

Executive Board

(Systemwide Senate Review) Proposed Revisions to Senate Bylaw 336_UCPT Proposed

Table of Contents

Exec SW-Review-Bylaw-336-Updated 2-1-19	1
---UCPT-AA-to-Council-RM-12.10.2018	4
Exec Email 3_LaBriola_Systemwide Senate Review_Proposed Revisions to Senate Bylaw 336_REVISED 2_1_19	20
Exec SBL 336-Corrected Redline-December 2018	22
Exec SW-Review-Bylaw-336-12-13-18 highlighted	29
---UCPT-AA-to-Council-RM-12.10.2018	32
Exec P and T Letter to Leadership_1_17_19_CORRECTIONS_Systemwide Senate Review_Proposed Revisions to Senate Bylaw 336	50
Exec SW-Review-Bylaw-336-Updated 12-17-18	53
---UCPT-AA-to-Council-RM-12.10.2018	56
Exec Email 2_LaBriola_Systemwide Senate Review_Proposed Revisions to Senate Bylaw 336_REVISED 12_17_18	74
Exec SW-Review-Bylaw-336-12-13-18	75
---UCPT-AA-to-Council-RM-12.10.2018	78
Exec Email 1_LaBriola_Systemwide Senate Review_Proposed Revisions to Senate Bylaw 336_12_13_18	94



Adebisi Agboola
Chair, University Committee on Privilege and Tenure
Email: agboola@math.ucsb.edu

Academic Senate
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

December 11, 2018

ROBERT MAY, CHAIR
ACADEMIC COUNCIL

Re: Senate Bylaw 336 – Reasons for Proposed Revisions

Dear Chair May:

The purpose of this letter is to describe the proposed revisions to [Senate Bylaw \(SBL\) 336](#), and to explain some of the reasons for them.

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 said at once that it very quickly became 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 was approved by UCPT in November 2018.

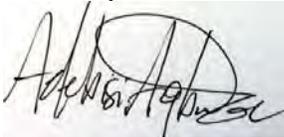
II. PROPOSED CHANGES

- i. It will be observed that the CSA recommendations pertain only to disciplinary cases involving SVSH, and in principle need not cover all disciplinary cases. However, UCPT is of the majority opinion that it is important that there be a uniform procedure for handling all alleged violations of the faculty code of conduct, irrespective of the nature of the violation in question. It is also the case that there would be quite serious difficulties involved in administering two different sets of procedures. For these reasons, UCPT decided that the proposed revisions to SBL 336 should be applied to all disciplinary cases.
- ii. The specific recommendations made in the CSA report are explicitly addressed in 336.E.1 and 336.F.10. 336.E.1 states that a hearing must begin no later than 60 calendar days after charges have been filed with P&T. It also gives a definition of good cause for the extension of deadlines associated with the disciplinary process and a description of the procedures that must be followed when a request for an extension is made. 336.F.10 gives the definition of the conclusion of a hearing.
- iii. As remarked earlier, the proposed revisions to SBL 336 will involve significant changes in the way in which divisional P&T Committees currently operate. For example, the CSA report mandates deadlines that are much shorter than the suggested deadlines that were previously in place, and this makes it necessary to substantially alter the manner in which certain procedures are currently carried out if the new deadlines are to be met.
- iv. 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. This goal is accomplished as follows:
 - a. 336.C.1 streamlines the procedure by which charges are delivered to the accused. The new procedures mandate that charges be delivered to the accused in person by the Chancellor or Chancellor's representative, or, when this is not possible, via a University email address.
 - b. The deadline for the accused to respond to the charges has been reduced from 21 days from receipt of the charges to 14 days of receipt of the charges (see 336.C.2).
 - c. Procedures have been established for scheduling a hearing as early and as efficiently as possible (see 336.C.3, and also 336.F.2).

- d. 336.F.1.a has been modified in order to allow a somewhat greater degree of flexibility in the membership of hearing committees.
- e. The pre-hearing process has been considerably streamlined; under the proposed revisions, as much of this process as possible is carried out via correspondence, rather than via a pre-hearing conference which in practice can prove quite hard to schedule (see 336.F.2).
- f. The terms under which Early Resolution may occur have been modified to take the new, shortened deadlines into account (see 336.D). One important change is the following. Given the deadlines under which P&T will be required to operate, it will no longer be possible for P&T 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.
- g. There are likely to be significant additional costs involved in holding hearings according to the time-frames mandated by the CSA recommendations. 336.F.11 has been modified in order to take account of this fact.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adebisi Agboola', written over a light grey rectangular background.

Adebisi Agboola
Chair, UCPT

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



Adebisi Agboola
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University of California
1111 Franklin Street, 12th Floor
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December 10, 2018

**ROBERT MAY, CHAIR
ACADEMIC COUNCIL**

Re: Senate Bylaw 336

Dear Chair May:

The University Committee on Privilege and Tenure (UCPT) is submitting the enclosed proposed revisions to [Senate Bylaw 336](#), which respond to recommendations contained in the California State Auditor (CSA) 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](#), and to [UC Regents Chair George Kieffer's subsequent request](#) that the Senate 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.

The Committee on Rules and Jurisdiction (UCRJ) has reviewed the proposed revisions, and their input and comments are reflected in the enclosures.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Adebisi Agboola".

Adebisi Agboola
Chair, UCPT

Enclosures

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

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

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~~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~~Committee on Privilege and Tenure 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.C. Prehearing Procedure in Disciplinary Cases

1. In cases of disciplinary ~~charges~~action filed~~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, ~~disciplinary charges~~proceedings shall be ~~filed~~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 ~~disciplinary~~ charges shall be in writing and shall contain notice of proposed disciplinary ~~sanctions~~action 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 1424 calendar days from the date of the 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. 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. (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 to schedule the hearing.

a. The Chair shall offer a choice of dates for the hearing and instruct the parties to provide their available 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 personally 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:

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

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

a.b. _____ A negotiated resolution is permissible and appropriate at any stage of these disciplinary procedures. If a negotiated resolution is reached after ~~disciplinary~~~~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 Committee on Privilege and Tenure~~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. Once disciplinary charges have been filed with the Committee on Privilege and Tenure, the Chair of the ~~Divisional~~Committee on Privilege and Tenure~~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.

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.

C.F. Hearing and Post-hearing Procedures

1. 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 at least half 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 decided 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)~~
- d. Specify 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. 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.

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. ~~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. These shall be forwarded 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, 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.

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 court reporter as well as other costs 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.

13. 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.

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

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 to schedule the hearing.
 - a. The Chair shall offer a choice of dates for the hearing and instruct the parties to provide their available 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 personally 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. However, such negotiation shall not extend any deadline in this Bylaw. (Am 14 Jun 17)
 - a. Such negotiations may proceed with the assistance of impartial third parties, including one or more members of the Committee.
 - b. A negotiated resolution is permissible and appropriate at any stage of these disciplinary procedures. 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 and should inform the Committee on Privilege and Tenure if the matter is resolved. (Am 14 Jun 17)
2. Once disciplinary charges have been filed with the Committee on Privilege and Tenure, the Chair of the Committee on Privilege and Tenure should request that the Chancellor or Chancellor's designee consult with the Committee or its chair prior to the completion of any early resolution.

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 at least half 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:
 - 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 decided by the Hearing Committee.
 - 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.
 - 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.
- 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.
- 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. 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.
11. 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.

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.

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.

From: [Michael LaBriola](#)
To: UCACOUN-L@LISTSERV.UCOP.EDU
Cc: [Kenneth Feer](#); [Brenda Abrams](#); [Fredye Harms](#); [Miller, Joanne](#); [Andrea Green Rush \(agreenrush@berkeley.edu\)](mailto:agreenrush@berkeley.edu); cherysa.cortez@ucr.edu; debra.blake@senate.ucsb.edu; [Edwin Arevalos](#); [Kate Brigman](#); [Laura Martin](#); [Mohr, Linda](#); [Matthew Mednick](#); [Ray Rodriguez](#); [Todd Giedt](#)
Subject: RE: (Systemwide Senate Review) Proposed Revisions to Senate Bylaw 336
Date: Friday, February 1, 2019 9:55:59 AM
Attachments: [SW-Review-Bylaw-336-12-13-18.pdf](#)

Dear all,

A couple of Senate divisions noticed a few small discrepancies in the “tracked changes” version of the proposed revisions to SB 336. We have worked with UCPT to resolve them and the corrected version is attached here. It is also posted on the Under Review website at: https://senate.universityofcalifornia.edu/_files/underreview/senate-review-bylaw-336-12-13-18.pdf

From: Academic Council Discussion List <UCACOUN-L@LISTSERV.UCOP.EDU> **On Behalf Of** Michael LaBriola

Sent: Monday, December 17, 2018 11:32 AM

To: UCACOUN-L@LISTSERV.UCOP.EDU

Subject: (Systemwide Senate Review) Proposed Revisions to Senate Bylaw 336

Dear all, the attached PDF of the proposed revisions to Bylaw 336 includes a redline showing more precisely all proposed changes to the current text. Please replace my transmission from Thursday with this version instead. I am sorry for any inconvenience. –Michael

CHAIRS OF SENATE DIVISIONS AND COMMITTEES:

On behalf of Senate Chair May, I am forwarding for systemwide Senate review a set of revisions to Senate Bylaw 336 proposed by the University Committee on Privilege and Tenure.

Please submit comments to the Academic Senate office at SenateReview@ucop.edu by **March 13, 2019** to allow us to compile and summarize comments for the Academic Council’s March 20 meeting. As always, any committee that considers these matters outside its jurisdiction or charge may decline to comment.

Thanks very much, Michael

Michael LaBriola
Principal Policy Analyst
Systemwide Academic Senate
510.987.0162

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 Committee on Privilege and Tenure Committee (hereafter, the Committee on Privilege and Tenure). 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 ~~Committee~~ may constitute a Special Committee composed of Senate members from any Division to carry out the proceedings.

B. Time Limitation for Filing Disciplinary Charges **MOVED from previous B.4 (no changes)**

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.~~ C. Prehearing Procedure in Disciplinary Cases

1. In cases of disciplinary ~~action commenced~~ charge 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, ~~proceedings~~ disciplinary charges shall be ~~initiated~~ 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 ~~action~~ sanctions 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.~~

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 (see section C.2 below), and (b) the deadline for commencing the hearing (see section E.1 below).

2. The accused shall have ~~21-14~~ calendar days from the date of ~~the 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. ~~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.~~ (Am 14 Jun 17)

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 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)~~

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 to schedule the hearing. 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.

(a) The Chair shall offer a choice of dates for the hearing and instruct the parties to provide their available 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

personally or by electronic mail or overnight delivery service, at least ten calendar days' notice of the time and place of the hearing.

- ~~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. (Am 9 March 05) (Am 14 Jun 17)~~
Moved to B.

~~C.~~ D. Early Resolution

~~1. Negotiation:~~

~~a. 1. The Chancellor or Chancellor's designee and the accused may attempt to resolve the disciplinary charges 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. (Am 14 Jun 17)~~

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

~~e. b. A negotiated resolution is permissible and appropriate at any stage of these disciplinary procedures. 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 and should inform the Committee on Privilege and Tenure if the matter is resolved. (Am 14 Jun 17)~~

~~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. 2. Once disciplinary charges have been filed with the Committee on Privilege and Tenure, 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.~~

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 related to the complaint and 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.

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.

~~D.~~ F. Hearing and Posthearing Procedures

1. The Chair of the Committee on 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 must include~~ consist of at least three Division members.

a. ~~At least two~~ majority of the members shall be current or former members of the Committee on Privilege and Tenure, ~~one of whom shall 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 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.

~~2.1. Prior to the formal hearing, the chair of the Hearing Committee shall schedule a conference with the accused, the Chancellor or the Chancellor's designee, and/or their representatives. This conference should attempt to:~~

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

- 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.~~

a. The Hearing Committee's initial determination of the issues to be decided at the hearing. The Chair of the Hearing Committee shall invited 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.

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.

c. ~~Set a time consistent with the timelines laid out in 336.B.3~~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 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)

d. ~~Specify w~~Whether prehearing and post-hearing briefs ~~and, if so, will be submitted by the parties as well as~~ the deadlines for those briefs.

e. ~~Attain agreement about w~~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'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. ~~At the conclusion of the hearing, t~~The Hearing Committee shall ~~promptly~~ make its findings of fact, conclusions supported by a statement of reasons based on the evidence, and recommendation, ~~and~~ These shall be forwarded these to the parties in the case, the Chancellor, 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 Hearing Committee's receipt of: (a) the written transcript of the hearing; or (b) 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 court reporter as well as other costs 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.

~~E. 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.



Adebisi Agboola
Chair, University Committee on Privilege and Tenure
Email: agboola@math.ucsb.edu

Academic Senate
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

December 11, 2018

ROBERT MAY, CHAIR
ACADEMIC COUNCIL

Re: Senate Bylaw 336 – Reasons for Proposed Revisions

Dear Chair May:

The purpose of this letter is to describe the proposed revisions to [Senate Bylaw \(SBL\) 336](#), and to explain some of the reasons for them.

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 said at once that it very quickly became 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 was approved by UCPT in November 2018.

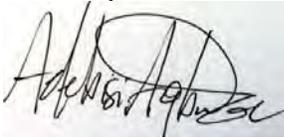
II. PROPOSED CHANGES

- i. It will be observed that the CSA recommendations pertain only to disciplinary cases involving SVSH, and in principle need not cover all disciplinary cases. However, UCPT is of the majority opinion that it is important that there be a uniform procedure for handling all alleged violations of the faculty code of conduct, irrespective of the nature of the violation in question. It is also the case that there would be quite serious difficulties involved in administering two different sets of procedures. For these reasons, UCPT decided that the proposed revisions to SBL 336 should be applied to all disciplinary cases.
- ii. The specific recommendations made in the CSA report are explicitly addressed in 336.E.1 and 336.F.10. 336.E.1 states that a hearing must begin no later than 60 calendar days after charges have been filed with P&T. It also gives a definition of good cause for the extension of deadlines associated with the disciplinary process and a description of the procedures that must be followed when a request for an extension is made. 336.F.10 gives the definition of the conclusion of a hearing.
- iii. As remarked earlier, the proposed revisions to SBL 336 will involve significant changes in the way in which divisional P&T Committees currently operate. For example, the CSA report mandates deadlines that are much shorter than the suggested deadlines that were previously in place, and this makes it necessary to substantially alter the manner in which certain procedures are currently carried out if the new deadlines are to be met.
- iv. 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. This goal is accomplished as follows:
 - a. 336.C.1 streamlines the procedure by which charges are delivered to the accused. The new procedures mandate that charges be delivered to the accused in person by the Chancellor or Chancellor's representative, or, when this is not possible, via a University email address.
 - b. The deadline for the accused to respond to the charges has been reduced from 21 days from receipt of the charges to 14 days of receipt of the charges (see 336.C.2).
 - c. Procedures have been established for scheduling a hearing as early and as efficiently as possible (see 336.C.3, and also 336.F.2).

- d. 336.F.1.a has been modified in order to allow a somewhat greater degree of flexibility in the membership of hearing committees.
- e. The pre-hearing process has been considerably streamlined; under the proposed revisions, as much of this process as possible is carried out via correspondence, rather than via a pre-hearing conference which in practice can prove quite hard to schedule (see 336.F.2).
- f. The terms under which Early Resolution may occur have been modified to take the new, shortened deadlines into account (see 336.D). One important change is the following. Given the deadlines under which P&T will be required to operate, it will no longer be possible for P&T 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.
- g. There are likely to be significant additional costs involved in holding hearings according to the time-frames mandated by the CSA recommendations. 336.F.11 has been modified in order to take account of this fact.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adebisi Agboola', written over a light grey rectangular background.

Adebisi Agboola
Chair, UCPT

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



Adebisi Agboola
Chair, University Committee on Privilege and Tenure
Email: agboola@math.ucsb.edu

Academic Senate
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

December 10, 2018

**ROBERT MAY, CHAIR
ACADEMIC COUNCIL**

Re: Senate Bylaw 336

Dear Chair May:

The University Committee on Privilege and Tenure (UCPT) is submitting the enclosed proposed revisions to [Senate Bylaw 336](#), which respond to recommendations contained in the California State Auditor (CSA) 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](#), and to [UC Regents Chair George Kieffer's subsequent request](#) that the Senate 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.

The Committee on Rules and Jurisdiction (UCRJ) has reviewed the proposed revisions, and their input and comments are reflected in the enclosures.

Please let me know if you have any questions.

Sincerely,

Adebisi Agboola
Chair, UCPT

Enclosures

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

×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~~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 ~~Privilege and Tenure Committee~~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)

B.C. Prehearing Procedure in Disciplinary Cases

1. In cases of disciplinary ~~charge filed~~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, disciplinary charges~~proceedings~~ shall be filed~~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 disciplinary charges shall be in writing and shall contain notice of proposed disciplinary ~~sanctions~~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~~Committee on Privilege and Tenure 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.

- 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 (see section C.2 below), and (b) the deadline for commencing the hearing (see section E.1 below).

2. The accused shall have ~~24~~ 14 calendar days from the date of ~~the receipt of the disciplinary charges~~ in which to file an answer in writing with the Committee in Privilege and Tenure. The Committee on Privilege and Tenure 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.~~ (Am 14 Jun 17) Timelines for completing the hearing process may not be extended solely in order to accommodate such a request. 

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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 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)

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 to schedule the hearing.

- (a) The Chair shall offer a choice of dates for the hearing and instruct the parties to provide their available 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 personally or by electronic mail or overnight delivery service, at least ten calendar days' notice of the time and place of the hearing.

Any deadline in this Bylaw may be extended by the Chair of the Privilege and Tenure Committee, or the Chair of the Hearing Committee at the request of any of the parties, but only for good cause shown, requested in writing in advance. Good cause consists of material or unforeseen circumstances related to the complaint and sufficient to justify the extension sought. Examples of good cause may include illness, unforeseen and/or unavoidable scheduling conflicts, or discovery of new evidence.



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The Privilege and Tenure Committee shall appoint a Hearing Committee (SBL 336.D) and establish time frames for all subsequent procedures. All parties must give priority to the scheduling of a hearing and must 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 hearing shall be held not more than 60 calendar days after charges have been received by the Committee on Privilege and Tenure. 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.



Any request to delay the start of the hearing beyond the 60 days mandated in this Bylaw must include adequate documentation of the basis of the request.

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~~Within three business days of receiving an extension request, the Chair of the Privilege and Tenure Committee or of the Hearing Committee will notify the parties in writing of the approval or denial of the request. If the request is approved, the notification will include the reason for granting it, the length of the extension, and the projected new timeline.~~

~~0. 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)~~

I.D. Early Resolution

~~1. Negotiation:~~

~~b-1. The Chancellor or Chancellor's designee and the accused may attempt to resolve the disciplinary charges through negotiations. However, such negotiations 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 for good cause shown and 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)~~

~~e-a. Such negotiations may proceed with the assistance of impartial third parties, including one or more members of the Committee.~~

~~e-b. A negotiated resolution is permissible and appropriate at any stage of these disciplinary procedures. If a negotiated resolution is reached after disciplinarywritten 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 CommitteeCommittee on Privilege and Tenure 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. Once disciplinary charges have been filed with the ~~Committee~~Committee on Privilege and Tenure, 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.

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 related to the complaint and 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.
- 2.3. 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.

J.F. Hearing and Post-hearing Procedures

1. The ~~Chair of the Privilege and Tenure Committee~~Committee on Privilege and Tenure 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~~should consist of~~ at least three Division members.
 - a. A majority~~least half~~ of the members shall be current or former members~~or previous members~~ of the Committee on Privilege and Tenure~~Committee on Privilege and Tenure~~, and the chair of the Hearing Committee shall be a current member of the Committee on Privilege and Tenure~~Committee on Privilege and Tenure~~. In exceptional circumstances, the Hearing Committee may include one member from another Divisional Academic Senate. ~~At least two of the members shall be members of the Committee on Privilege and Tenure, one of whom shall chair the Hearing Committee.~~
 - b. The ~~Chair of the Committee~~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.

~~4.d.~~ _____ 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~~ 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:~~
 - 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. (Am 14 Jun 17)~~
 - 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.~~

2. Within two business days after the hearing has been scheduled,
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2.1 Within ??? calendar days of receipt of the charges, the Chair of the Committee on Privilege and Tenure or the Chair of the Hearing Committee shall notify/write to the accused, the Chancellor or the Chancellor's designee, and/or their representatives in writing of the Hearing Committee's decisions on, concerning the following issues involving the scheduling of the hearing:

(a) Notify the parties of the date by which the hearing must begin, i.e. sixty days after charges have been filed with the Committee by the Chancellor.

(b) Remind the parties that, according to SBL 336.B.3, "All parties must give priority to the scheduling of the hearing and must cooperate in good faith during the scheduling process".

~~(c) Remind the parties that while they are free to pursue early resolution, hearing deadlines will not be extended solely to accommodate this.~~

~~(d) Instruct the parties to provide, within fourteen calendar days of receipt, their availability for a hearing within time frames that should be specified by the Chair of the Committee on Privilege and Tenure.~~

~~(e) Notify the parties that once the hearing is scheduled, they will receive a letter from the Chair of the Hearing Committee that will address pre-hearing matters.~~

~~2.2 Within seven calendar days of receipt by the Chair of the Committee on Privilege and Tenure of a response (336.D.2.1) from the parties, the Chair of the Hearing Committee shall schedule a hearing and write to the parties and/or their representatives in order to address the following prehearing matters:~~

~~(a) The Hearing Committee's Provide an initial determination of the issues to be decided at the hearing. Tby the Chair of the Hearing Committee Hearing Committee, shall and invite the parties to inform the Hearing Committee of any other issues they believe to be important. The final determination of the issues to be decided shall be made by the Chair of the Hearing Committee.~~

~~(b) DSet a deadline (see 336.B.3) for the parties to determine the facts about which there is no dispute. At the hearing, these facts may be established by stipulation.~~

~~(b)~~

~~(c) DSet a deadline (see 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) WSpecify whether pre-hearing and post-hearing briefs will be submitted by the parties and, if so, as well as the deadlines for those briefs.~~

- (e) ~~Specify 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.

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~~After the prehearing letter has been sent, the Chair of the Hearing Committee may at his or her discretion, also schedule a conference with the accused, the Chancellor or Chancellor's designee, and/or their representatives, to in order to resolve any questions concerning address items (a) through (e) above. 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. ~~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 Hearing Committee shall ~~shall~~ make its findings of fact, conclusions supported by a statement of reasons based on the evidence, and recommendation. These shall be, and forwarded these to the parties in the case, the

Chancellor, 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 Hearing Committee's receipt of: (a) the Hearing

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Committee has received the written transcript of the hearing; or (b) if post-hearing briefs are permitted,
the Hearing Committee has received the post-hearing briefs from the parties in the case, whichever is later, 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 court reporter as well as other costs 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.

K.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.

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 Committee on Privilege and Tenure (hereafter, the Committee on Privilege and Tenure). 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 sanction 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 by the administration 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 to schedule the hearing.
 - a. The Chair shall offer a choice of dates for the hearing and instruct the parties to provide their available 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 personally 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. However, such negotiations shall not extend any deadline in this Bylaw. (Am 14 Jun 17)
 - a. Such negotiations may proceed with the assistance of impartial third parties, including one or more members of the Committee.
 - b. A negotiated resolution is permissible and appropriate at any stage of these disciplinary procedures. 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 and should inform the Committee on Privilege and Tenure if the matter is resolved. (Am 14 Jun 17)
2. Once disciplinary charges have been filed with the Committee on Privilege and Tenure, the Chair of the Committee on Privilege and Tenure should request that the Chancellor or Chancellor's designee consult with the Committee or its chair prior to the completion of any early resolution.

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 in 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 at least half 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:
 - 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.
 - 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.
 - 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 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. Whether pre-hearing and post-hearing briefs will be submitted by the parties and, if so, the deadline for submitting 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.
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. 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, 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 Hearing 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.
11. 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.
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.

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.

January 16, 2019

To: Joe Bristow, Academic Senate Chair

From: Sheryl Kataoka 
Privilege & Tenure Chair

Re: Proposed Revisions to Bylaw 336

Dear Chair Bristow,

The Privilege & Tenure Committee is concerned about the rushed review of the proposed Bylaw 336 revisions and hopes that you will pass on this Committee's concern that the proposed revisions undergo a full and thorough review. Request for review of a key Senate bylaw should include a correctly marked version of the proposed revisions and the full context of the rationale for the review.

Please pass on these concerns to the Academic Senate Council and Assembly as soon as possible. While the committee appreciates the work that went in over the summer by UCPT and UCRJ as well as the need to improve the timing of hearings, the proposed revisions represent significant changes to a bylaw that protects a very important and fundamental Senate right to a hearing as well as again eliminating mediation as an option (previously proposed and eliminated in the 2017 revision). This has implications for all Senate discipline as well as Senate grievances, not just those involving Title IX. The 2017 revisions to Bylaw 336 not only had broader representation in the initial proposal, they went through two rounds of review. The present proposed revisions are much more extensive and we urge a careful and considered review.

Correctly marked proposed revisions

The first item of concern is that text posted for review¹ is not correctly marked to indicate changes to the current version of Bylaw 336. In particular, starting with the new section C2 there are many strikeouts of language that was never in the original Bylaw 336. This is problematic because it means that what campuses are reviewing does not accurately reflect the proposed changes in contrast to the current version. See the attached for highlights of such areas and a corrected redline version.

Full Context

The cover letter quotes recommendations from the California State Auditor as though these are mandated changes. This precludes a proper Senate discussion of what a reasonably prompt timeframe is for its disciplinary hearing process. Selectively quoting these recommendations does not take into account the following:

¹ Available: <https://senate.universityofcalifornia.edu/files/underreview/senate-review-bylaw-336-12-13-18.pdf>

1. The Office of Civil Rights Agreement of February 2018 called for decisions about sanctions to be made in a “reasonably prompt manner.”
2. In response to the CSA recommendations for the specific timelines quoted in the cover letter, **President Napolitano did not treat the CSA timeline as a mandate.** Rather, she affirmed the Senate’s right under shared governance to determine “what constitutes a ‘reasonably prompt’ timeline:

In its efforts UC has been, and must continue to be, mindful of the University’s shared governance system. We value our consultative relationship with the University’s Academic Senate, which has its own faculty code of conduct and bylaws. Although UC adopted a framework establishing timelines and procedures for some parts of the faculty disciplinary process, 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. We have sought to fully engage the Senate in our SVSH efforts, including through the Joint Committee of the Administration and Academic Senate in 2015. 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. <http://sexualviolence.universityofcalifornia.edu/files/documents/UC-President-Napolitano-response-to-CSA-053118.pdf> *Emphasis added*

3. **The Board of Regents Compliance and Audit Committee did not treat the CSA timeframe as a mandate.** The Committee called for exact time frames but did not specify what these should be:

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 by July 2019.
<https://www.bsa.ca.gov/reports/2017-125/responses.html>

4. **The Academic Council did not treat the CSA timeframe as mandated changes to the bylaws.**

(Minutes of June 27, 2018 meeting) The CSA left open the overall duration of the P&T hearing process, but recommended 60 days to schedule a hearing following the date of the charge filed by the Chancellor, and 30 days to issue a report following the hearing’s conclusion.

Council members agreed that Chair White should ask UCPT and UCRJ to examine the CSA recommendations on Council’s behalf and **suggested that those committees may wish to consider a guidance document rather than a bylaw change.** The guidance document should also include guidance concerning timeline exceptions and a visual representation of the complaint and investigation process.

<https://senate.universityofcalifornia.edu/files/committees/council/council-6-27-18-minutes.pdf>

++++

Academic Council to Regents (July 13, 2018)

The Academic Council unanimously supported enacting the CSA recommendations for achieving prompt resolution of sexual harassment complaints and has already asked the University Committee on Privilege and Tenure (UCPT) and the University Committee on

Rules and Jurisdiction (UCRJ) to examine the recommendations on Council's behalf. Specifically, Council asked those committees to **consider a bylaw change and/or the development of a guidance document** for campus P&T committees which would also include a checklist for each step of the P&T hearing process, as well as a simple visual representation of the overall complaint, investigation, and disciplinary process that would be available to all members of the University community.

<https://senate.universityofcalifornia.edu/files/reports/SNW-GK-CSA-SVSH-Audit.pdf>

5. Lastly, the CSA report only reviewed the timeframe in the context of Title IX complaints and cannot be considered a comprehensive review of a process that covers all Senate discipline. It is the Senate's right as well as responsibility to consider the recommendations in light of all Senate discipline.

The Committee looks forward to providing a detailed review of the proposed revisions themselves and to the general request to insure that the Senate's role in the disciplinary process is conducted in a "reasonably prompt manner."

On behalf of Committee members:

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

/mmo



Adebisi Agboola
Chair, University Committee on Privilege and Tenure
Email: agboola@math.ucsb.edu

Academic Senate
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

December 11, 2018

ROBERT MAY, CHAIR
ACADEMIC COUNCIL

Re: Senate Bylaw 336 – Reasons for Proposed Revisions

Dear Chair May:

The purpose of this letter is to describe the proposed revisions to [Senate Bylaw \(SBL\) 336](#), and to explain some of the reasons for them.

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 said at once that it very quickly became 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 was approved by UCPT in November 2018.

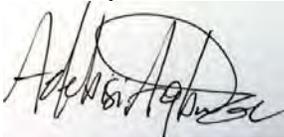
II. PROPOSED CHANGES

- i. It will be observed that the CSA recommendations pertain only to disciplinary cases involving SVSH, and in principle need not cover all disciplinary cases. However, UCPT is of the majority opinion that it is important that there be a uniform procedure for handling all alleged violations of the faculty code of conduct, irrespective of the nature of the violation in question. It is also the case that there would be quite serious difficulties involved in administering two different sets of procedures. For these reasons, UCPT decided that the proposed revisions to SBL 336 should be applied to all disciplinary cases.
- ii. The specific recommendations made in the CSA report are explicitly addressed in 336.E.1 and 336.F.10. 336.E.1 states that a hearing must begin no later than 60 calendar days after charges have been filed with P&T. It also gives a definition of good cause for the extension of deadlines associated with the disciplinary process and a description of the procedures that must be followed when a request for an extension is made. 336.F.10 gives the definition of the conclusion of a hearing.
- iii. As remarked earlier, the proposed revisions to SBL 336 will involve significant changes in the way in which divisional P&T Committees currently operate. For example, the CSA report mandates deadlines that are much shorter than the suggested deadlines that were previously in place, and this makes it necessary to substantially alter the manner in which certain procedures are currently carried out if the new deadlines are to be met.
- iv. 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. This goal is accomplished as follows:
 - a. 336.C.1 streamlines the procedure by which charges are delivered to the accused. The new procedures mandate that charges be delivered to the accused in person by the Chancellor or Chancellor's representative, or, when this is not possible, via a University email address.
 - b. The deadline for the accused to respond to the charges has been reduced from 21 days from receipt of the charges to 14 days of receipt of the charges (see 336.C.2).
 - c. Procedures have been established for scheduling a hearing as early and as efficiently as possible (see 336.C.3, and also 336.F.2).

- d. 336.F.1.a has been modified in order to allow a somewhat greater degree of flexibility in the membership of hearing committees.
- e. The pre-hearing process has been considerably streamlined; under the proposed revisions, as much of this process as possible is carried out via correspondence, rather than via a pre-hearing conference which in practice can prove quite hard to schedule (see 336.F.2).
- f. The terms under which Early Resolution may occur have been modified to take the new, shortened deadlines into account (see 336.D). One important change is the following. Given the deadlines under which P&T will be required to operate, it will no longer be possible for P&T 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.
- g. There are likely to be significant additional costs involved in holding hearings according to the time-frames mandated by the CSA recommendations. 336.F.11 has been modified in order to take account of this fact.

Please let me know if you have any questions.

Sincerely,



Adebisi Agboola
Chair, UCPT

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



Adebisi Agboola
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December 10, 2018

**ROBERT MAY, CHAIR
ACADEMIC COUNCIL**

Re: Senate Bylaw 336

Dear Chair May:

The University Committee on Privilege and Tenure (UCPT) is submitting the enclosed proposed revisions to [Senate Bylaw 336](#), which respond to recommendations contained in the California State Auditor (CSA) 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](#), and to [UC Regents Chair George Kieffer's subsequent request](#) that the Senate 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.

The Committee on Rules and Jurisdiction (UCRJ) has reviewed the proposed revisions, and their input and comments are reflected in the enclosures.

Please let me know if you have any questions.

Sincerely,

Adebisi Agboola
Chair, UCPT

Enclosures

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

×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~~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 ~~Privilege and Tenure Committee~~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)

B.C. Prehearing Procedure in Disciplinary Cases

1. In cases of disciplinary ~~charge filed~~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, disciplinary charges~~proceedings~~ shall be filed~~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 disciplinary charges shall be in writing and shall contain notice of proposed disciplinary ~~sanctions~~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~~Committee on Privilege and Tenure~~ 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.

- 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 (see section C.2 below), and (b) the deadline for commencing the hearing (see section E.1 below).
2. The accused shall have ~~24~~ **14** calendar days from the date of ~~the receipt of the disciplinary charges~~ in which to file an answer in writing with the Committee in Privilege and Tenure. The Committee on Privilege and Tenure 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.~~ (Am 14 Jun 17) ~~Timelines for completing the hearing process may not be extended solely in order to accommodate such a request.~~
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 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)~~

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 to schedule the hearing.

- (a) The Chair shall offer a choice of dates for the hearing and instruct the parties to provide their available 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 personally or by electronic mail or overnight delivery service, at least ten calendar days' notice of the time and place of the hearing.

~~Any deadline in this Bylaw may be extended by the Chair of the Privilege and Tenure Committee, or the Chair of the Hearing Committee at the request of any of the parties, but only for good cause shown, requested in writing in advance. Good cause consists of material or unforeseen circumstances related to the complaint and sufficient to justify the extension sought. Examples of good cause may include illness, unforeseen and/or unavoidable scheduling conflicts, or discovery of new evidence.~~

~~The Privilege and Tenure Committee shall appoint a Hearing Committee (SBL 336.D) and establish time frames for all subsequent procedures. All partiesAll parties must give priority to the scheduling of a hearing and must 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 hearing shall be held not more than 60 calendar days after charges have been received by the Committee on Privilege and Tenure. 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.~~

~~Any request to delay the start of the hearing beyond the 60 days mandated in this Bylaw must include adequate documentation of the basis of the request.~~

~~Within three business days of receiving an extension request, the Chair of the Privilege and Tenure Committee or of the Hearing Committee will notify the parties in writing of the approval or denial of the request. If the request is approved, the notification will include the reason for granting it, the length of the extension, and the projected new timeline.~~

~~0. 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)~~

I.D. Early Resolution

~~1. Negotiation:~~

~~b-1. The Chancellor or Chancellor's designee and the accused may attempt to resolve the disciplinary charges through negotiations. However, such negotiations 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 for good cause shown and 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)~~

~~e-a. Such negotiations may proceed with the assistance of impartial third parties, including one or more members of the Committee.~~

~~e-b. A negotiated resolution is permissible and appropriate at any stage of these disciplinary procedures. If a negotiated resolution is reached after disciplinarywritten 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 CommitteeCommittee on Privilege and Tenure 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. Once disciplinary charges have been filed with the ~~Committee~~Committee on Privilege and Tenure, 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.

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 related to the complaint and 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.
- 2.3. 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.

J.F. Hearing and Post-hearing Procedures

1. The ~~Chair of the Privilege and Tenure Committee~~Committee on Privilege and Tenure 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~~should consist of~~ at least three Division members.
- a. A majority~~least half of the members shall be current or former members or previous members of the Committee on Privilege and Tenure~~Committee on Privilege and Tenure, and the chair of the Hearing Committee shall be a current member of the Committee on Privilege and Tenure~~Committee on Privilege and Tenure~~. In exceptional circumstances, the Hearing Committee may include one member from another Divisional Academic Senate. At least two of the members shall be members of the Committee on Privilege and Tenure, one of whom shall chair the Hearing Committee.
- b. The ~~Chair of the Committee~~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.

~~1.d.~~ _____ 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:~~
 - 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. (Am 14 Jun 17)~~
 - 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.~~

2. Within two business days after the hearing has been scheduled,

2.1 Within ??? calendar days of receipt of the charges, the Chair of the Committee on Privilege and Tenure or the Chair of the Hearing Committee shall notify ~~write to~~ the accused, the Chancellor or the Chancellor's designee, and/or their representatives in writing of the Hearing Committee's decisions on, ~~concerning the following issues involving the scheduling of the hearing:~~

- (a) ~~Notify the parties of the date by which the hearing must begin, i.e. sixty days after charges have been filed with the Committee by the Chancellor.~~
- (b) ~~Remind the parties that, according to SBL 336.B.3, "All parties must give priority to the scheduling of the hearing and must cooperate in good faith during the scheduling process".~~

~~(c) Remind the parties that while they are free to pursue early resolution, hearing deadlines will not be extended solely to accommodate this.~~

~~(d) Instruct the parties to provide, within fourteen calendar days of receipt, their availability for a hearing within time frames that should be specified by the Chair of the Committee on Privilege and Tenure.~~

~~(e) Notify the parties that once the hearing is scheduled, they will receive a letter from the Chair of the Hearing Committee that will address pre-hearing matters.~~

~~2.2 Within seven calendar days of receipt by the Chair of the Committee on Privilege and Tenure of a response (336.D.2.1) from the parties, the Chair of the Hearing Committee shall schedule a hearing and write to the parties and/or their representatives in order to address the following prehearing matters:~~

~~(a) The Hearing Committee's Provide an initial determination of the issues to be decided at the hearing. Tby the Chair of the Hearing Committee Hearing Committee, shall and invite the parties to inform the Hearing Committee of any other issues they believe to be important. The final determination of the issues to be decided shall be made by the Chair of the Hearing Committee.~~

~~(b) DSet a deadline (see 336.B.3) for the parties to determine the facts about which there is no dispute. At the hearing, these facts may be established by stipulation.~~

~~(b)~~

~~(c) DSet a deadline (see 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) WSpecify whether pre-hearing and post-hearing briefs will be submitted by the parties and, if so, as well as the deadlines for those briefs.~~

(e) ~~W~~Specify 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~~Prior to the hearing, the Chair of the Hearing Committee may at his or her discretion, also schedule a conference with the accused, the Chancellor or Chancellor's designee, and/or their representatives, to in order to resolve any questions concerning address items (a) through (e) above.~~the above and any other issues. 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. ~~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 Hearing Committee shall shall make its findings of fact, conclusions supported by a statement of reasons based on the evidence, and recommendation. These shall be, and forwarded these to the parties in the case, the~~

~~Chancellor, 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 Hearing Committee's receipt of: (a) the Hearing~~

~~Committee has received the written transcript of the hearing; or (b) if post-hearing briefs are permitted, the Hearing Committee has received the post-hearing briefs from the parties in the case, whichever is later, 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 court reporter as well as other costs 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.

K.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.

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 Committee on Privilege and Tenure (hereafter, the Committee on Privilege and Tenure). 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 sanction 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 by the administration 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 to schedule the hearing.
 - a. The Chair shall offer a choice of dates for the hearing and instruct the parties to provide their available 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 personally 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. However, such negotiations shall not extend any deadline in this Bylaw. (Am 14 Jun 17)
 - a. Such negotiations may proceed with the assistance of impartial third parties, including one or more members of the Committee.
 - b. A negotiated resolution is permissible and appropriate at any stage of these disciplinary procedures. 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 and should inform the Committee on Privilege and Tenure if the matter is resolved. (Am 14 Jun 17)
2. Once disciplinary charges have been filed with the Committee on Privilege and Tenure, the Chair of the Committee on Privilege and Tenure should request that the Chancellor or Chancellor's designee consult with the Committee or its chair prior to the completion of any early resolution.

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 in 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 at least half 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:
 - 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.
 - 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.
 - 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 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. Whether pre-hearing and post-hearing briefs will be submitted by the parties and, if so, the deadline for submitting 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.
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. 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, 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 Hearing 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.
11. 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.
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.

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.

From: [Michael LaBriola](#)
To: [UCACOUN-L@LISTSERV.UCOP.EDU](#); [mmartone@ucsd.edu](#); [mdtodd@ucsd.edu](#); [earauchway@ucdavis.edu](#); [kwp@chem.ucsb.edu](#); [chowning@berkeley.edu](#); [mjazzara@ucdavis.edu](#); [Schneider, Rich](#); [darlenefrancis@berkeley.edu](#); [agboola@math.ucsb.edu](#); [jglater@law.uci.edu](#)
Cc: [Fredye Harms](#); [Kenneth Feer](#); [Brenda Abrams](#); [Miller, Joanne](#); [Andrea Green Rush \(agreenrush@berkeley.edu\)](#); [cherysa.cortez@ucr.edu](#); [debra.blake@senate.ucsb.edu](#); [Edwin Arevalos](#); [Kate Brigman](#); [Laura Martin](#); [Mohr, Linda](#); [Matthew Mednick](#); [Ray Rodriguez](#); [Todd Giedt](#)
Subject: (Systemwide Senate Review) Proposed Revisions to Senate Bylaw 336
Date: Monday, December 17, 2018 11:32:09 AM
Attachments: [SW-Review-Bylaw-336-12-13-18.pdf](#)

Dear all, the attached PDF of the proposed revisions to Bylaw 336 includes a redline showing more precisely all proposed changes to the current text. Please replace my transmission from Thursday with this version instead. I am sorry for any inconvenience. –Michael

CHAIRS OF SENATE DIVISIONS AND COMMITTEES:

On behalf of Senate Chair May, I am forwarding for systemwide Senate review a set of revisions to Senate Bylaw 336 proposed by the University Committee on Privilege and Tenure.

Please submit comments to the Academic Senate office at SenateReview@ucop.edu by **March 13, 2019** to allow us to compile and summarize comments for the Academic Council's March 20 meeting. As always, any committee that considers these matters outside its jurisdiction or charge may decline to comment.

Thanks very much, Michael

Michael LaBriola
Principal Policy Analyst
Systemwide Academic Senate
510.987.0162



Adebisi Agboola
Chair, University Committee on Privilege and Tenure
Email: agboola@math.ucsb.edu

Academic Senate
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

December 11, 2018

ROBERT MAY, CHAIR
ACADEMIC COUNCIL

Re: Senate Bylaw 336 – Reasons for Proposed Revisions

Dear Chair May:

The purpose of this letter is to describe the proposed revisions to [Senate Bylaw \(SBL\) 336](#), and to explain some of the reasons for them.

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 said at once that it very quickly became 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 was approved by UCPT in November 2018.

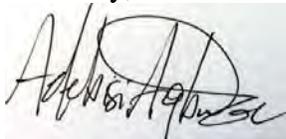
II. PROPOSED CHANGES

- i. It will be observed that the CSA recommendations pertain only to disciplinary cases involving SVSH, and in principle need not cover all disciplinary cases. However, UCPT is of the majority opinion that it is important that there be a uniform procedure for handling all alleged violations of the faculty code of conduct, irrespective of the nature of the violation in question. It is also the case that there would be quite serious difficulties involved in administering two different sets of procedures. For these reasons, UCPT decided that the proposed revisions to SBL 336 should be applied to all disciplinary cases.
- ii. The specific recommendations made in the CSA report are explicitly addressed in 336.E.1 and 336.F.10. 336.E.1 states that a hearing must begin no later than 60 calendar days after charges have been filed with P&T. It also gives a definition of good cause for the extension of deadlines associated with the disciplinary process and a description of the procedures that must be followed when a request for an extension is made. 336.F.10 gives the definition of the conclusion of a hearing.
- iii. As remarked earlier, the proposed revisions to SBL 336 will involve significant changes in the way in which divisional P&T Committees currently operate. For example, the CSA report mandates deadlines that are much shorter than the suggested deadlines that were previously in place, and this makes it necessary to substantially alter the manner in which certain procedures are currently carried out if the new deadlines are to be met.
- iv. 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. This goal is accomplished as follows:
 - a. 336.C.1 streamlines the procedure by which charges are delivered to the accused. The new procedures mandate that charges be delivered to the accused in person by the Chancellor or Chancellor's representative, or, when this is not possible, via a University email address.
 - b. The deadline for the accused to respond to the charges has been reduced from 21 days from receipt of the charges to 14 days of receipt of the charges (see 336.C.2).
 - c. Procedures have been established for scheduling a hearing as early and as efficiently as possible (see 336.C.3, and also 336.F.2).

- d. 336.F.1.a has been modified in order to allow a somewhat greater degree of flexibility in the membership of hearing committees.
- e. The pre-hearing process has been considerably streamlined; under the proposed revisions, as much of this process as possible is carried out via correspondence, rather than via a pre-hearing conference which in practice can prove quite hard to schedule (see 336.F.2).
- f. The terms under which Early Resolution may occur have been modified to take the new, shortened deadlines into account (see 336.D). One important change is the following. Given the deadlines under which P&T will be required to operate, it will no longer be possible for P&T 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.
- g. There are likely to be significant additional costs involved in holding hearings according to the time-frames mandated by the CSA recommendations. 336.F.11 has been modified in order to take account of this fact.

Please let me know if you have any questions.

Sincerely,



Adebisi Agboola
Chair, UCPT

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



Adebisi Agboola
Chair, University Committee on Privilege and Tenure
Email: agboola@math.ucsb.edu

Academic Senate
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

December 10, 2018

**ROBERT MAY, CHAIR
ACADEMIC COUNCIL**

Re: Senate Bylaw 336

Dear Chair May:

The University Committee on Privilege and Tenure (UCPT) is submitting the enclosed proposed revisions to [Senate Bylaw 336](#), which respond to recommendations contained in the California State Auditor (CSA) 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](#), and to [UC Regents Chair George Kieffer's subsequent request](#) that the Senate 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.

The Committee on Rules and Jurisdiction (UCRJ) has reviewed the proposed revisions, and their input and comments are reflected in the enclosures.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Adebisi Agboola".

Adebisi Agboola
Chair, UCPT

Enclosures

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

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

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~~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 Committee on Privilege and Tenure~~Privilege and Tenure Committee~~ 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.C. Prehearing Procedure in Disciplinary Cases

1. In cases of disciplinary charges~~action filed~~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, disciplinary charges~~proceedings~~ shall be filed~~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 disciplinary charges shall be in writing and shall contain notice of proposed disciplinary sanctions~~action~~ 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 1421 calendar days from the date of the 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. 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. (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 to schedule the hearing.

a. The Chair shall offer a choice of dates for the hearing and instruct the parties to provide their available 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 personally 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:

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

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

a.b. _____ A negotiated resolution is permissible and appropriate at any stage of these disciplinary procedures. If a negotiated resolution is reached after ~~disciplinary~~~~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 Committee on Privilege and Tenure~~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. Once disciplinary charges have been filed with the Committee on Privilege and Tenure, the Chair of the ~~Divisional~~Committee on Privilege and Tenure~~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.

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.

C.F. Hearing and Post-hearing Procedures

1. 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 at least half 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 decided 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)~~
- d. Specify 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. 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.

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. ~~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. ~~These shall be forwarded 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, 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.

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 court reporter as well as other costs 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.

13. 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.

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

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 to schedule the hearing.
 - a. The Chair shall offer a choice of dates for the hearing and instruct the parties to provide their available 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 personally 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. However, such negotiation shall not extend any deadline in this Bylaw. (Am 14 Jun 17)
 - a. Such negotiations may proceed with the assistance of impartial third parties, including one or more members of the Committee.
 - b. A negotiated resolution is permissible and appropriate at any stage of these disciplinary procedures. 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 and should inform the Committee on Privilege and Tenure if the matter is resolved. (Am 14 Jun 17)
2. Once disciplinary charges have been filed with the Committee on Privilege and Tenure, the Chair of the Committee on Privilege and Tenure should request that the Chancellor or Chancellor's designee consult with the Committee or its chair prior to the completion of any early resolution.

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 at least half 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:
 - 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 decided by the Hearing Committee.
 - 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.
 - 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.
- 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.
- 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)
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Subject: (Systemwide Senate Review) Proposed Revisions to Senate Bylaw 336
Date: Thursday, December 13, 2018 7:54:44 AM
Attachments: [SW-Review-Bylaw-336-12-13-18.pdf](#)

CHAIRS OF SENATE DIVISIONS AND COMMITTEES:

On behalf of Senate Chair May, I am forwarding for systemwide Senate review a set of revisions to Senate Bylaw 336 proposed by the University Committee on Privilege and Tenure.

Please submit comments to the Academic Senate office at SenateReview@ucop.edu by **March 13, 2019** to allow us to compile and summarize comments for the Academic Council's March 20 meeting. As always, any committee that considers these matters outside its jurisdiction or charge may decline to comment.

Thanks very much, Michael

Michael LaBriola
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