

COMMITTEE ON PRIVILEGE AND TENURE Annual Report 2023-24

To: Academic Senate, Santa Cruz Division

I. Grievances and Charges

Three grievances were filed by a faculty member in the term. The Committee on Privilege and Tenure (P&T) reached a positive prima facie determination in the first and third grievances and on part of grievance two. A hearing was not required per a resolution agreement between the respondent/grievant and the Administration.

There was one disciplinary case brought against a faculty member which was resolved without a hearing.

The presumptive resignation process was applied to one faculty member (APM 700-30). The faculty member did not reply by the prescribed deadline, and therefore the Chancellor determined that they were presumed to have resigned.

II. Divisional and Systemwide Reviews

A. UCSC Procedures Implementing UC's Abusive Conduct in the Workplace Policy

P&T reviewed the draft University of California, Santa Cruz procedures for implementing the University of California's systemwide Abusive Conduct Policy and provided the following comments:

- It was not clear which office had overall responsibility to handle complaints.
- For faculty, the term "managers and supervisors" was not fully defined.
- Provision should have been made in the procedures for what should happen if the incident reported involves APO/SHR or a member thereof. Also, Section A.1 of the procedures should have specified that the policy applies to all University employees: faculty, administrators, staff, and student employees in the capacity of their employment.
- When the respondent is notified that a formal investigation has been initiated (Section C.3.a), it should have been made clear that:
 - (if this is true) the investigating officer or the applicable office may submit a disciplinary complaint at the end of the process, if they consider it to be appropriate;
 - investigative reports, evidence gathered, and findings of fact made pursuant to this policy may be used as evidence in subsequent complaint or grievance resolution processes and/or disciplinary proceedings;

- The Complainant and the Respondent may have an advisor present when they are interviewed and at meetings. They may have other support persons present under other policies.

We requested confirmation that if the “next steps” mentioned in Section C.3.b.viii include disciplinary action, then in the case of faculty members this will go through the standard process starting with the Charges Committee.

B. Systemwide Senate Review of Proposed Regents Policy on Use of University Administrative Websites

P&T reviewed the proposed Regents’ Policy on the use of University Administrative Websites. We found it unfortunate that the Regents considered enacting such a policy without taking into account the June 2, 2022 recommendations from the Academic Council and the University Committee on Academic Freedom, which were well crafted and were the result of considerable effort from the faculty at all campuses. With that in mind we provided the following brief comments.

The Policy:

- was not clear on what a “Unit” is. An enumeration that includes “other entities” is not a definition.
- was not clear on what “locations of the Unit’s administrative website other than the main landing page” meant, e.g. whether the Regents expected every opinion expressed on faculty web pages to include a disclaimer.
- was not clear on what the “respective roles as spokespersons for the University within their areas of responsibility” were in Item 2 of the Regents’ proposed policy. We have become all too familiar with University authorities issuing political statements about matters which are not obviously within their area of responsibility. Also, the term “spokesperson” implied that an opinion has been formed by an agency that the spokesperson is speaking for; it was not clear which agencies form the opinions that the Chancellors and President have been expressing.

More broadly in our view, the Regents were attempting the impossible in distinguishing between the “official business of the University” and “opinions.” Coming up with well-reasoned and carefully thought-out opinions is an important part of the duties of the faculty.¹

¹ From our letter: Does the statement in a job advertisement on a University website, “The X Department values diversity, equity and inclusion” have to come with a disclaimer that it does not represent the official views of the University? Is a statement announcing a group to study “the ongoing genocide in Gaza” an opinion or an announcement of an activity of the University? If it is prohibited as an opinion, what about an announcement of a seminar with the same title; are we supposed to start censoring invited speakers? Is a course on “California and Native Americans: a history of genocide” more acceptable because the opinion implicitly expressed is less controversial? Is a statement that “Physics is for everyone!”, a statement that many people who have taken physics courses may bitterly disagree with, acceptable? There are no clear boundaries between official business and opinions in a university, and if this policy is enacted, the “administrator responsible for maintaining the website” may have difficulty implementing it.

C. Proposed revisions to APM 16

P&T reviewed the proposed revision to Academic Personnel Manual (APM) 016 that deals with faculty conduct and the administration of discipline. In particular, the reviewed version of Section II would allow the Administration to pause an academic personnel review if the faculty member is under disciplinary investigation. We noticed that a pause in a personnel review will harm faculty members who are subsequently exonerated. Even ignoring the fact that the delayed personnel review will add to the stress of a disciplinary investigation, there is the tangible harm caused by a delayed salary increase; at a minimum, the interest that would have been earned. Thus, such a pause should be imposed only when really needed. This was detailed in a proposal from the University Committee on Privilege and Tenure (UCPT), discussed in the next paragraph.

In an April 24, 2023 letter from the UCPT Chair Julia Simon to Academic Senate Chair Susan Cochran, Chair Simon wrote that some campuses were imposing pauses in academic personnel reviews even though there was no such provision in the APM. UCPT proposed to allow for these pauses, but with safeguards:

1. The no-fault pause could be imposed when disciplinary charges were filed, not before. The letter states, “currently, some administrations pause actions as soon as investigations are opened.”
2. The misconduct being charged must have occurred during the period under review.
3. Materials about disciplinary action (if the misconduct occurred during the period under review and had a direct bearing on the criteria for assessment) could only be inserted in the personnel review file after the conclusion of disciplinary proceedings.

Surprisingly, all these safeguards disappeared from the proposed revision to APM 016. In their absence, we considered the proposed revision to APM 016 as regularizing pauses in personnel reviews that can damage the integrity of the review process, and opposed the revision. If the Administration were to have restored the safeguards listed above, we would have supported the revision.

D. Proposed Revisions to Systemwide Senate Bylaw 55.b.2-5

P&T reviewed the proposed change to Senate Bylaw 55 and recommended that it should not be approved. In the cover letter from Academic Council Chair Steintrager, the only explicit argument for the change was that the current wording of Bylaw 55 “has fostered inconsistencies.” But this is not the only inconsistency that Bylaw 55 allows. For example, voting rights for associate professors may be enlarged in one department and not enlarged in another. There was no obvious reason why the particular inconsistency that concerns Teaching Faculty was singled out as problematic.

P&T felt that the case had not been made, that there was a problem to solve and that it was worth solving. The cover letter also had an implicit argument for the change: that faculty in the Lecturer with Security of Employment (LSOE)/Teaching Professor series have the same expertise as faculty in the Professor Series, although with a different emphasis. APM 220-10 states that the criteria for appointment, merit increase or promotion in the Professor

Series are a) teaching b) research and creative work c) professional competence and activity d) University and public service; APM 285- 9 states that the criteria for appointment, reappointment, merit increase or promotion in the LSOE Series are a) teaching excellence b) professional and/or scholarly achievement c) University and public service. Despite the parallels between the two, P&T felt that the relative weight given to the second criterion for the LSOE series varied from department to department. Accordingly, allowing each department to make their own decisions about whether to extend voting privileges was desirable.

E. Systemwide Review of Presidential Policy – University of California – Policy on Vaccination Programs

P&T reviewed the revised policy. Our comments were similar to those about the previous version of the policy. Being “Up-To-Date” was defined in terms of vaccine recommendations from the Centers for Disease Control (CDC) and California Department of Public Health (CDPH). P&T felt that employees cannot be expected to hunt through CDC and CDPH recommendations. The definition was also inconsistent with the policy, which defines being Up-To-Date with references to vaccines described in program attachments, which is the definition that the committee endorsed.

We also disagreed with this part of the policy in the FAQ:

Your Location may also treat you as a Covered Individual if you are authorized to be Physically Present in connection with your employment, appointment, or education or training program.

The proper penalty for a failure to comply with the policy is to be barred from being physically present at a University location or program. While this may *result* in disciplinary action as a result of non-performance of assigned duties, the disciplinary action cannot be a consequence of the failure to comply itself. As an example, a faculty member may be on sabbatical for the year, with no physical presence required, and choose to defer vaccination until the end of the year because of some concerns. They should be able to do so without being subject to disciplinary action simply because they were permitted to be physically present on campus.

III. Other Opinions

P&T raised concerns with the Campus Provost and Executive Vice Chancellor Lori Kletzer regarding Campus Academic Personnel Manual (CAPM) 002.015.K.2 which states that, during a disciplinary process against a Senate faculty member,

Respondents who are interested in pursuing a negotiated resolution may negotiate directly with the administration or may request the involvement of the Chair of Privilege and Tenure. Respondents should contact the Campus Provost or the Chair of Privilege and Tenure to discuss this option further or to propose a negotiated resolution.

This indicates that it is up to the respondent to decide whether to ask for the involvement of the Committee on Privilege and Tenure, and requires that this involvement be by the Chair.

- In two recent disciplinary proceedings, the respondent requested P&T's involvement, but the Administration's representatives said that they did not think this was necessary. The committee asked that the Administration consider whether it believes that negotiations should only involve the committee if both parties request this, and if so, to amend CAPM 002.015.K.2 accordingly.
- In the second case, the Administration also stated that if P&T involvement in the negotiations became necessary, the Administration would ask for the assistance of a member of P&T who was not on the Hearing Committee. (The P&T Chair was on the Hearing Committee.) While this is not unreasonable, it is at variance with CAPM 002.015.K.2. If the Administration wishes both parties to have the option of requesting that a member of P&T other than the Chair assist with negotiations, an amendment to the CAPM will be needed.

IV. Title IX Training

During the winter quarter P&T members participated in a Title IX training provided by the UC Santa Cruz Title IX Office. This training is required for any hearing committee member participating in a hearing which has Title IX implications. It is also of contextual assistance in assessment of sexual harassment or sexual conduct charges against faculty members.

Respectfully submitted,

COMMITTEE ON PRIVILEGE AND TENURE

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