

**Special Senate Committee on Faculty Discipline and Redress
Report, Spring 1997**

To the Academic Senate, Santa Cruz Division:

The Report of the Special Committee for the Spring 1996 meeting of the Academic Senate listed eight recommendations for action to be taken this year. During the past year a number of committees have considered and discussed items that have a close relationship to these recommendations. The draft report of the Universitywide Disciplinary Procedures Task Force, headed by UC Davis Law Professor Daniel Simmons, was considered by all the campuses, comments were made, and a final report issued on 10 April 1997

(<http://www.ucop.edu/acadadv/acadpers/t-cont.html>). The Committees on Privilege and Tenure (P&T) and Academic Freedom have been in discussions with the campus administration on matters relating to faculty discipline. The Committee on Academic Freedom has put forward a resolution that was approved at the Winter meeting of the Academic Senate having to do with legal counsel for faculty members. Finally, the Special Committee has been part of those discussions, and has engaged in discussions with the administration as well.

The campus is at present operating under a set of procedures for "Implementation of University Policy on Faculty Conduct and Administration of Justice" which appears in Section 002.015 of the UCSC Campus Academic Policies and Procedures Manual (CAPPMP). The procedures outline actions to be taken by the administration.

With consideration of all the above information, the Special Committee and the Executive Vice Chancellor have discussed a modification of the campus procedures such that they describe actions to be taken both by the administration and by an Academic Senate committee, namely, the Committee on Privilege and Tenure. Thus the modified procedures are examples of shared governance, and, as such, need approval and support by both the Academic Senate and the administration.

Though we have made considerable progress, we have not yet formulated a final set of procedures that could come before the Senate for approval. Instead we have a draft of a set of procedures that provide satisfaction of some of the Special Committee's recommendations from last year, and that can be brought to the Senate for discussion. If this draft is judged to be on the right track, a modified set of procedures should be finished by 31 August 1997, and should be ready to be approved by the Senate at the Fall 1997 Academic Senate meeting.

The main changes contained in these modified procedures are the following:

1. The Committee on Charges is changed from an administrative committee to a subcommittee of the Academic Senate's Committee on Privilege and Tenure (P&T).
2. The decisions of the administration on faculty discipline and grievance will be communicated to the Chair of P&T.
3. Grievance procedures are described.

4. A standard of proof is explicitly stated.

In this report, we outline how the attached procedures relate to the eight recommendations made by our committee last year.

Recommendation 1 suggested the designation of an ombudsman to be the initial contact for a complainant. The attached procedures do not identify such a person; rather the purpose of such a person is satisfied by the Chair of P&T being brought in at an early stage.

Recommendation 2 suggested changing the Charges Committee from its present administrative character to a committee of the Academic Senate. The Special Committee has identified two possibilities, and a choice between them is an appropriate topic for Senate discussion. The two possibilities are: (1) Create a new Committee on Charges; and (2) Have the Committee on Charges be a subcommittee of P&T. Several of the other campuses follow the separate-committee line. For example, UCLA has three related committees: Grievance and Disciplinary Procedures, Charges, and Privilege and Tenure, each comprising seven members. A number of faculty commented to the Special Committee that a small campus like UCSC has many fewer faculty from which to draw members of such committees. Furthermore, during the course of this last year we have been made aware of the fact that over the past fifteen years, fewer than ten cases of the type considered here have come to a consideration. These points support the idea that the Committee on Charges could be a subcommittee of P&T, which is how the attached procedures are written. On the other hand, concern has been raised about the perception of fairness if P&T, even in a separate subcommittee, has a prosecutorial role as well as a judicial one. In either case, the recommendation to move to an Academic Senate committee is satisfied.

Recommendation 3 asked that specific procedures be developed to insure that administrators involved in prosecution or judgment do not have a conflict of interest. The procedure in the modification consists of the formation of a panel of Deans who are not of the division of the faculty member who has a grievance or is being disciplined. This panel of Deans will replace the Executive Vice Chancellor if he recuses himself.

Recommendation 4 asked that a way be found to deal with the differences between disciplinary and grievance cases. The attached procedures do this by spelling out the different situations. The cases of discipline involve the Committee on Charges while the cases of grievance do not.

Recommendation 5 asked that duplication of effort in investigation be avoided. In the past, informal investigations were carried out before a formal charge was made. If the case ultimately reached the Committee on Charges, another investigation was carried out. The attached procedures confine the investigation to a single one, to be performed by the Charges Subcommittee of P&T. It is useful here to point out that this avoidance of investigatory duplication was one of the primary recommendations of the Simmons Task Force.

Recommendation 6 asked for more openness and accountability by informing complainants of procedures under way, of decisions and the reasons given, and of final resolutions. The main purpose of this recommendation was to find a way to assure that the faculty will have confidence

in the procedures being used to reach decisions in these cases. The attached procedures have a specific requirement on the time at which complainants are informed, and the extent to which they are informed. The amount of information a complainant is given is limited mainly because of a need to avoid violating the accused faculty member's right to privacy. The University as a whole is investigating this conflict further as a primary recommendation of the Simmons Task Force. Our Special Committee points out that the Santa Cruz campus should and will have input into those discussions at the Universitywide level, and our procedures cannot solve this problem until resolution is obtained at this higher level. We think that the inclusion of the Chair of P&T as presented in the attached modification is a good, possibly interim, solution.

Recommendation 7 asked that ways be found for Senate faculty to receive legal counsel by some means other than hiring personal attorneys. The attached procedures say nothing about this recommendation. To make progress in this direction, it is our view that it needs to be addressed in a Universitywide manner, and we support the Committee on Academic Freedom in their request for consideration approved at the Winter Academic Senate Meeting.

Recommendation 8 suggested expanding the range of available sanctions from the present four (written censure, suspension, demotion, or dismissal). The attached procedures do not address this issue, because, like Recommendation 7, it is a Universitywide matter. The Simmons Task Force makes some specific recommendations in this matter, and the Santa Cruz Division of the Academic Senate will have input into any Universitywide implementation of those recommendations. The task-force recommendations are available for perusal on the web at: <http://www.ucop.edu/acadadv/acadpers/apm/review7.html>.

In conclusion, the Special Committee presents the attached procedures as a positive example of shared governance, and desires both Senate comment and Senate concurrence with the tenor of the modifications. If a general sense of approval is obtained, the Committee will work with the administration and with P&T to reach a final version to be presented at the Fall Academic Senate meeting.

Respectfully
submitted,

SPECIAL SENATE
COMMITTEE ON
FACULTY
DISCIPLINE AND
REDRESS

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May 12, 1997

UCSC CAPP (proposed modifications are underlined and in bold type):

002.015 PROCEDURES FOR IMPLEMENTATION OF UNIVERSITY POLICY ON FACULTY CONDUCT AND ADMINISTRATION OF DISCIPLINE

At UCSC, the following serves to implement university policy on faculty conduct and the administration of discipline, as defined by the Regents on 14 June 1974, and applies to all members of the Academic Senate and officers of instruction as defined in the Standing Orders of The Regents 105.1 and Bylaw 113(B) of the Academic Senate.

The responsibility and authority to discipline faculty members lies with the Chancellor and hence with the administration. There is to be no redelegation of the Chancellor's authority to impose disciplinary sanctions within the terms of the University Policy on Faculty Conduct and the Administration of Discipline; no such sanction shall be imposed except as a consequence of the processes set forth below.

The following procedures apply in those instances in which an individual is charged with improper conduct as a member of the faculty, **and in those instances in which a faculty member files a grievance that may require administrative action.** No faculty member's right to direct appeal to the Committee on Privilege and Tenure or under APM 140 shall be abridged in any way by these procedures.

A. COMPLAINTS

Allegations against a member of the faculty originating from any source, **or grievances originating from a faculty member,** shall normally be addressed to the Executive Vice Chancellor, and shall normally be accepted for inquiry only on the basis of a written, signed complaint form by the complainant (see Appendix A). The Executive Vice Chancellor may consult with the appropriate department chair and/or dean.

The Executive Vice Chancellor may provide to the complainant a copy of the rules of procedure of the **Committee on Privilege and Tenure (P&T)**. It shall be the complainant's responsibility to draft his/her complaint in the form furnished to him/her and to submit it to the Executive Vice Chancellor (or designated representative) for inspection to insure that it conforms to a reasonable standard of conciseness and order. If any changes in the complaint are required to meet this standard, they shall be made in consultation with, and with the approval of, the complainant.

Upon receipt of a formal complaint by or against a member of the Academic Senate, the Executive Vice Chancellor will meet with the complainant (who may be the EVC), the accused (if such exists), and the Chair of P&T to discuss possible outcomes to the complaint

and possibly reach a resolution of the complaint. The content and outcome of such meeting(s) will be held in strict confidence by the participants, although the Chair of P&T may use its results anonymously in the annual report of P&T, as long as that use is consistent with faculty members' right to privacy under the Information Practices Act. This stage of the procedures should normally be concluded in less than thirty (30) days from receipt of the formal complaint by the Executive Vice Chancellor. Absent a resolution at these meetings, the Executive Vice Chancellor will forward all charges of violations of the Faculty Code of Conduct, or grievances, by Academic Senate members, to P&T.

B. PROCEDURES OF THE **COMMITTEE ON PRIVILEGE AND TENURE**

Although P&T is a committee of the Academic Senate, its actions in these cases are part of shared governance with the administration. Therefore, the following procedures have been approved by both the administration and the Academic Senate.

The P&T will, at the beginning of each academic year, form a standing subcommittee, hereinafter called the "Committee on Charges".

The Committee on Charges will advise the Executive Vice Chancellor, in accordance with the "Procedures for Implementation of University Policy on Faculty Conduct and Administration of Discipline":

1. whether any of the allegations in the complaint, if true, would constitute a violation of university policy on faculty conduct;
2. if so, whether there is sufficient evidence to warrant the administration's initiating a disciplinary action; and
3. if so, what disciplinary action is appropriate.

The Committee on Charges has the Chancellor's authority to seek further information in writing from people (witnesses) who may have relevant information.

The Committee on Charges should advise individuals that the University **will do all in its power to** assure that information will be kept confidential to the extent required by law.

The Committee on Charges has access to and may examine files and documents under the control of the administration, including relevant personnel files and confidential documents therein. Such confidential documents will remain confidential within the committee.

The Committee on Charges may discuss procedural and interpretive questions with the Executive Vice Chancellor and/or his or her designee, and with University Counsel.

It is expected that the Committee on Charges will conclude its work in ninety (90) calendar days or less, unless an extension is granted by the Executive Vice Chancellor.

A member of the staff will be assigned to assist the Committee on Charges with scheduling, preparation of correspondence, and maintenance of a complaint file.

The complaint file shall include the letter to **P&T** from the Executive Vice Chancellor, forwarding the charge for investigation; the original copy of the complaint; any background materials submitted to the committee; and the committee's final report giving its determinations, assessment of the evidence, and proposed disciplinary action, if any. **The standard of proof upon which the recommendation is based shall be that of probable cause.** Upon conclusion of the work of the Committee on Charges the complaint file will be maintained in the Administrative Records Office.

C. DISPOSITION OF THE REPORT OF THE COMMITTEE ON CHARGES

In any case of discipline of a faculty member, the Chancellor **will** delegate to the Executive Vice Chancellor **her** authority to take action upon receipt of the report of the Committee on Charges **of P&T**.

Upon receipt of the report, the Executive Vice Chancellor, acting on behalf of the Chancellor, will decide whether to dismiss the complaint or whether to initiate a disciplinary action against the faculty member. The Executive Vice Chancellor shall notify the Committee on Charges **of P&T** of the action s/he intends to take in response to the Committee's recommendation(s). A faculty member who brings charges against another Academic Senate member, including faculty serving in an administrative capacity, will be informed as to whether the charge is held to have merit, but will not know what, if any, disciplinary action is taken. **[If State Law obstacles can be overcome, this section may be changed to allow more information to be communicated to the complainant, under a promise of confidentiality. That is the position of the Simmons report.]**

D. DECISION TO DISCIPLINE: POSSIBLE HEARING BEFORE THE COMMITTEE ON PRIVILEGE AND TENURE

If the Executive Vice Chancellor decides to initiate disciplinary action 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 of the Standing Orders of The Regents, proceedings shall be conducted before the divisional Committee on Privilege and Tenure, as specified by Bylaw 335 of the Academic Senate, **unless this right is waived by the Academic Senate member**. P&T, **absent the members who served as the Committee on Charges, will hear the case, using as a standard of proof the basis of clear and convincing evidence, and** will report its findings and recommendations to the Chancellor, who, in turn, will decide which, if any, discipline to impose. **If any faculty member is disciplined, the occurrence of the discipline and its character shall be reported to the Chair of P&T. In a case in which a faculty member has waived the right to a hearing before P&T, the occurrence of the discipline shall still be reported, but with the names removed, so that the information may be included in the annual report of P&T to the Academic Senate. The Chair of P&T will be bound by the requirements of the Information Practices Act, even in cases in which names are removed.**

In the case of other disciplinary actions initiated against a faculty member, the Executive Vice Chancellor will inform the faculty member of the appropriate mechanism of appeal.

E. GRIEVANCE PROCEDURES OF THE COMMITTEE ON PRIVILEGE AND TENURE

If a grievance case is not resolved in the meetings of the faculty member, Executive Vice Chancellor, and Chair of P&T, then the faculty member has the right to request a hearing before P&T. P&T will carry out its judicial task, on the basis of clear and convincing evidence, and, in cases requiring administrative action, report its findings to the Executive Vice Chancellor, who will decide whether to follow the recommendation of P&T or not. The Executive Vice Chancellor will inform both the aggrieved faculty member and the Chair of P&T of the decision.

F. ALTERNATE DELEGATION OF CHANCELLORIAL AUTHORITY

If the Executive Vice Chancellor recuses himself from a case at any stage, the Chancellor will delegate her authority to take action to a panel of Deans from Divisions other than those to which the principals belong.

G. THE CASE OF AN EXTREME EMERGENCY

If, in the judgment of the Executive Vice Chancellor, there is a clear probability that the continued assignment of the complained-against faculty member to regular duties would immediately and seriously endanger the university community or substantially impair the integrity of the academic program, s/he may place the faculty member on full or partial interim suspension with pay, proceeding *immediately* to implement the full review procedure as set forth above. Such action does not represent imposition of a disciplinary sanction. The Executive Vice Chancellor shall provide the faculty member with a written statement of the reasons for such suspension.