

January 19, 2021

Mary Gauvain
UC Academic Senate Chair

Re: Proposed Revision to Senate Bylaw 336.F.8

Dear Chair Gauvain,

The Divisional Executive Board, councils, and committees appreciate the opportunity to review the proposed revision to Senate Bylaw 336.F.8. Committee members applauded efforts to clarify Bylaw 336, which is an important bylaw that supports equity.

The response of the Committee on Privilege and Tenure (P&T) was supported or endorsed by the Committees on Diversity Equity and Inclusion, Faculty Welfare, Charges, and Rules and Jurisdiction, but additional comments were made. The membership of the Executive Board endorsed the P&T response and the overlay of additional committees' and individuals' concerns. All of the attached comments are important and warrant careful consideration and response. At this time, without responses to the identified concerns, the Executive Board was unable to support the proposed revision to Senate Bylaw 336.F.8 as is.

P&T expressed three key areas of concern: variance in disciplinary standards, variance with imposition of discipline following other types of investigation outcomes, and the right to a hearing. P&T made a set of four recommendations, in brief to:

- Evaluate whether using “preponderance of the evidence” as the investigation standard for a finding of a violation, with “clear and convincing” remaining the standard to impose any of the six disciplinary actions as defined in APM-016, would meet the intersection of federal and state standards;
- Add language to the proposed bylaw revisions that clearly specifies that the revisions only apply to cases for which an intersection of Federal and State policy must be decided by a preponderance of the evidence;
- Alternatively (or additionally), since California law only requires the lower standard for “sexual assault, domestic violence, dating violence, and stalking,” have the bylaw carve out only these violations rather than all Title IX violations;
- Specify that the Title IX hearing will also be the hearing before a committee of the Senate.

The Committee on Rules and Jurisdiction (CR&J) added additional concerns and another layer of analysis to the P&T letter, noting:

- There is no conflict between state law and UC Senate Bylaws requiring the preponderance of the evidence standard for cases of sexual harassment.

- DOE's August 2020 ruling on Title IX specifies that the standard of evidence to be used in determining responsibility in individual cases be the same for all classes of respondents in the University, but says nothing about the imposition of disciplinary sanctions in case of a finding of responsibility.
- Concerns relating to the idea that the Title IX hearing be stipulated as 'the hearing before a committee of the Senate,' and the role of the hearing officer.

The concerns of the Los Angeles Division are many and robust, warranting close review of all the attached individual letters. There were several overarching themes. Members raised concerns about an erosion of faculty rights and freedoms. They questioned the scope required by state law as well as whether the federal regulations requiring the same standard of evidence govern the standard to impose discipline or the standard to make a finding of a violation.

Once again, we appreciate the opportunity to opine on this issue. As is the divisional practice, we have appended all of the committee responses we received prior to the deadline to submit our response.

Sincerely,



Shane White
Chair, UCLA Academic Senate

Cc: Jody Kreiman, Vice Chair/Chair Elect, UCLA Academic Senate
Michael Meranze, Immediate Past Chair, UCLA Academic Senate
April de Stefano, Executive Director, UCLA Academic Senate