be referred to mediation after charges have been filed. Any attempts at mediation between the parties to a disciplinary case will have to take place before charges are filed with P&T."

It is not clear that removal of the pre-hearing conference is the best strategy. Could the reasoning for this be explained?

The second point is not consistent with what is stated in 336.D.1.b (which lays out how mediation can be used even after charges are filed).

Diversity and Equity thank you for the opportunity to provide comments.

cc: D&E Members Senate Office

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ACADEMIC SENATE, MERCED DIVISION COMMITTEE ON FACULTY WELFARE AND ACADEMIC FREEDOM LAURA HAMILTON, CHAIR lhamilton2@ucmerced.edu UNIVERSITY OF CALIFORNIA, MERCED 5200 NORTH LAKE ROAD MERCED, CA 95343 (209) 228-4369

February 25, 2019

- To: Kurt Schnier, Chair, Division Council
- From: Laura Hamilton, Chair, Committee on Faculty Welfare and Academic Freedom (FWAF)

Re: Proposed Revisions to Senate Bylaw 336

FWAF reviewed the proposed revisions to Senate Bylaw 336.

We recommend there be a process by which the individual making the accusation and the accused can submit names of individuals that they believe cannot serve on the Hearing Committee without bias. The proposed revisions do not appear to include such a mechanism. It is important that, for example, a good friend of the accused not be appointed to such a committee. There must be a way for all involved parties to indicate objectionable candidates for the committee.

We appreciate the opportunity to opine.

cc: Senate office

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OFFICE OF THE ACADEMIC SENATE ROBERT HILLMAN, CHAIR, PRIVILEGE & TENURE rwhillman@ucdavis.edu UNIVERSITY OF CALIFORNIA, MERCED 5200 NORTH LAKE ROAD MERCED, CA 95343 (209) 228-6312

FEBRUARY 25, 2019

TO: KURT SCHNIER, CHAIR, ACADEMIC SENATE

#### FROM: ROBERT HILLMAN, CHAIR, PRIVILEGE AND TENURE COMMITTEE

#### RE: PROPOSED REVISIONS TO SENATE BYLAW 336

The Privilege and Tenure Committee discussed by email the proposed revisions to Senate Bylaw 336. In general, members concluded that the revisions make sense as a response to the California State Auditor's recommendations.

That said, the committee offers the following comments:

- Regarding the decision that email may constitute delivery of the charges (336 C.1.): In general, the committee believes this approach to delivering charges makes sense; charges will never come out of the blue. Members noted, however, that people who conduct field work in places where they truly have no access to email may be disadvantaged by this policy change, particularly given the newly shortened timeline for filing with P&T a response to charges and for the entire process as a whole. Members hope this potential situation will be considered as the policy is finalized and procedures are developed.
- 2. Regarding 336 F. 1. (a), which limits hearing committees to one person not from that division: The committee noted that meeting this criterion will be very hard for UC Merced at this time; the Division does not yet have a sufficiently large senior faculty or the experience necessary to meet this stipulation. The issue would be particularly acute if multiple cases were before the Division simultaneously, particularly given the new timeline for adjudicating cases.

As we understand it, this standard is meant to mitigate against the dilution of divisional norms and practices that might occur if the new 60 day timeline encouraged hearing committees to be comprised of faculty from other divisions. This stipulation, however, could seriously impede UC Merced's ability to identify an appropriately prepared panel, with ramifications for the rights of accused faculty and for completing hearings in keeping with the newly established timeline.

CC: Privilege and Tenure Committee Senate Office

Encl (1)

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UNIVERSITY OF CALIFORNIA, MERCED 5200 NORTH LAKE ROAD MERCED, CA 95343 (209) 228-7930

ACADEMIC SENATE, MERCED DIVISION UNDERGRADUATE COUNCIL (UGC) jsharping@ucmerced.edu fpaul@ucmerced.edu

February 13, 2019

To: Kurt Schnier, Chair, Divisional Council

From: Jay Sharping, Chair, Undergraduate Council

Re: Proposed Revisions to Senate Bylaw 336

The Undergraduate Council discussed the proposed revisions to Bylaw 336 and offers the following observations.

The proposed revisions to Senate Bylaw 336 were first developed by an ad-hoc workgroup convened by the Academic Senate in response to an audit report <u>issued by the California State Auditor</u> (CSA) that recommended the Academic Senate, specifically the Committee on Privilege and Tenure revise Bylaw 336 with regard to the handling of disciplinary cases and when hearings should be scheduled (no later than 60 calendar days) after charges have been filed by the Chancellor. The CSA visited 3 campuses (UCB, UCD, and UCLA) and identified problems with the length of time to discipline; inconsistencies in discipline (especially for faculty with multiple complaints); exceeding investigation time frames without approved time extensions; and not sending all required information to complainants and respondents.

The CSA report identified three areas in which the systemwide office should focus to prevent and respond to sexual harassment: setting policy, analyzing applicable data, and overseeing the campuses. Specific recommendations were the following:

"(a) A hearing should be required to begin no later than 60 calendar days after charges have been filed by the Chancellor, unless an extension is granted for good cause. The notion of `good cause' should be defined."

"(b) A hearing committee should be required to deliver its report to the Chancellor no later than 30 calendar days after the conclusion of the hearing, and the phrase `conclusion of the hearing' should be precisely defined."

UGC notes that the definition of "good cause" seems unclear. Bylaw 336.E.2 defines good cause as "consists of material or unforeseen circumstances sufficient to justify the extension sought". This section could be revisited to specify what constitutes "good cause".

Page 2, section iv, a through g of Chair Agboola's memo: "In order to balance the need for due process with the requirement of complying with the CSA recommendations, a guiding principle in developing the revisions to SBL 336 was that of ensuring that the new procedures allow the parties sufficient time (i.e. at least four weeks) within which to prepare their cases prior to the start of a disciplinary hearing. [...]

UGC offers the following comments on the aforementioned section:

- The section clearly defines the point in time at which the accused has received the disciplinary charges as when they are sent by the administration to the accused's official University email account.
- The accused then has 14 calendar days to respond. There was discussion of whether the short time frame of 14 days from an email being sent would be problematic in the case of a faculty member who is travelling or doing field work without reliable internet service. It was noted that the accused would have an idea that the charges were coming as there would first have been an investigation.
- Point f regarding terms for Early Resolution was discussed. The language between the memo and section 336.D.2 appeared to be inconsistent. It was clarified by a member of P&T that mediation was still possible, but that entering into mediation will not change any of the stated deadlines.

UGC members appreciate the opportunity to opine.

Cc: UGC Associate Director Paul Senate Office BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED• RIVERSIDE • SAN DIEGO • SAN FRANCISCO



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CHAIR, ACADEMIC SENATE RIVERSIDE DIVISION UNIVERSITY OFFICE BUILDING, RM 225 DYLAN RODRÍGUEZ PROFESSOR OF MEDIA & CULTURAL STUDIES RIVERSIDE, CA 92521-0217 TEL: (951) 827-6193 EMAIL: DYLAN.RODRIGUEZ@UCR.EDU

March 12, 2019

Robert May, Chair, Academic Council 1111 Franklin Street, 12th Floor Oakland, CA 94607-5200

### RE: [Systemwide Review] Proposed Revisions to Senate Bylaw 336

Dear Robert,

During our March 11, 2019 meeting, the Executive Council of the Riverside Division conducted a significant discussion on the matter of these Proposed Revisions. The Division's P&T Analyst offered contextual information as part of this discussion. Council voiced concern about the apparent possibility that Chancellors can wait up to three year before acting on an allegation. Some members voiced concern at the language of the Bylaw, stating that it seems to be phrased in terms that are best understood by someone trained in jurisprudence as opposed to a common faculty member. Another important point that emerged concerned the possible unreliability of email correspondence as the primary or exclusive method of communication in cases that concern Bylaw 336.

I have included all standing committee responses to the Proposed Revisions. There is feedback throughout, although i will emphasize that a few of the most important points concern applicability to international students (as well as procedures to ensure appropriate method of communication across cultural and linguistic differences), congruence of deadlines with existing procedures of divisional committees, and the anticipated difficulty of meeting expedited deadlines during the summer months due to faculty serving 9 month appointments (and often assuming research or other responsibilities during the summer). I trust the attached consultative memos will further aid the review process.

peace

Dylan Rodriguez Professor of Media & Cultural Studies and Chair of the Riverside Division

CC: Hilary Baxter, Executive Director of the Academic Senate Cherysa Cortez, Executive Director of UCR Academic Senate Office

## UCRIVERSITY OF CALIFORNIA Academic Senate COMMITTEE ON ACADEMIC FREEDOM

February 25, 2019

To:

Dylan Rodriguez, Chair Riverside Division of the Academic Senate

From: John S. Levin, Chair JAC Automotive Committee on Academic Freedom (CAF)

## Re: Proposed Bylaw Revision: Proposed Revisions to Senate Bylaw 336

The Committee on Academic Freedom considered "Proposed Bylaw Revision: Proposed Revisions to Senate Bylaw 336." Only one member of the Committee commented. Essentially the revisions conform to the previous policy but speed up the process. Does this pace jeopardize the rights of faculty or the fairness of the process? This issue needs to be considered. Finally, a technical matter on item #4, the use of "videoconferencing" is noted, but not "teleconferencing" for testimony. Testimony by "teleconferencing" should be permitted.

## **UCRIVERSITY OF CALIFORNIA** Academic Senate COMMITTEE ON ACADEMIC PERSONNEL

January 14, 2019

| To:   | Dylan Rodriguez   |
|-------|---|
|       | Riverside Division Academic Senate  |
| From: | Rajiv Gupta, Chair Day of Support<br>Committee on Academic Personnel                        |
| Re:   | UPDATED. Systemwide Review. Proposed Bylaw Revision. Proposed Revisions to Senate Bylaw 336 |

The Committee on Academic Personnel considered the updated proposal to revise Senate Bylaw 336 and did not identify any issues or problems relevant to the Committee on Academic Personnel. However, members did note concerns with the shortened time frame being unrealistic as well as questioning if email is a sufficient method of notification.



February 11, 2019

To: Dylan Rodríguez, Chair Riverside Division

From: Paul Lyons, Chair Committee on Educational Policy

Re: Proposed Revisions to Senate Bylaw 336

The Committee on Educational Policy (CEP) reviewed the proposed revisions to Senate Bylaw 336 at their February 8, 2019 meeting and were supportive of the revisions to require a hearing no later than 60 days after charges are filed by the Chancellor and the delivery of a hearing report to the Chancellor no later than 30 days after the conclusion of the hearing.



February 14, 2019

| To: | Dylan Rodriguez<br>Chair, Riverside Division Academic Senate |
|-----|--|
| Fr: | Timothy J. Close<br>Chair, Committee on Charges              |
| Re: | Systemwide Review of Proposed Revisions to Senate Bylaw 336  |

The Charges Committee considered the proposed revisions to Senate Bylaw (SBL) 336. The Committee finds the proposed revisions to be clear and has no further comments to provide.

We appreciate the opportunity to review and opine on this systemwide matter.

# UNIVERSITY OF CALIFORNIA, RIVERSIDE

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EXECUTIVE COMMITTEE: COLLEGE OF HUMANITIES, ARTS, AND SOCIAL SCIENCES

RIVERSIDE, CALIFORNIA 92521-0132

February 28, 2018

- TO: Dylan Rodriguez, Chair Academic Senate
- FROM: Johannes Endres, Chair CHASS Executive Committee

RE: Proposed Bylaw Revision: Proposed Revisions to Senate Bylaw 336

The CHASS Executive Committee discussed the Systemwide Review of the Proposed Bylaw Revision: Proposed Revisions to Senate Bylaw 336 at the regular meeting on January 23, 2019. The committee recognized the recommendation from the California State Auditors to streamline the process and make the process quicker. There were no objections and the committee approved the proposed revision.

Johannes Endres, Chair

CHASS Executive Committee



January 30, 2019

To: Dylan Rodriguez, Chair Riverside Division

From: Nicole zur Nieden, Chair Committee on International Education

RE: Systemwide Review: Proposed Revisions to Senate Bylaw 336

The committee reviewed the proposed revisions to Senate Bylaw 336. The committee would like to know how this applies to international students and if there are any policies or procedures in place to account for cultural differences and languages barriers.

# UCRIVERSITY OF CALIFORNIA Agricultural Sciences

**Executive Committee** 

February 20, 2019

| То:   | Dylan Rodriguez, Chair<br>Riverside Division  |
|-------|---|
| From: | Louis Santiago, Chair, Executive Committee<br>College of Natural and Agricultural Science |
| Re:   | Systemwide Review: Proposed Revisions to Senate Bylaw 336                                 |

The CNAS Executive Committee discussed the Proposed Revisions to Senate Bylaw 336 at its February 19, 2019 meeting. Overall, the committee was in agreement with the proposed revisions and thought that designating specific timelines for the actions required by the Chancellor and Title IX Office was a good idea. There were no concerns over the proposed policy.

Sincerely,

lons Smitig

Louis Santiago, Chair CNAS Executive Committee



January 23, 2019

To: Dylan Rodriguez, Chair Riverside Division

From: Djurdjica Coss, Chair Committee on Research

RE: Systemwide Review: Proposed Revisions to Senate Bylaw 336

The Committee on Research reviewed the proposed revisions to Senate bylaw 336. While the committee agrees that timely responses to charges are necessary, the committee has several concerns: 1) if the deadlines are compatible with current operating procedures of appropriate Academic Senate committees, as already noted by Chairs of these committees, b) if proposed revisions are in compliance with confidentiality rules that already exist, and c) the ambiguity of the actions and consequences in the instances where the hard deadlines are not met.



January 24, 2019

| To:   | Dylan Rodriguez<br>Riverside Division Academic Senate |
|-------|---|
| From: | Daniel Jeske, Chair<br>Committee on Faculty Welfare   |

Re: UPDATED - Proposed Revisions to Senate Bylaw 336

The Faculty Welfare Committee (FWC) met on 1/15/2019 to discuss the proposed revision of senate bylaw 336. The committee supports the proposed revision.

# UCRIVERSITY OF CALIFORNIA Senate

#### **PLANNING & BUDGET**

March 7, 2019

| To: | Dylan Rodriguez, Chair    |
|-----|---------------------------|
|     | <b>Riverside Division</b> |

From: Katherine Kinney, Chair **Vistherine Vinney** Committee on Planning and Budget

RE: [Systemwide Review] Proposed Bylaw Revision: Proposed Revisions to Senate Bylaw 336

Planning & Budget (P&B) discussed the proposed revisions to Senate Bylaw 336 at their February 19, 2019 meeting. P&B did not have any specific comments that would pertain to the charge of P&B, but members expressed concern over the expectation for faculty with 9-month appointments and research commitments to adhere to the new timelines in the event hearings occur during the summer. Some members expressed concern that shortened timelines may minimize the chances for mediation at earlier stages in the process.



February 12, 2019

| To: | Dylan Rodriguez   |
|-----|---|
|     | Chair, Riverside Division Academic Senate                                   |
| Fr: | Michael Adams <i>M. Sullann</i><br>Chair, Committee on Privilege and Tenure |
| Re: | Systemwide Review of Proposed Revisions to Senate Bylaw 336                 |

The Committee on Privilege and Tenure reviewed the proposed revisions to Senate Bylaw (SBL) 336. With respect to fulfillment of the mandate for expedited review during summer months, the Committee reiterates its view that practical limitations will be faced in expecting faculty with 9-month appointments and research commitments elsewhere to serve during this time. Otherwise, the Committee is in support of the revisions with no further recommendations.



December 17, 2018

To: Dylan Rodríguez, Chair Riverside Division

Ziv Ran

From:

Chair, Committee on Rules and Jurisdiction

Re: Systemwide Review: Proposed Bylaw Revision: Proposed Revisions to Senate Bylaw 336

The Committee on Rules and Jurisdiction finds the proposed revisions consistent with senate code. However, the committee believes that in Section 336.D on early resolution it should perhaps be clarified that while attempts at early resolution are strongly encouraged, P&T itself would not engage in attempts to bring about such an early resolution.

# UCRIVERSITY OF CALIFORNIA School of Medicine

Maurizio Pellecchia, Ph.D. Professor of Biomedical Sciences School of Medicine Research Building Office 317 900 University Avenue Riverside, CA 92521 Tel 951.827.7829 www.medschool.ucr.edu

February 6, 2019

TO: Senate Division Chair Dylan Rodriguez

FROM: Maurizio Pellecchia, Chair Executive Committee, School of Medicine

RE: SOM FEC comments on "Senate Bylaw 336 - Reasons for Proposed Revisions"

The School of Medicine Executive Committee evaluated the document at the January 2019 FEC meeting.

The FEC members do not object to the modifications that aimed at providing a streamlined procedure, detailing the maximum time allotted to each step and defines provisions to extend that time. However, the committee noted that the document does not seem to address what would happen if any of these hard deadlines are not met. As a suggestion, the committee wonders if <u>perhaps</u> it may be wiser to soften the time lines inserting the words "possibly" or "reasonably" within X days etc. or "possibly no later than". Alternatively, the document should/could indicate the consequences for missing any of the detailed hard time lines.

Kind regards,

Maurizio Pellecchia

Professor of Biomedical Sciences School of Medicine Research Building Office 317 900 University Avenue Riverside, CA 92521 Tel 951.827.7829

www.medschool.ucr.edu



January 28, 2019

To: Dylan Rodríguez, Chair Riverside Division

From: David Volz, Chair

Committee on Undergraduate Admissions

Re: Proposed Revision to Senate Bylaw 336

The Committee on Undergraduate Admissions reviewed the proposed revision to Senate Bylaw 336 at their January 9, 2019 meeting and did not have any concerns with the revision as it relates to the Committee's charge of undergraduate admissions. The proposed revisions adequately address the California State Auditor's (CSA's) request to impose a time limitation between 1) disciplinary charges filed by the Chancellor and initiating a Senate hearing (60 days) and 2) concluding a Senate hearing and delivering a report to the Chancellor (30 days). However, the Committee expressed concerns that, per Part III.A.3 of the APM 015 (The Faculty Code of Conduct), the Chancellor is provided up to three years to file disciplinary charges after being informed of the alleged violation. The Committee recommends that the proposed revision to Senate Bylaw 336 include a strong justification for allowing up to three years to file disciplinary charges following receipt of a complaint, as the Committee expressed concerns that this time period may be too long and, if possible, should be decreased to less than three years. In addition, the Committee recommends that the proposed revision to Senate Bylaw 336 provide greater clarity about the process and time limitations prior to filing disciplinary charges, specifically as it relates to receipt of a complaint, initiating an investigation, concluding an investigation, and filing disciplinary charges.

### UNIVERSITY OF CALIFORNIA, SANTA BARBARA

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ACADEMIC SENATE Santa Barbara Division 1233 Girvetz Hall Santa Barbara, CA 93106-3050

(805) 893-4511 http://www.senate.ucsb.edu Henning Bohn, Chair

March 11, 2019

To: Robert May, Chair Academic Council

From: Henning Bohn, Chair Henning Bohn

Santa Barbara Division

Proposed Revisions to Bylaw 336 Re:

The Santa Barbara Division requested detailed comments from its Committee on Privilege and Tenure (P&T) and its Charges Advisory Committee (CAC), which is led by the divisional Charges Officer.

Both P&T and CAC endorsed the proposed extension the new timeframes to all types of disciplinary cases. P&T argued that restricting the changes only to SVSH cases would unjustifiably prioritize SVSH over non-SVSH cases as well as create significant practical problems. CAC expressed the hope that measures designed to accelerate efforts, where appropriate, to informally resolve SVSH cases prior to the filing of charges with P&T will also encourage accelerated efforts, where appropriate, to informally resolve non-SVSH cases.

P&T and CAC also expressed concern about the allocation of time to various stages of the process. P&T was concerned that there might be insufficient time to form of the Hearing Committee, as well as for the Hearing Committee to reach and communicate its decision on prehearing matters to the parties. CAC was not convinced that the parties needed 14 calendar days to provide their availability for a hearing, and noted that a shorter timeframe for this stage would allow for a greater window of time within the 60-day limit during which the hearing could be scheduled. CAC also raised concern with the proposal to schedule the hearing prior to the parties' sharing witness lists, suggesting that this policy change might reduce the likelihood that all witnesses – especially those called by P&T but not by either party -- are available to testify during the hearing.

Both P&T and CAC questioned whether it was appropriate for a quorum of a P&T Hearing Committee to consist of only two members, which under the proposed changes would be permitted for three or four-member Hearing Committees. CAC suggested that this could be particularly problematic for fourmember Hearing Committees, since it may be difficult to reach a majority consensus when a twoperson quorum presided over one or more sessions of the hearing. To avoid this potential issue, CAC recommended amending the bylaw to specify that a quorum requires a *majority* of the Hearing Committee members.

P&T also raised two points regarding extensions. First, concerning the proposed definition of extension for "good cause," P&T requested clarification on what is meant by "material or unforeseen circumstances sufficient to justify the extension sought." (Section E.2) Second, P&T noted that the policy (in Section E) does not clearly specify *who* can request an extension; in particular P&T was unclear as to whether P&T (e.g., the P&T Chair or the P&T Hearing Committee Chair) can request an extension for good cause.

P&T also registered concern with the idea (from Section B of the proposed new policy, repeating Section B.4 of existing policy) that, in the case of alleged SVSH policy violations, the Chancellor is deemed to know *either* when an administrator at department chair level or above *or* when the Title IX Officer learns of the allegations. P&T worried about cases where, for example, a department chair fails to refer a complaint to the Title IX Office (perhaps not realizing that the Title IX policy may have been violated), and where some other party refers the complaint to the Title IX Office three years later. In such cases, the Chancellor (or designee) would not be able to file charges even if a Title IX investigation subsequently determined that an SVSH policy violation had occurred.

Finally, P&T noted a potential ambiguity in the two references to "schedule the hearing" in Section C.3. In the first instance the phrase means "begin the process of scheduling the hearing," while in the second instance (see 3.b), it means "fix the date for the hearing." P&T recommended rewriting the passage to avoid potential confusion.

The Santa Barbara Division also distributed the proposed revisions to Bylaw 336 to a broad spectrum of Senate councils and committees for optional comment. The Graduate Council and the Faculty Executive Committee of the Gevirtz Graduate School of Education responded by endorsing the changes overall.

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1156 HIGH STREET SANTA CRUZ, CALIFORNIA 95064

Office of the Academic Senate SANTA CRUZ DIVISION 125 CLARK KERR HALL (831) 459 - 2086

March 13, 2019

Robert May, Chair Academic Council

#### **Re: Senate Bylaw 336**

Dear Chair May,

The Santa Cruz Division has completed its review of the revisions to systemwide Senate Bylaw 336 proposed by the University Committee on Privilege and Tenure (UCPT). The Committees on Affirmative Action and Diversity (CAAD), Academic Freedom (CAF), Faculty Welfare (CFW), Privilege and Tenure (P&T), and Rules, Jurisdiction, and Elections (RJ&E), have responded. Past chair of P&T (2012-13), Onuttom Narayan, also submitted an individual response. The responses were consistent in reflecting concerns about the curtailed timeline for the adjudication of disciplinary actions presented in the proposed revisions. In addition, several other common themes emerged (described below) alongside more specific concerns; I am thus attaching the individual responses so you have the benefit of reviewing the detailed comments.

P&T and CAF are concerned that the compressed timelines will be inadequate for the divisional P&Ts to complete their work and may perhaps even be impossible to comply with. P&T suggests the changes may damage the core purpose of the hearing process: specifically, to provide the parties involved the opportunity to present their cases. It is unclear, as well, to members of RJ&E, just who benefits from the shorter timelines. As RJ&E observed, the state auditor noted a disparate timeframe for the adjudication of staff disciplinary actions (43days) and faculty (220 days). What is not clear to the committee is how the proposed shortened timelines address this gap. The choice of 60 calendar days for the completion of the adjudicatory process appears to be arbitrary, as reflected in P&T's comment, "The requirement that a hearing be held within 60 days of the issuance of charges appears to have been snatched out of the air, and not based on comparable processes elsewhere. The University might try to find out whether there are comparable processes elsewhere that we might cite for comparison."

These compressed timelines present issues of concordance between Senate bylaws and the Academic Personnel Manual (APM). As Professor Narayan notes, the proposed changes to Senate bylaws impact the Senate processes related to disciplinary proceedings, and should be accompanied by parallel changes to the Academic Personnel Manual (APM), lest the administration be unfairly advantaged by these shortened timeframes.

RJ&E, CFW, and CAAD raised concerns related to Section II – Early Resolution (i)(v)(f). The proposed revisions, if implemented, will no longer allow P&T to recommend that a case be referred to mediation once the charges have been filed, essentially requiring that any attempts at mediation take place before charges are filed with P&T. It seems now imperative that faculty be made aware of the complaints that have been made against them at the earliest opportunity, during a period when an investigation pursuant to the complaint would be taking place. Relatedly, Professor Narayan recommends that the "APM should be modified to require that the Chancellor must inform the accused faculty member as soon as the probable cause investigation starts" given the shorter timeline.

Another casualty of the proposed policy is the elimination of the prehearing conference which Professor Narayan views as a "serious weakness of the proposed revisions" as the prehearing conference "often results in a significant narrowing of the scope of a hearing, which makes the case much more manageable." If the parties can stipulate to facts and to the question to be considered ahead of the hearing, would this not serve the desired purpose of the revisions by creating efficiency in the process? This is precisely the purpose that the prehearing conference serves in the process. Eliminating this feature eliminates efficiency in the adjudicatory process.

In addition, P&T and CAF both suggest that there be implementation trial period during which the divisional committees will be able to assess the efficacy of the shortened timelines. P&T suggests that the Senate revisit the bylaw in 3 years to determine the level of compliance among divisional P&Ts while CAF suggests reporting after a year.

The Santa Cruz Division appreciates the opportunity to comment on these consequential changes to current Senate adjudicatory processes. It is my hope that they are taken in the spirit of comity in which they are intended.

Sincerely,

Binbreak

Kimberly Lau, Chair Academic Senate, Santa Cruz Division

Cc: Elizabeth Abrams, Chair, Committee on Affirmative Action and Diversity Gail Hershatter, Chair, Committee on Academic Freedom Jorge Hankamer, Chair, Committee on Privilege and Tenure Jason Nielsen, Chair, Committee on Rules, Jurisdiction, and Elections Onuttom Narayan, Professor, Physics Department Kimberley Lau Chair, Santa Cruz Division Academic Senate

#### Re: Proposed revisions to Senate Bylaw 336

#### Dear Kim,

Proposed revisions to Senate Bylaw 336 (SB 336), the bylaw that governs how the Committee on Privilege and Tenure (P&T) conducts hearings in faculty disciplinary cases, have been circulated for systemwide review. As is clear from the documents that accompany the proposed revisions, the proposal is a result of a recommendation from the California State Auditor (CSA), converted into a directive from the Board of Regents. The ad-hoc work group should be commended for the considerable effort they have made to implement a difficult directive. I hope that my comments below will be useful when the changes are finalized, and will increase the chances that these cases are resolved in a timely manner.

The regental directive requires the Academic Senate to specify "exact time frames for completing the phases of its disciplinary process." It is not clear that the "exact time frames" must be precisely what was recommended by the CSA: that a hearing be scheduled to begin within 60 calendar days from the date charges are filed, and that the Hearing Committee must issue a recommendation within 30 calendar days of the conclusion of the hearing. Considering the fact that the hearing process typically takes much longer at present, and that this is not — at least entirely — because of delays caused by the Academic Senate, it might be desirable to commit to slightly longer deadlines, with which P&T will be more able to comply. This is especially so since the revisions to SB 336 have had to set extremely short and probably unrealistic deadlines — in one case, two days! — and do away with the pre-hearing conference to enable the 60 day deadline for a hearing. However, the rest of this letter assumes that such a change is not possible.

#### A. General comments

 The State Auditor's report recommends that the Chancellor should issue a decision about discipline within 14 days of receiving the report from the Hearing Committee. The report also observes that the 60 business-day deadline to complete initial investigations is often violated, and recommends that if the deadline cannot be met, a campus should have to request and receive an extension for good cause. Although this is not within the scope of Senate Bylaws, the Senate should insist that these deadlines be included in the Academic Personnel Manual (APM) when revisions are made to SB 336. Implementing deadlines for both the administrative and the Senate stages of the disciplinary process will result in a speedier resolution of these cases, which is something that would be beneficial for everyone. This would also be more even-handed and therefore fairer: as it stands, after a carefully constructed case by the administration before charges are filed, the Hearing Committee must scramble to conduct the hearing and write its report, probably resulting in a less compelling report than would have been possible, after which the Chancellor has unlimited time to pick it apart.<sup>1</sup>

Of course, the Academic Senate does not control the APM, but I find it difficult to believe that the administration would impede the process of complying with the CSA report by refusing to do its part if the Senate asked that it be done as part of the SB 336 'package'. So far as logistics, I realize that a formal amendment to the APM takes a long time, but the President could certainly issue a directive that campus administrations must implement the CSA's recommendations regarding deadlines immediately while the amendment process unfolds; there is nothing in the APM that prevents the administration from imposing more restrictions on itself.

2. One of the key concerns in the CSA report is the lack of uniformity in the discipline imposed on Senate faculty members for similar offences. To address this problem, it would be desirable for divisional P&T committees to submit an annual report to UCP&T about the disciplinary cases that were concluded that year: with identifying details removed for individuals, the charges that were proved and the discipline that was imposed. These should be collected and retained by UCP&T, and be available to any Hearing Committee — or P&T in the case of negotiated discipline (see comment B.6 below) — to help them assess if the proposed discipline is reasonable.

Because of the recent well-publicized cases involving unreasonably light disciplinary action against Senate faculty members, and the fact that the Hearing Committee — appropriately — cannot recommend discipline that is more severe than that proposed by the administration, such information should also be retained by the Office of the President<sup>2</sup>, and the Chancellor should be required by the APM to consult with the President before filing charges and proposing discipline.<sup>3</sup>

It is true that SB 336 already requires the final Hearing Committee report to be shared with the Chair of UCP&T, but these reports, with full details, can obviously not be provided to future Hearing Committees. Instead, I am proposing a brief synopsis of what

<sup>&</sup>lt;sup>1</sup> Any deadline for the Chancellor should be consistent with SB 334.C, and probably apply separately to the Chancellor's "tentative decision" and final decision.

<sup>&</sup>lt;sup>2</sup> Or the peer review committee required by current administrative policy.

<sup>&</sup>lt;sup>3</sup> By itself, this second step is not enough. If discipline proposed by the Chancellor has been normalized by the Office of the President, but the P&T hearing committee does not have access to similar information, it will be very difficult for it to disagree with the proposed disciplinary action and recommend something different. This will weaken the role of the Academic Senate in disciplinary cases.

was proved and what the sanction imposed by the Chancellor (and perhaps the sanction recommended by the Hearing Committee) was. I believe the UCSC Title IX Officer used to issue such an annual report, and may still do so.

If greater uniformity is not achieved, we are likely to get another report in a few years' time with similarly simplistic 'recommendations' to solve the problem.

3. The elimination of the requirement for a pre-hearing conference is a serious weakness of the proposed revisions. The pre-hearing conference often results in a significant narrowing of the scope of a hearing, which makes the case much more manageable. A real-time back-and-forth between the parties with the Hearing Committee Chair present is much more effective than an email exchange.

In fact, since the proposed revisions would require that the initial determination of the scope of the hearing be almost immediately after the hearing has been fixed, at which point it is possible that no substantive response to the charges has been received from the accused (see comment B.3 below), it is not clear *how* the initial determination can be made, other than to say that everything that the administration alleges may be disputed.

Perhaps the inflexible 60/30 day deadlines require that everything about the process has to be flexible, but even if this is true, it would be best to specify that the Hearing Committee Chair will attempt to schedule a pre-hearing conference within a certain time-frame, and is *permitted* to follow the proposed process if this proves impossible.

4. Although UCP&T debated whether to apply the short deadlines recommended by the CSA for disciplinary cases involving sexual harassment or sexual violence (SVSH) to all disciplinary cases, and a majority decided that it would be better to have a uniform system for all disciplinary cases, this decision would be worth reconsidering. The deadlines in the proposed revisions are so short that it is not clear how difficult they will be to comply with. Do we want to compound the difficulties for P&T by applying the same deadlines where they are not required? Are we confident that the short deadlines will not result in a process that is less fair than we would like?

Moreover, if there is a temporary uptick in the number of disciplinary cases, and P&T has to give immediate attention to each of them, it will be forced to delay any pending grievance cases. A system where grievance cases are always given lower priority than disciplinary cases is inherently unfair.

It may seem inelegant to have two different procedures for disciplinary hearings,<sup>4</sup> with one being applied if any violation of UC's SVSH policy is included in the charges, but

<sup>&</sup>lt;sup>4</sup> Although there is already a carve-out from SB 335 when a grievance case involves the Whistleblower (Protection) Policy.

having a slower process for a subset of cases may be essential for an overloaded P&T. After a few years, if the fears about the effect of short deadlines are found to be misplaced, the Senate could extend the SVSH disciplinary hearing process to all cases, knowing that this will be manageable.

5. While strict parity between the two is not possible, there is deliberately a lot of similarity between SB 335 which governs the Senate faculty grievance process and SB 336 which governs the disciplinary process. Given this fact, it is striking that the short 21 day deadline in SB 336 for a Senate faculty member to respond to charges and proposed discipline, which is being shortened still further to 14 days, has *absolutely no counterpart* in SB 335. While I do not suggest a 14 day deadline for the administration to respond to a preliminary determination from P&T in a grievance case, it would be desirable to have *some* deadline, especially since the administration is often capable of creating facts on the ground that render a grievance moot if it has time to do so. I hope this can be done immediately after the SB 336 revisions are settled.

#### B. Detailed comments

- In view of the short and almost inflexible deadlines being proposed, the APM should be modified to require that the Chancellor must inform the accused faculty member as soon as the probable cause investigation starts. (While this may be the norm, it is not required.) It is difficult for an accused faculty member to find a good attorney with expertise in the university disciplinary process at short notice. The more time they have to do so, the greater is the likelihood that they will be adequately represented.
- 2. In view of the fact that the role of the P&T Chair when disciplinary charges are delivered is being reduced, SB 336.C.1.b should state that the Chancellor or Chancellor's designee shall also provide written notice of c) the right to a P&T hearing governed by SB 336, and the name of the P&T Chair d) the fact that, if the accused faculty member claims their right to a P&T hearing, they may continue to pursue a negotiated settlement with the administration while the hearing process starts as per SB 336.D.
- 3. SB 336.C.2 should clarify that the "answer" required within 14 days of the receipt of charges is simply whether the accused Senate faculty member accepts the disciplinary sanctions proposed by the administration. If substantive responses were to be required within 14 days, it would be unreasonable.<sup>5</sup>
- 4. SB 336.3.b states that a hearing shall not be postponed because the accused faculty member is on leave or fails to appear. It may be desirable to include a failure to appear

<sup>&</sup>lt;sup>5</sup> It would also be inconsistent with the current SB 336.B.3 (deleted in the revisions, presumably because of the tighter deadlines) which states that even the absence of a response triggers a hearing, making it clear that a substantive response is not required.

on the part of the administration in this provision.

- 5. SB 336.D.1.b and 336.D.2 repeat the same information. The "encouraged to consult" is too weak. Under Regents' Standing Order (RSO) 100.4.c, the President presumably delegated to the Chancellors long ago is *required* to consult with P&T before taking at least some disciplinary actions, even if they are negotiated.<sup>6</sup>
- 6. SB 336.E.2 should specify who (both parties?) may request an extension to a deadline. The requirement that the circumstances should be related to the complaint is too restrictive; if the accused suffers a medical emergency, it may not be related to the complaint but an extension would be warranted. It would be preferable to replace "related to the complaint" with "that substantially affect the ability of the party to present their case effectively", or something similar.
- 7. SB 336.F.2 states that within *two business days* of the hearing being scheduled, the Hearing Committee's initial determination of the issues to be heard at the hearing will be provided to the parties. Considering that the Hearing Committee probably cannot be constituted until the hearing is scheduled because the members will have to be chosen based on their availability on the dates of the hearing rather than the other way around, a deadline of two days seems completely impractical. If such a short deadline is necessary, the initial determination should be made by the P&T Chair, who can consider the charges from the time they are filed. (See also comment A.5 above.)

Sincerely,

Drayan.

Onuttom Narayan Professor of Physics

Cc: P&T Chair Jorge Hankamer RJ&E Chair Jason Nielsen

<sup>&</sup>lt;sup>6</sup> An examination of the historical record of the Regents' Standing Orders shows that the authority over campus discipline that is given to Chancellors in RSO 100.6.a has a different meaning.

February 11, 2019

Kimberly Lau, Chair Academic Senate

#### Re: Proposed Revisions to Senate Bylaw 336

Dear Kim,

During its meeting of January 28, 2019, the Committee on Affirmative Action and Diversity (CAAD) reviewed the proposed revisions to Senate Bylaw 336 by the University Committee on Privilege and Tenure (UCPT).

CAAD raised concerns with the item under Section II.iv point f, in which the shortened deadlines in the Early Resolution process will no longer allow P&T to recommend that a case be referred to mediation after the charges have been filed, and attempts at mediation must take place before charges are filed with P&T. CAAD asserts that it seems counterintuitive to accept a change that makes mediation impossible at this stage of the process, although it is understood to be a change to meet the expectations of the California State Auditor.

CAAD is also curious about the "significant additional costs" noted in Section II.iv point g, and would like to understand the higher costs associated with expedited time-frames, as the modifications to SB 336.F.11 do not explicitly describe costs incurred as the result of shortened timeframes in the process.

Sincerely,

/s/

Elizabeth Abrams, Chair Committee on Affirmative Action and Diversity

Cc: Gail Hershatter, Chair, Committee on Academic Freedom Grant McGuire, Chair, Committee on Faculty Welfare Jorge Hankamer, Chair, Committee on Privilege & Tenure Jason Nielsen, Chair, Rules Jurisdiction & Elections Gina Dent, Chair, Graduate Council Matthew Mednick, Director, Academic Senate

February 11, 2019

Kimberly Lau, Chair Academic Senate

#### Re: Proposed Revisions to Senate Bylaw 336

Dear Kim,

During its meeting of February 11, 2019, the Committee on Academic Freedom (CAF) reviewed the Proposed Revisions to Senate Bylaw 336.

We appreciate the care that the working group put in to this revision, and we understand their decision to adopt the same timetable for all Privilege and Tenure disciplinary cases. We do not see any direct implications for the protection of academic freedom. Our one concern is that the accelerated timetable delineated in this revision may pose a hardship for the operation of divisional Privilege and Tenure committees and may interfere with their ability to make determinations with full consideration of all the evidence. Should they find that to be the case, we hope that they will make any such problems known to the Senate and to the administration, and we suggest that after the policy has been in place for a year, they report back to both on how well this new procedure is working.

Thank you for the opportunity to review this proposed revision.

Sincerely,

Jail Hersbatter

Gail Hershatter, Chair Committee on Academic Freedom

 cc: Elizabeth Abrams, Chair, Committee on Affirmative Action and Diversity Grant McGuire, Chair, Committee on Faculty Welfare Gina Dent, Chair, Graduate Council Jorge Hankamer, Chair, Committee on Privilege and Tenure Jason Nielsen, Chair, Committee on Rules, Jurisdiction and Elections

January 10, 2019

Kimberly Lau Chair, Academic Senate

#### **Re: Proposed Revisions to Senate Bylaw 336**

Dear Kim,

During its meeting of January 10, 2019, the Committee on Faculty Welfare reviewed the proposed revisions to Senate Bylaw 336 to comply with the California State Auditor (CSA) with regards to Committee on Privilege and Tenure (P&T) procedures for handling disciplinary cases. Overall, CFW members approve of the proposed changes. However, the committee did note that the proposed deadlines will no longer provide for P&T to suggest that a case be referred to mediation after the charges have been filed. CFW defers to the expertise and review of P&T to determine whether or not this effect on mediations is a cause for concern.

Sincerely, /s/ Grant McGuire, Chair Committee on Faculty Welfare

February 27, 2019

Kimberly Lau, Chair Academic Senate, Santa Cruz Division

#### Re: Systemwide Review of Proposed Revisions to Senate Bylaw 336

Dear Chair Lau,

During its meeting of January 25, 2019, the Committee on Rules, Jurisdiction, and Elections (RJ&E) reviewed proposed revisions to systemwide Senate Bylaw 336. The members understand these revisions to be a response from the University Committee on Privilege and Tenure (UCPT) to the State Auditor's report entitled *The University of California Office of the President: It Must Take Additional Steps to Address Long-Standing Issues With Its Response to Sexual Harassment Complaints.* After a thorough review and discussion of the legislative intent and accompanying mock up, members were left with some questions and concerns, all related to the expedited time frame for adjudicating disciplinary hearings.

#### **General Considerations**

First and foremost, it was not made clear to members how the compressed prehearing schedule serves the assumed overall principle of ensuring consistency in disciplinary processes across UC's ten campuses. Notably, in correspondence to Academic Council chair Robert May dated December 11, 2018, Adebisi Agboola, chair of UCPT writes: *In order to balance the need for due process with the requirement of complying with the CSA recommendations, a guiding principle in developing the revisions to SBL 336 was that of ensuring that the new procedures allow the parties sufficient time (i.e. at least four weeks) within which to prepare their cases prior to the start of a disciplinary <i>hearing*. How was this timeframe determined to be adequate? Members are aware that the state auditor noted disparate adjudicatory timeframes for staff and faculty writing, *On average, the three campuses disciplined staff within 43 days after the conclusion of an investigation compared to 220 days for faculty in the Academic Senate.*<sup>1</sup> What is not clear is how the new timeframe addresses this gap.

This also left members with the question of just whom these changes are meant to protect.

With the truncated timeline for respondent to make a decision on the recommendations made by the charges committee (at UCSC) and the elimination of the possibility for the chair to recommend a negotiated settlement once the charges are received, it is imperative that faculty understand when and if faculty are made aware of the initial complaint that resulted in the charges.

It is also important to clarify what the timeline is for P&T to be notified of the charges. Once the charges are delivered to the respondent, how long does the Chancellor have to deliver them to P&T? If a goal of these revisions is to better align Senate process with Title IX processes,

<sup>&</sup>lt;sup>1</sup> https://www.bsa.ca.gov/reports/2017-125/index.html

these nuances in timing are important.

#### **Specific Comments**

§336(B): The Chancellor must file disciplinary charges by delivering notice of proposed disciplinary action to the respondent no later than three years after the Chancellor is deemed to have known about the alleged violation. This seems to overwhelmingly favor the administration in its preparation given the shortened timeframe of 14 days in which the accused must digest the charges, possibly consult with counsel, and respond formally to charges.

§336(D)(1)(b): The language as proposed reads *Chancellor or Chancellor's designee is encouraged* to consult with the chair of the Privilege and Tenure Committee on Privilege and Tenure prior to finalizing the settlement and should inform the Privilege and Tenure Committee on Privilege and Tenure if the matter is resolved. Members suggest that is encouraged to consult should be changed to *must consult* or something that sets an expectation for the administration's efforts.

Sincerely *lsl* Jason Nielsen, Chair Committee on Rules, Jurisdiction, and Elections

Cc: Elizabeth Abrams, Chair, Committee on Affirmative Action and Diversity Gail Hershatter, Chair, Committee on Academic Freedom Grant McGuire, Chair, Committee on Faculty Welfare Gina Dent, Chair, Graduate Council Jorge Hankamer, Chair, Committee on Privilege and Tenure

March 4, 2019

Kimberly Lau, Chair Academic Senate, Santa Cruz Division

#### Re: Systemwide Review of Proposed Revisions to Senate Bylaw 336

Dear Kim,

During its meeting of February 13, 2019, the Committee on Privilege and Tenure (P&T) reviewed the proposed revisions to systemwide Senate Bylaw 336 submitted for Senate review by the University Committee on Privilege and Tenure (UCPT) on December 11, 2019, and has the following comments.

Like other committees, P&T is concerned that the proposed compressed timeframe for P&T hearing processes may

- a) damage the core purpose of the hearing process, which is to give both sides a fair opportunity to present their cases; and
- b) be impossible to comply with.

The requirement that a hearing be held within 60 days of the issuance of charges appears to have been snatched out of the air, and not based on comparable processes elsewhere. The University might try to find out whether there are comparable processes elsewhere that we might cite for comparison.

We will do everything that we can to comply with the proposed timetable. We will carefully document every step, and note the reasons for any delays.

We finally recommend that the Senate determine to revisit this bylaw in three years. By that time it should be clear whether it has been possible to comply with its requirements. It may be harder to discern how deleterious the effects of the changes have been.

Sincerely *lsl* Jorge Hankamer, Chair Committee on Privilege and Tenure

Cc: Elizabeth Abrams, Chair, Committee on Affirmative Action and Diversity Gail Hershatter, Chair, Committee on Academic Freedom Grant McGuire, Chair, Committee on Faculty Welfare Gina Dent, Chair, Graduate Council Jason Nielsen, Chair, Committee on Rules, Jurisdiction, and Elections

## UNIVERSITY OF CALIFORNIA, SAN DIEGO

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OFFICE OF THE ACADEMIC SENATE 9500 GILMAN DRIVE LA JOLLA, CALIFORNIA 92093-0002 TELEPHONE: (858) 534-3640 FAX: (858) 534-4528

February 22, 2019

Professor Robert May Chair, Academic Senate University of California 1111 Franklin Street, 12<sup>th</sup> Floor Oakland, California 94607-5200

SUBJECT: Review of Proposed Revisions to UC Senate Bylaw 336, Privilege and Tenure: Divisional Committees -- Disciplinary Cases

Dear Robert:

The proposed revisions to UC Senate Bylaw 336, Privilege and Tenure: Divisional Committees -- Disciplinary Cases were circulated to standing Senate committees for review, and were discussed at the San Diego Divisional Senate Council's meeting on February 4, 2019. The San Diego Divisional Senate Council endorsed the proposed policy revisions with the caveat that the timeframe allotted to the Chancellor to file disciplinary charges be reconsidered.

While members generally support the revisions, they noted that the shortened timelines may pose challenges and should be revisited in the future to ensure that the proposed timelines are appropriate. Members discussed section 336(B), which provides the Chancellor three years from when they are "deemed to have known about the alleged violation" in which to file disciplinary charges and commented that it is unclear why the revised Bylaw continues to allow for such a delay in filing charges given the new timeline for the completion of Title IX investigations. The Divisional Committee on Privilege and Tenure proposed revised language for section 336 (B), which is enclosed.

Sincerely,

Row Humitz

Robert Horwitz, Chair Academic Senate, San Diego Division

Enclosure

cc: H. Baxter M. Corr R. Rodriguez

February 14, 2019

#### **ROBERT HORWITZ**

Chair, San Diego Divisional Academic Senate

Dear Chair Horwitz,

The Committee on Privilege and Tenure discussed the proposed revisions to the University of California Systemwide Senate Bylaw 336, Privilege and Tenure: Divisional Committees -- Disciplinary Cases at its meeting on January 14, 2019 and again on February 11, 2019. Generally, the Committee agrees with the changes but has several concerns.

The Committee expressed concern about the challenges that will likely be posed by the shortened timelines. Additionally, while the Committee appreciates the need to ensure that disciplinary cases are resolved in a timely fashion, we believe it is unfortunate that CPT will no longer be able to refer cases to mediation after charges have been filed. However, we understand that the Administration and the accused will still be able to pursue a negotiated resolution while the disciplinary process moves forward.

The Committee noted that revised section 336(B) still provides the Chancellor three years from when they are "deemed to have known about the alleged violation" in which to file disciplinary charges. The Committee was unclear why the revised Bylaw continues to allow for such a delay in filing charges given the new timeline for the completion of Title IX investigations. It was posited that the three year period may have initially been intended to allow for the initiation and completion of necessary investigations and subsequent discussions with the accused faculty member, but given the new investigation timeline, the Committee questioned whether a three year period in which to file charges would lead to undue delays. The Committee proposed further revising the language as follows:

"The Chancellor must file disciplinary charges by delivering notice of proposed disciplinary action to the respondent no later than three years after the Chancellor is deemed to have known about the alleged violation, *or within one year of receiving the investigative report, whichever is earlier.*"

Additionally, the revisions to section 336(F)(1)(d) eliminates the previous quorum requirement of "at least half, but not less than three members of the Hearing Committee," to just half of the Hearing Committee. Under this revised provision, a hearing could proceed with just two Hearing Committee members present for part or all of the hearing. While the Committee understands the objective to streamline the hearing process and minimize opportunities for undue delay, fairness cannot and should not be sacrificed in the name of efficiency. The Committee believes it would compromise the integrity of the hearing process to allow a hearing to proceed without the benefit of at least three hearing committee members present to hear arguments and evidence in real time.

Finally, the Committee recommends that these bylaw revisions be reviewed in two years to ensure that they are having the desired effect.

Thank you for the opportunity to provide feedback on this important issue.

Sincerely,

Justi a. Varne

Judith Varner Chair Committee on Privilege and Tenure

cc: M. Corr, Vice Chair – San Diego Divisional Academic Senate
 P. Cosman, Vice Chair – San Diego Divisional CPT
 T. Mallis, Senate Analyst – San Diego Divisional CPT
 R. Rodriguez, Director – San Diego Divisional Academic Senate Office

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BOARD OF ADMISSIONS AND RELATIONS WITH SCHOOLS (BOARS) Eddie Comeaux, Chair eddie.comeaux@ucr.edu Assembly of the Academic Senate 1111 Franklin Street, 12<sup>th</sup> Floor Oakland, CA 94607-5200 Phone: (510) 987-9466 Fax: (510) 763-0309

March 12, 2019

#### **ROBERT MAY, CHAIR ACADEMIC COUNCIL**

#### **RE:** Proposed Revisions to Senate Bylaw 336 (Disciplinary Cases)

Dear Robert,

The Board of Admissions and Relations with Schools (BOARS) has discussed the proposed revisions to SBL 336 (Disciplinary Cases), and we have two questions about the changes. First, we seek clarity on the timeline and sequence of events. The proposed change would require rapid Senate action, but the chancellor will still have up to three years to begin an inquiry. We do not understand this discrepancy. Second, given the requirement for in-person meetings with investigators, within this more limited time frame, we seek guidance for how planned research travel, etc., will be accommodated.

Thank you for your continued attention to this important matter.

Sincerely,

Eddie Comeaux BOARS Chair

cc: Members of the Board of Admissions and Relations with Schools (BOARS) Executive Director Baxter



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David Teitel, MD, Chair Sharmila Majumdar, PhD, Vice Chair Vineeta Singh, MD, Secretary Jae Woo Lee, MD, Parliamentarian March 15, 2019

Robert C. May, PhD Chair, Academic Council Systemwide Academic Senate University of California Office of the President 1111 Franklin St., 12<sup>th</sup> Floor Oakland, CA 94607-5200

Re: Proposed Revisions to Investigation and Adjudication Framework for Senate and Non-Senate Faculty under the SVSH Policy

Dear Robert:

The San Francisco Division of the Academic Senate endorses the enclosed letter from the UCSF Privilege and Tenure Committee.

UCSF's Committee on Privilege and Tenure reviewed the proposed revisions. Consistent and fair application of the Sexual Harassment and Sexual Violence Policy is of paramount importance. Requiring the Chancellor or Chancellor's Designee to confer with the Title IX Officer, a subject matter expert, should promote those goals.

We also support the recommendation of UCSF P&T that the Chancellor should be required to notify the Chair of the Divisional P&T committee when s/he extends the 14-day timeframe for making a final decision regarding discipline after receiving the final P&T report.

Sincerely,

David Teitel, MD, 2017-19 Chair UCSF Academic Senate

Encl. (1)

CC: Sharmila Majumdar, Vice Chair, UCSF Academic Senate Roland Henry, Chair, UCSF Privilege & Tenure Hilary Baxter, Executive Director, UC Academic Senate

#### http://senate.ucsf.edu



January 30, 2019

David Teitel, MD Chair UCSF Academic Senate

RE: Systemwide Consultation of proposed revisions to Investigation and Adjudication Framework for Senate and Non-Senate Faculty

Dear Chair Teitel,

The draft revisions to the Investigation and Adjudication Framework for Senate and Non-Senate Faculty and for Staff and Non-Faculty Academic Personnel under the Presidential Sexual Violence and Sexual Harassment (SVSH) Policy are in response to the mandate from the California State Auditor.

The notice for systemwide consultation on the proposed revisions specifically solicited feedback only on the redline changes and not the document as a whole.

We offer the following comments on the Investigation and Adjudication Framework for Senate and Non-Senate Faculty. We have no comment on the framework for staff and non-faculty academic personal.

Under Section IV (Assessment and Consultation), the proposed revision adds the following language:

D. Title IX Officer Consultation for Senate and Non-Senate Faculty

In all cases where the Title IX investigation has found a Senate or non-Senate faculty respondent responsible for violating the SVSH Policy, the Chancellor or Chancellor's designee will consult with the campus Title IX Officer on how to resolve the matter, including the appropriate discipline or other corrective measures.

We fully support this provision as it establishes a reasonable step in the process. Under the current framework, the Chancellor or Chancellor's designee can propose discipline or other corrective measures without consulting the Title IX Officer. Without consulting the Title IX Officer, the proposed discipline or other correction actions may be either too lenient or too severe based on the facts and conclusions in the Title IX investigation report. Consultation provides an opportunity for the Chancellor or Chancellor's designee to receive the professional opinion of the Title IX Officer.

Under Section V (Decision on Sanctions for Senate Faculty), the proposed revision would impose a new deadline of 14 calendar days after receiving the recommendation from P&T for the Chancellor to make a final decision regarding discipline. The revision also provides that, "Extensions to this timeframe may be granted by the Chancellor for good cause with written notice to the complainant and respondent stating the reason for the extension and the projected new timeline."

The implementation of a 14-day deadline for the Chancellor to make a final decision regarding discipline is required by the California State Auditor. We note that the revisions would permit the Chancellor to extend that timeframe for good cause. The Chancellor would be required to give notice to the complainant and responded.

We recommend requiring that the Chancellor provide notice to the Chair of the Divisional P&T Committee. Senate Bylaw 334 (Privilege and Tenure: Divisional Committees – Jurisdiction) section C (Resolution of Disagreements with the Chancellor) requires the Chancellor to provide notice to P&T of any tentative decision to disagree with the P&T findings or recommendations. If the Chancellor needs to extend the timeframe for making a final decision regarding discipline, then the P&T Committee should also receive notice of that extension.

We propose the following revision:

"Extensions to this timeframe may be granted by the Chancellor for good cause with written notice to the complainant, and respondent, and Chair of the Divisional P&T Committee stating the reason for the extension and the projected new timeline."

Thank you for this opportunity to provide comment.

Sincerely,

X

Roland Henry, PhD Chair, Privilege and Tenure UCSF Academic Senate 2018-2019

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Assembly of the Academic Senate 1111 Franklin Street, 12<sup>th</sup> Oakland, CA 94607-5200 Phone: (510) 987-9466 Fax: (510) 763-0309

March 18, 2019

#### **ROBERT MAY, CHAIR ACADEMIC COUNCIL**

#### **RE:** Proposed Revisions to Senate Bylaw 336 (Disciplinary Actions)

Dear Robert,

Sean Malloy, Chair

smalloy@ucmerced.edu

The University Committee on Faculty Welfare (UCFW) has discussed the proposed Revisions to Senate Bylaw 336 (Disciplinary Actions), and we have a few comments intended to improve the proposal. First, we question setting the quorum at 50%+1; it seems that for matters of such import, the quorum should be 2/3 of membership (F.1.a). Second, we recognize that burden of proof standards are often terms of art, but most people involved in this process will not have such knowledge; accordingly, guidelines and definitions will be necessary (F.8). Finally, for privacy purposes, we suggest that the consent of all involved parties, not just of the accused, be sought prior to releasing findings, conclusions, or recommendations (F.10).

Thank you for your continued attention to this critical issue.

Sincerely,

Sean Malloy, UCFW Chair

Copy: UCFW Hilary Baxter, Executive Director, Academic Senate