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June 3, 2008

Michael Brown  
Chair of the Academic Council  
University of California Academic Senate

**In Re: Review of the Proposal to Amend Senate Bylaw 337**

Dear Michael,

Thank you for the opportunity to review and opine upon the Proposal to Amend Senate Bylaw 337. Upon receipt, I specifically requested that UCLA's Committee on Rules and Jurisdiction, Committee on Privilege and Tenure, and Executive Board opine. All other Senate Committees were, likewise, welcome to opine. I am pleased to report that the UCLA Academic Senate supports the proposal: Rules and Jurisdiction raised no objections to the proposal. The Committee on Privilege and Tenure endorsed the proposed changes as did the Executive Board.

In addition to endorsing the proposal as written, the Committee on Privilege and Tenure recommended additional language, which the Executive Board likewise endorsed:

*Proposal:* The modification we suggest requires the University to dismiss any pending early termination proceedings and to expunge the charge supporting the termination from the faculty member's record, if the Privilege and Tenure Committee has not held a hearing and made a recommendation before the faculty member's appointment expires. This rule could be combined with one suggested by Professor Fenstermaker near the end of her letter, "to schedule the [early termination] hearing *automatically* [emphasis added] unless the faculty member requests otherwise." Scheduling the hearing automatically would avoid enabling the faculty member to obtain dismissal of the charge simply by refusing to seek a hearing before his or her appointment expires.

I am attaching the responses from the Committee on Rules and Jurisdiction and the Committee on Privilege and Tenure, for your information. Please do not hesitate to contact me, should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth L. Bjork".

Elizabeth Ligon Bjork  
UCLA Academic Senate Chair

Cc: María Bertero-Barceló, Executive Director and Chief of Staff, Systemwide Senate Office  
Jaime R. Balboa, Ph.D., Chief Administrative Officer, UCLA Academic Senate

May 16, 2008

Elizabeth Bjork  
Academic Senate Chair

**In Re: R&J Review of the Proposal to Amend Senate Bylaw 337 (Privilege and Tenure: Divisional Committees – Early Termination Cases)**

Dear Elizabeth,

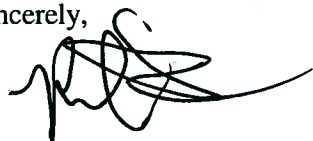
Thank you for the opportunity to opine upon the proposal to amend Senate Bylaw 337 (Privilege and Tenure: Divisional Committees – Early Termination Cases). The Berkeley Divisional Rules and Election Committee proposed this amendment in order to correct an unintentional removal of the right for a grievant to a hearing before the Committee on Privilege and Tenure regarding early termination cases. The University Committee on Privilege and the University Committee on Rules and Jurisdiction endorse this amendment and find it consonant with the Code of the Academic Council.

The Committee on Rules and Jurisdiction reviewed the proposal and raise no objections. We found no conflicts with Senate regulations nor overlap with other bylaw language. In cases of early termination, the bylaw permits a faculty member to request a hearing before the Divisional Committee on Privilege and Tenure before the end of his or her appointment in question. Should such a hearing not be requested before the end date in question, then the faculty member may grieve the non-reappointment through Senate Bylaw 335 (Senate faculty) or the Academic Personnel Manual (non-Senate faculty). This added language honors the right of faculty to a hearing to grieve an early termination, under condition the request is made prior to the end of the appointment term.

The proposal clarifies the difference between early termination and non-renewal of a faculty member's appointment. A non-renewal of an appointment occurs when a hearing does not commence before the expiration of the term. In non-renewal of appointments, faculty members may grieve under Senate Bylaw 335 (Senate faculty) or APM 140 (non-Senate faculty).

Thank you again for the opportunity to opine. Please contact me should you have any questions.

Sincerely,



Robin Fisher  
Chair, Committee on Rules and Jurisdiction

Cc: Jaime Balboa, CAO Academic Senate  
Dayna Baker, Committee Analyst

May 20, 2008

Elizabeth Bjork  
Academic Senate Chair

**In Re: P&T Review of the Proposal to Amend Senate Bylaw 337 (Privilege and Tenure: Divisional Committees – Early Termination Cases)**

Dear Elizabeth,

The Committee on Privilege and Tenure appreciates the opportunity to send you its opinion on the proposal to amend Senate Bylaw 337 (Privilege and Tenure: Divisional Committees – Early Termination Cases). On May 20, 2008, the Committee voted unanimously in support of the amendment.

While in favor of the revised amendment, the committee wishes to suggest a modification that could be used as an alternative to the proposed amendment or as a supplement to it. As explained below, we suggest that any charge against a faculty member supporting an early termination be automatically removed from her record if a hearing process is not concluded by the time her appointment expires and is not renewed.

*Background:* The proposed amendment to SB 337 concerns the hearing rights of a faculty member for whom the University has proposed early termination but whose appointment has expired before the Committee on Privilege and Tenure has held a hearing. UCPT Chair Professor Sarah Fenstermaker's letter of February 20, 2008 to Academic Council Chair Professor Michael Brown explains the rationale for the proposed amendment. The salutary idea is to ensure that the faculty member does not inadvertently fail to exercise his or her right to a hearing if the appointment ends before a hearing starts. Although the faculty member could grieve the non-renewal and contest any disciplinary charge offered by the administration as reason for the non-renewal, that setting is procedurally disadvantageous to him or her in contesting the disciplinary charge. The proposed amendment attempts to ensure that the faculty member continues to have a meaningful right to a hearing on the charge underlying the early termination, even after the appointment has ended.

*Proposal:* The modification we suggest requires the University to dismiss any pending early termination proceedings and to expunge the charge supporting the termination from the faculty member's record, if the Privilege and Tenure Committee has not held a hearing and made a recommendation before the faculty member's appointment expires. This rule could be combined with one suggested by Professor Fenstermaker near the end of her letter, "to schedule the [early termination] hearing *automatically* [emphasis added] unless the faculty member requests otherwise." Scheduling the hearing automatically would avoid enabling the faculty member to obtain dismissal of the charge simply by refusing to seek a hearing before his or her appointment expires.

Of course, the University would retain the right to not renew the faculty member's appointment, and the faculty member could grieve that action under Senate Bylaw 335 or APM 140. If the faculty member challenged the non-renewal, the University could raise the allegations supporting the early termination in the grievance proceeding. The process we propose, however, protects the faculty member from a permanent record of charges supporting early termination if a hearing is not completed by the time of non-renewal and the faculty member does not grieve the subsequent non-renewal.

As an alternative to a flat rule requiring the hearing to be completed before the appointment ends, SB 337 could be amended to set a hearing schedule such as that in SB 336 for disciplinary charges. The schedule contemplated in SB 336 is fairly precise, and any final amendment to SB 337 could require postponing the date of the appointment's expiration until a hearing is completed.

Thank you again for the opportunity to opine.

Sincerely,

Matthew Malkan  
Ruth Milkman  
Kyeyoung Park  
Arnold Scheibel  
Clyde Spillenger  
Barry O'Neill, Chair

Cc: Jaime Balboa, CAO Academic Senate  
Dayna Baker, Committee Analyst  
Brandie Henderson, Interim Committee Analyst