

Executive Board

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

Table of Contents

Exec Divisional Response - Proposed Revisions to Senate Bylaw 336 and Academic Framework_Bristow to May_3_13_19	1
---Robert May	1
Exec SW-Review-Bylaw-336-Updated 2-1-19	3
---UCPT-AA-to-Council-RM-12.10.2018	6

March 13, 2019

Robert May
Chair, Academic Council

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

Dear Chair May:

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

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

Proposed Revisions to Senate Bylaw 336

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

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

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

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

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

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

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

Proposed Revisions to SVSH Academic Frameworks

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

Sincerely,



Joseph Bristow
Chair, UCLA Academic Senate, 2018-2019

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



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University of California
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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.

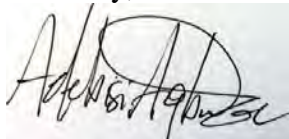
II. PROPOSED CHANGES

- 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 blue rectangular background.

Adebisi Agboola
Chair, UCPT

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

UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

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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", is written over a light blue background.

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~~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.

G.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.