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*Assembly of the Academic Senate*  
*Academic Council*  
*1111 Franklin Street, 12<sup>th</sup> Floor*  
*Oakland, CA 94607-5200*

March 31, 2008

**SYSTEM-WIDE SENATE COMMITTEE CHAIRS  
DIVISION CHAIRS**

**RE: System-wide Review of the Proposal to Amend [Senate Bylaw 337](#) (Privilege and Tenure:  
Divisional Committees – Early Termination Cases)**

Dear System-wide Senate Committee and Division Chairs:

On behalf of Chair Michael T. Brown, please find attached a proposal to amend Senate Bylaw (SB) 337, which is being forwarded for your review and comments. As background information, in April of 2007, the Berkeley Divisional office, submitted to Chair Oakley, a request to amend SB 337. The Berkeley Divisional Rules and Election Committee has proposed an amendment to SB 337 “. . . because the present wording of SB 337 may unintentionally remove the right of a grievant to a hearing before a Committee on Privilege and Tenure regarding early termination.” Prior to sending the proposal out for Systemwide review, the Academic Council requested that the proposed amendment was reviewed by University Committees on Privilege and Tenure (UCP&T) and Rules and Jurisdiction (UCR&J). UCR&J found the proposed amendment consonant with the Code of the Academic Council, and UCP&T endorsed the proposed amendments. (Copy of UCP&T’s comments is included in this memo.)

At its March 26, 2008 meeting, the Academic Council agreed to send out the following proposed amendments of SB 337 for senatewide review.

**337. Privilege and Tenure: Divisional Committees -- Early Termination Cases (En 23 May 01)**

**A. Jurisdiction**

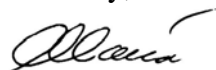
In cases of proposed termination of a Senate or non-Senate faculty member before the expiration of the faculty member's appointment, or in cases where a tenured faculty member faces termination for incompetent performance, or for other faculty members whose right to a hearing before a Senate committee is given by Section 103.9 or 103.10 of the Standing Orders of The Regents (Appendix I) (hereafter collectively referred to as early termination), the faculty member may request a hearing before a Divisional Privilege and Tenure Committee. The committee shall then conduct a hearing on the case to determine whether, in its judgment, the proposed early termination is for good cause and has been recommended in accordance with a procedure that does not violate the privileges of the faculty member. Resolution of the dispute, either through negotiation or mediation, is permissible and appropriate at any stage of these proceedings. No Senate or non-Senate faculty member may

be terminated prior to the expiration of an appointment without having an opportunity for a hearing before the Divisional Privilege and Tenure Committee. ~~If the hearing has not commenced by the end of the faculty member's term of appointment, the faculty member no longer has a right to a nearly termination hearing pursuant to this bylaw. Instead,~~ **So long as the faculty member requests a hearing before the end of his or her appointment, the Divisional Privilege and Tenure Committee shall appoint a Hearing Committee and proceed according to Section B below. If the faculty member fails to request a hearing before the end date of the appointment in question,** the faculty member may seek a grievance hearing by grieving the non-reappointment pursuant to Senate Bylaw 335 in the case of Senate faculty or the Academic Personnel Manual in the case of non-Senate faculty.

In order to complete the review of this proposed amendment during this academic year, **System-wide Senate Committee Chairs and Divisional Chairs are asked to submit comments by no later than June 12, 2008.**

As a reminder to System-wide Senate Committee Chairs, please note that **request for comments are sent out to all System-wide Committees. Each committee may decide whether or not to opine.** Please notify the Senate Office either directly by emailing me or through your Committee Analyst, if your committee chooses not to participate in this review.

Cordially,



María Bertero-Barceló, Executive Director  
Academic Senate

Encl: 2

Copy: Academic Council Chair Michael T. Brown  
Divisional Senate Directors  
Academic Senate Committee Analysts



April 13, 2007

JOHN OAKLEY  
Chair, Academic Senate

*Subject: Proposed Amendment to Senate Bylaw 337 (Privilege and Tenure:  
Divisional Committees – Early Termination Cases)*

On behalf of the Divisional Council of the Berkeley Division, I am forwarding the attached proposal to amend Senate Bylaw 337 governing divisional committees on Privilege and Tenure – early termination cases. The Berkeley Division would appreciate consideration of the proposal by the University Committee on Rules and Jurisdiction, and Academic Council.

Please feel free to contact me if you have any questions about the proposal.

Sincerely,

A handwritten signature in blue ink, appearing to read 'William Drummond', is placed over a light blue rectangular background.

William Drummond  
Chair, Berkeley Division of the Academic Senate

Cc: Daniel Melia, Chair, Committee on Rules and Elections  
Linda Song, Associate Director staffing the Committee on Rules and Elections

Encl.



February 27, 2007

PROFESSOR WILLIAM DRUMMOND  
Chair, Berkeley Division of the Academic Senate

*Re: Proposed Amendment to Senate Bylaw 337 (Privilege and Tenure:  
Divisional Committees – Early Termination Cases)*

Dear Chair Drummond,

As the result of a query from the Committee on Privilege and Tenure, the Committee on Rules and Elections (R&E) recommends the following amendment to Senate Bylaw (SB) 337.A (deleted text is noted by a strikethrough line, new text is noted by an underline). R&E submitted the proposed amendment to the University Committee on Rules and Jurisdiction for comment, and they provided a suggestion, which R&E incorporated. R&E endorsed this amendment at its February 8, 2007 meeting.

337. Privilege and Tenure: Divisional Committees -- Early Termination Cases (En 23 May 01)

A. Jurisdiction

In cases of proposed termination of a Senate or non-Senate faculty member before the expiration of the faculty member's appointment, or in cases where a tenured faculty member faces termination for incompetent performance, or for other faculty members whose 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) (hereafter collectively referred to as early termination), the faculty member may request a hearing before a Divisional Privilege and Tenure Committee. The committee shall then conduct a hearing on the case to determine whether, in its judgment, the proposed early termination is for good cause and has been recommended in accordance with a procedure that does not violate the privileges of the faculty member. Resolution of the dispute, either through negotiation or mediation, is permissible and appropriate at any stage of these proceedings.

No Senate or non-Senate faculty member may be terminated prior to the expiration of an appointment without having an opportunity for a hearing before the Divisional

Privilege and Tenure Committee. ~~If the hearing has not commenced by the end of the faculty member's term of appointment, the faculty member no longer has a right to an early termination hearing pursuant to this bylaw. Instead,~~ So long as the faculty member requests a hearing before the end of his or her appointment, the Divisional Privilege and Tenure Committee shall appoint a Hearing Committee and proceed according to Section B below. If the faculty member fails to request a hearing before the end date of the appointment in question, the faculty member may seek a grievance hearing by grieving the non-reappointment pursuant to Senate Bylaw 335 in the case of Senate faculty or the Academic Personnel Manual in the case of non-Senate faculty.

R&E proposes this amendment because the present wording of SB 337 may unintentionally remove the right of a grievant to a hearing before a Committee on Privilege and Tenure regarding early termination. Since APM 140-14(e) states that a non-Senate faculty member waives the right to appeal early termination under APM 140 once he or she has chosen to file an early termination grievance under Bylaw 337, the present wording of Bylaw 337.A leaves open the possibility that practical time constraints of committee deliberations (e.g., if an early termination grievance is submitted shortly before the committee adjourns for the summer) could deprive a non-Senate faculty member of the right to appeal under any authority. The proposed change to Senate Bylaw 337.A would not, of course, apply to appointees subject to an existing memorandum of understanding.

I attach excerpts of the relevant sections of Standing Order 103.9, which establishes the Senate's authority to hear early termination grievances by Senate and non-Senate faculty, and APM 140 for reference.

Sincerely,

**Daniel F. Melia** LS

Daniel F. Melia  
Chair, Committee on Rules and Elections

Encl: 1

## **STANDING ORDER 103.9 Tenure**

All appointments to the positions of Professor and Associate Professor and to positions of equivalent rank are continuous in tenure until terminated by retirement, demotion, or dismissal. The termination of a continuous tenure appointment or the termination of the appointment of any other member of the faculty before the expiration of the appointee's contract shall be only for good cause, after the opportunity for a hearing before the properly constituted advisory committee of the Academic Senate, except as otherwise provided in a Memorandum of Understanding for faculty who are not members of the Academic Senate.

An Assistant Professor who has completed eight years of service in that title, or in that title in combination with other titles as established by the President, shall not be continued after the eighth year unless promoted to Associate Professor or Professor. By exception, the President may approve appointment of an Assistant Professor beyond the eighth year for no more than two years.

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*Includes amendments through May 15, 1987*

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### **Academic Personnel Manual 140 Non-Senate Academic Appointees/Grievances 140-14 Eligibility**

- a. This policy applies to all academic appointees of the University who are not members of the Academic Senate except as provided in APM - 140-14-b, -c and -d. For non-Senate academic appointees covered by a Memorandum of Understanding (MOU), this policy applies only to the extent provided for in the MOU.
- b. APM - 140 does not apply to Postdoctoral Scholars (see APM - 390).
- c. Under this policy, student academic appointees not covered by an MOU shall only be eligible to grieve matters related to their academic appointment. Complaints pertaining to academic standing or non-employment-related matters are under the jurisdiction of applicable student grievance or academic appeal procedures.
- d. Housestaff (interns and residents) shall be eligible to use APM - 140 unless alternative policies and procedures are instituted by the campus.
- e. When a non-Senate faculty member receives notice of termination before the expiration of his or her appointment, he or she may select as a grievance mechanism either APM - 140, as described in this policy, or Section 103.9 of the Standing Orders of The Regents (S.O. 103.9), the procedures of which are described in Academic Senate Bylaw 337. In selecting either APM - 140 or S.O. 103.9, the non-Senate faculty member waives the right to invoke the other mechanism to review the same grievance.

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UNIVERSITY COMMITTEE ON PRIVILEGE AND TENURE (UCPT)  
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February 20, 2008

MICHAEL BROWN  
CHAIR, ACADEMIC COUNCIL

## Re: Proposed Amendment to Senate Bylaw 337

Dear Michael,

At its January meeting, the University Committee on Privilege and Tenure (UCPT) reviewed a proposed amendment from the Berkeley division to [Senate Bylaw 337](#), which governs procedures used by divisional Privilege and Tenure committees in early termination cases. UCPT endorses the amendment for the reasons I will outline below.

Under current policy, if the administration proposes to terminate a faculty member before the end of his or her appointment, the faculty member may request an early termination hearing with P&T to protest that decision. If the hearing does not commence before the term actually expires however, there is, in effect, no early termination, but rather a non-renewal of the faculty member's appointment. Bylaw 337 states that a grievance for a non-renewal may then be brought under [Bylaw 335](#) for Senate faculty and in [APM 140](#) for non-Senate faculty. Berkeley's proposed new language would guarantee faculty an early termination hearing regardless of timing, so long as they request it before the end of their appointed term.

Although the current language of Bylaw 337 implies that the early termination hearing may be seamlessly transferred into a non-renewal grievance hearing in the event the term expires, UCPT believes the proposed amendment addresses a consequential difference between the two sorts of procedures, and is stronger for it. In an early termination hearing, the administration assumes the burden to provide convincing evidence that there is good cause for early termination, while in a non-renewal grievance, the burden of proof shifts to the faculty member to contest the action. We believe a faculty member who initiates an early termination grievance deserves to have the option of seeing that process through to completion, even if her/his appointment expires. Under the current language of Bylaw 335, faculty members have to begin a grievance process, in which *they* bear the burden of the argument, while the amended wording gives the faculty member a choice of proceeding with *either* an early termination or a non-renewal grievance process. Moreover, some faculty may feel a proposed early termination could be seen as a stain on their

record, with greater stigma than a non-renewal of appointment, so the committee believed that they should have a choice of grieving that specific action, with the chance of expunging such action from the record.

The committee also discussed a downside to the amendment. In the event a hearing to contest early termination is scheduled but does not occur until the term expires, the early termination becomes a non-renewal, but despite the fact that no early termination actually transpired, there would nevertheless be a hearing to contest it. The implication here is that if no early termination occurs and yet an early termination hearing goes forward, any administrative response to allegations would surely be that no early termination took place. These considerations, however, did not in the end sway our judgment against the amendment, but since our committee concluded its deliberations with some misgivings, UCPT hopes there will be further discussion in Council of the practical implications of the amendment.

Notwithstanding our support for the amendment, UCPT also believes that the intent of the earlier wording was laudable insofar as it made the grievance process timelier. With the amendment, the committee thought there should be stronger mechanisms to ensure that an early termination hearing commenced before the end of the term. Currently, Bylaw 337 states that the faculty member who has received a notice of early termination has the right to request a hearing. Perhaps a better approach would be to schedule the hearing automatically unless the faculty member requests otherwise. In that case, P&T could begin the early termination hearing procedures as soon as the administration reached a decision, rather than waiting for the faculty member to exercise his or her right of request. In addition, Bylaw 337 might benefit from the addition of an explicit schedule of events for hearings similar to that in Bylaw 336.

Please do not hesitate to contact me should you have questions or need clarification.

Sincerely,



Sarah Fenstermaker  
Chair, UCPT

cc: UCPT  
Director Bertero-Barceló