

## PROPOSED REVISIONS TO SYSTEMWIDE SENATE BYLAW 336 GOVERNING PRIVILEGE AND TENURE HEARINGS

**Bylaw 336** prescribes the procedures and timelines for Privilege and Tenure proceedings in discipline cases. Proposed revisions below derive from recommendations made by the of the Administration-Senate Joint Committee (2016) on investigating and adjudicating processes for sexual harassment and sexual violence cases involving faculty. They also reflect feedback from an initial systemwide Senate review of changes required to align the bylaw with recent APM revisions that resulted from the Joint Committee work.

Following approval by the Academic Assembly, the Regents in March approved revisions to APM 015 and 016, including language on the “three-year rule.” *This language also appears in Bylaw 336 (see highlighted text) and is not subject to further revision at this point.*

Comment is invited on other proposed revisions; explanatory notes appear in the margin. Suggestions for unrelated changes to existing bylaw text will be held for future consideration. Also, proposed revisions from fall 2016 appear in **RED** and the current set appear in **BLUE**.

### **336. Privilege and Tenure: Divisional Committees -- Disciplinary Cases (En 23 May 01)**

#### 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 Privilege and Tenure Committee (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 Privilege and Tenure Committee may constitute a Special Committee composed of Senate members from any Division to carry out the proceedings.

#### B. Prehearing Procedure in Disciplinary Cases

1. In cases of disciplinary action commenced 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, proceedings shall be initiated 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 charges shall be in writing and shall contain notice of proposed disciplinary action and a full statement of the facts underlying the charges. 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.

(Note: The Regents recodified their Bylaws, Standing Orders, and Policies in July 2016. Accordingly, all references to Regental authority will need to be updated to reflect the new numbering.)

2. The accused shall have 21 ~~twenty-one~~ calendar days from the date of the receipt in which to file an answer in writing with the Committee. The Committee shall immediately provide a copy of the answer to the Chancellor or Chancellor's designee. Upon receipt of a written application, the chair of the Committee, may grant a reasonable extension of time for filing of an answer and shall immediately notify the Chancellor or Chancellor's designee of the extension.

**Comment [WU1]:** To keep all parties informed of schedule changes

3. The Privilege and Tenure Committee shall consider the matter within 21 calendar days after receipt of an answer or, if no answer is received, after the deadline for receipt of an answer. The committee shall evaluate the case and establish time frames for all subsequent procedures. The committee may suggest refer the case to 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 10 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.

**Comment [ 2]:** This change responds to concerns raised in the first round of Senate review of proposed revisions. P&T committees may not formally "refer" a case to mediation, though they may suggest the option. (Mediation occurs only when the Chancellor and accused agree.)

**Comment [ 3]:** This addition responds to the Joint Committee's interest in minimizing unnecessary delays. Moved from the end of the paragraph (as proposed in fall) to its current place.

**Comment [ 4]:**  
Fall reviewers requested this clarification.

**Comment [ 5]:**  
Fall reviewers requested this clarification.

**Comment [WU6]:** This aspirational language aligns with text from APM 015 III.B.7.

4. 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.

**Comment [WU7]:** APM 015 language – NOT subject to revision at this point.

No disciplinary action may commence if more than three years have passed between the time when the Chancellor or Chancellor's designee, who is authorized to initiate proceedings in accordance with SBL 336.B.1 and divisional disciplinary procedures, knew or should have known about the alleged violation of the Code of Conduct, and the delivery of the notice of proposed disciplinary action. For purposes of this section, if an administrator or employee in a supervisory role (e.g., program director, department chair, dean) has actual knowledge about an alleged violation, then it will be conclusively presumed that the Chancellor or Chancellor's designee should have known about the alleged violation. ~~(AM9 March 05)~~

## C. Early Resolution

### 1. Negotiation:

(Note: The Regents recodified their Bylaws, Standing Orders, and Policies in July 2016. Accordingly, all references to Regental authority will need to be updated to reflect the new numbering.)

a. The Chancellor or Chancellor's designee and the accused may attempt to resolve the disciplinary charges informally through negotiations. 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.

**Comment [WU8]:** This addition responds to the Joint Committee recommendation that discipline not be put on hold pending settlement negotiations.

b. Such negotiations may proceed with the assistance of impartial third parties, including one or more members of the Committee.

c. A negotiated resolution is permissible and appropriate at any stage of these disciplinary procedures. If a negotiated resolution is reached after 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 Privilege and Tenure Committee should be given notice that if the matter has been is resolved.

**Comment [WU9]:** This text aligns with APM 015 III.B.4.

**Comment [WU10]:** A few Senate reviewers suggested this provision be made mandatory (i.e., "must" rather than "should"). Such a change would first require agreement by the Administration likely through a subsequent APM 015 revision.

2. **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.

3. Once charges have been filed with the Committee, the Chair of the Divisional Privilege and Tenure Committee should request that the Chancellor or Chancellor's designee consult with the Committee or its chair prior to the completion of any early resolution.

D. Hearing and Post-hearing Procedures

1. The Privilege and Tenure Committee shall appoint a Hearing Committee for each disciplinary case that is not resolved through a negotiated resolution or mediation. The Hearing Committee should consist of at least three Division members. 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. 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:

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- a. Determine the facts about which there is no dispute. At the hearing, these facts may be established by stipulation.
  - b. Define the issues to be decided by the Hearing Committee.
  - c. 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.
  - d. Specify whether prehearing and post-hearing briefs will be submitted by the parties as well as the deadlines for those briefs.
  - e. Attain 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.
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](#).
  5. Prior discipline [imposed on involving](#) 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.
  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

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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. At 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, and 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. 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 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.

#### E. 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.

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