

## **COMMITTEE ON PRIVILEGE AND TENURE**

### **Annual Report, 2000-2001**

To the Academic Senate, Santa Cruz Division:

During the course of the year, the Committee on Privilege and Tenure (P&T) met about a dozen times, dealing with issues of policy, faculty grievances, and faculty discipline.

### **POLICY**

#### **Systemwide Policy**

The Committee provided input to UCP&T on several matters. We commented on several aspects of the new Senate bylaws (adopted by the Academic Assembly in May 2001) dealing with faculty grievances, early termination, and discipline. We also provided input on the proposed revisions to APM 015 dealing with faculty discipline and on the Faculty Code of Conduct.

Prior to 2001-2002, Academic Senate Bylaw 335 described divisional Privilege and Tenure Committees and their rules and procedures in handling cases of faculty grievances, faculty discipline, and early termination cases. The legislation passed by the Academic Assembly in May replaced Bylaw 335 with new Bylaws 334-337. Here, we very briefly highlight several important aspects of these revised bylaws:

- Grievances, disciplinary matters, and early termination cases have been placed into separate bylaws for reasons of clarity.
- Both the burden of proof and the standard of proof has been explicitly stated for all P&T hearings. The burden/standard are as follows: Grievances (grievant/preponderance of the evidence); discipline (administration/clear and convincing evidence); early termination (administration/clear and convincing evidence of good cause).
- Besides clarifying the differences between grievances and disciplinary matters, the bylaws provide guidance on how to handle situations involving both grievances and discipline.
- Sections have been added which are meant to encourage early resolution of disputes.
- For grievances, the bylaw clarifies the amount of investigation required of P&T committees at the initial stages.
- A section has been added explicitly incorporating the recently adopted policy regarding disagreements between chancellors and P&T committees.
- A record-keeping function has been added to the duties of UCP&T so that there is a global database of information on grievances and faculty discipline within the UC system.
- A statute of limitations has been added for both grievance and disciplinary matters. UCSC Disciplinary Policy

The Committee reviewed, in detail, the UCSC disciplinary policy (APM 002.015). As a result of that review and of discussions with the Administration, a new draft policy (APM 002.015) has been generated. We anticipate that this draft policy will be circulated on campus for formal review and comment during Fall of 2001.

### **Policies Regarding the Narrative Evaluations Student Grievance Hearing Committee**

Issues regarding the procedures governing the Narrative Evaluations Student Grievance Hearing Committee (Part III, Appendix C of the Bylaws) were brought to our attention by the Committee on Academic Freedom. Specifically, CAF perceived some similarity between the conditions under which the student grievance hearing committee can change a student's grade or evaluation and certain specific examples of unethical behavior given in the Faculty Code of Conduct. This has led to two concerns by CAF: (1) that a committee other than Privilege and Tenure may be reaching decisions about whether faculty behavior is inconsistent with the Faculty Code of Conduct, and (2) that faculty giving evidence before the Narrative Evaluations Student Grievance Hearing Committee may compromise their right to silence in subsequent disciplinary proceedings.

The Privilege and Tenure Committee does not accept the conclusion that circumstances that justify the changing of a student's grade or evaluation necessarily imply that a violation of the Faculty Code has occurred. For example, an inappropriate grade might be arbitrarily given by an instructor as the result of physical or mental illness. This would involve injury to a student that we, as a Senate, should put right, but it would not necessarily be deemed a violation of the Code of Conduct on the part of the instructor.

This is one of the reasons why the Committee opposed the proposal to subsume the duty to recommend changes in student grades and evaluations into P&T's duty to hold hearings and make recommendations regarding faculty discipline. There are other reasons as well. (1) At UCSC, faculty discipline follows this procedure: First, charges are filed with the campus Provost alleging violation of the Faculty Code of Conduct. Then, the Provost must send the matter to the administrative Charges Committee for investigation and a recommendation, after which the Provost must decide whether there is probable cause to believe that the Code has been violated (and what sanction to propose). Only at this point does the Privilege and Tenure Committee enter the picture, and should the matter not be resolved, the P&T committee holds a formal disciplinary hearing and makes a recommendation to the Chancellor regarding whether there is clear and convincing evidence that the Code of Conduct has been violated. During a disciplinary hearing, the Provost (or his designee) presents evidence of violation of the Code, and the accused faculty member presents evidence that the Code has not been violated. A student who has been inappropriately evaluated has no standing to argue his or her case before P&T, although that student might be called as a witness. Once charges are filed with the administration, the campus Provost has the sole discretion regarding whether to pursue or to drop the charges. It is P&T's view that the student should be permitted to present his/her case directly to the body deciding the grievance. (2) Faculty disciplinary hearings before P&T are strictly confidential proceedings. It might be deemed a violation of state privacy laws for the results of such hearings to be used for purposes other than faculty discipline or to be divulged to other parties (including the complainant).

While the UCSC procedures regarding appeals of grades bears a strong similarity to the procedures used on most (but not all) other campuses, the concern regarding possible compromise of faculty rights in hearings regarding student grades is a very real one. This might justify changing our bylaws to prevent testimony before the Student Grievance Hearing Committee from being used at subsequent P&T hearings. But P&T was very clear about the inappropriateness of P&T being the body which decides such grievances. This matter should be addressed by the Senate and hopefully resolved during the 2001-2002 academic year.

## **GRIEVANCE**

The Committee actively dealt with formal grievances from three faculty members this year. One of these cases was carried over from the previous year, during which a prima facie case was established that a faculty member's rights and privileges had been violated. During the 2000-2001 academic year, efforts to resolve this matter through negotiations failed, and the case was set for a formal Privilege and Tenure grievance hearing. Due to certain circumstances, the hearing did not take place during the academic year, and the formal hearing is still pending. Grievances from the other two faculty members were either found by P&T not to meet the prima facie standard for a violation of faculty rights or the grievance was returned to the grieving party for further clarification.

During the year, the committee also learned of several potential grievances which were resolved through administrative channels before they could be formally submitted to the Committee. We both appreciate and support such efforts. In the course of our work, we also provided informal advice regarding faculty rights to one faculty member and his/her department chair.

The Committee would like to praise the work of the P&T Advisors who made our job easier. The P&T Advisors are a group of faculty, usually with experience on P&T, who are available to provide advice and assistance to faculty who believe that their rights and privileges may have been violated. These advisors can help faculty members determine if they have a viable grievance, and they can also provide help to faculty in preparing and filing a grievance complaint with P&T. The current list of P&T advisors is located at <http://senate.ucsc.edu/p&t/P&T%20Advisors0102.htm>.

## **DISCIPLINE**

During the year, the Committee had before it formal disciplinary charges [in the sense of UCSC APM 002.015 (E)] against one member of the faculty. This matter had been carried over from 1999-2000, and during the 2000-2001 academic year a prehearing on the matter was held. By the end of the year, a tentative negotiated resolution was reached between the accused faculty member and the administration. In the view of P&T, the terms of this resolution were entirely reasonable.

Respectfully submitted,

COMMITTEE ON PRIVILEGE AND TENURE

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