



UNIVERSITY COMMITTEE ON PRIVILEGE AND TENURE (UCP&T)
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Assembly of the Academic Senate
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August 6, 2004

LAWRENCE PITTS, CHAIR
ACADEMIC COUNCIL

Re: UCP&T Proposed Revisions to SBL 336.B.4

Dear Chair Pitts:

Senate Bylaw 336 governs the standards and procedures employed by divisional Privilege and Tenure committees for disciplinary cases. One important aspect of these standards and procedures is the statute of limitations for disciplinary cases, which protects faculty from having to defend themselves against charges for events taking place in the distant past when evidence, memories and witnesses may have long disappeared. SBL 336.B.4 currently defines the statute of limitations for disciplinary cases as:

No disciplinary action may commence if more than three years have passed between the time when the Chancellor or Chancellor's designee knew or should have known about the alleged violation of the Code of Conduct, and the delivery of the notice of proposed disciplinary action.

The interpretation of this statute of limitations for faculty disciplinary cases, however, has been problematic on at least one campus. In response, the University Committee on Privilege and Tenure (UCP&T) has reviewed SBL 336 and identified two problematic phrases that are in need of further clarification: "Chancellor's designee" and "should have known." The committee discussed a variety of different methods of clarifying this statute of limitations and came to the conclusion that the bylaw should be revised as indicated in the attached document. We request that these proposed revisions to SBL 336.B.4 be brought forward to the Academic Council for consideration in the fall.

Sincerely,

Carolyn Martin Shaw, Chair
UCP&T

cc: Maria Bertero-Barcelo, Executive Director

University Committee on Privilege and Tenure (UCP&T)
Proposed Amendments to Senate Bylaw 336

The University Committee on Privilege and Tenure (UCP&T) recommends that Senate Bylaw 336, which governs the standards and procedures employed by Privilege and Tenure committees for disciplinary cases, be modified as set forth below.

Present Wording:

336. Privilege and Tenure: Divisional Committees – Disciplinary Cases

B. Prehearing Procedure in Disciplinary Cases

4. No disciplinary action may commence if more than three years have passed between the time when the Chancellor or Chancellor's designee knew or should have known about the alleged violation of the Code of Conduct, and the delivery of the notice of proposed disciplinary action.

Proposed Wording:

336. Privilege and Tenure: Divisional Committees – Disciplinary Cases

B. Prehearing Procedure in Disciplinary Cases

4. No disciplinary action may commence if more than three years have passed between the time when the Chancellor or Chancellor's designee, **who is authorized to initiate proceedings in accordance with SBL 336.B.1 and divisional disciplinary procedures**, knew or should have known about the alleged violation of the Code of Conduct, and the delivery of the notice of proposed disciplinary action. **For purposes of this section, if an administrator or employee in a supervisory role (e.g., program director, department chair, dean) has actual knowledge about an alleged violation, then it will be presumed that the Chancellor or Chancellor's designee should have known about the alleged violation.**

JUSTIFICATION:

Senate Bylaw 336.B.4 sets the statute of limitations for disciplinary cases:

No disciplinary action may commence if more than three years have passed between the time when the Chancellor or Chancellor's designee knew or should have known about the alleged violation of the Code of Conduct, and the delivery of the notice of proposed disciplinary action.

The intent of the statute of limitations in SBL 336.B.4 is to protect faculty from having to defend themselves against charges for events taking place in the distant past. This is analogous to criminal and civil statutes of limitations, which by establishing time limits within which charges can be filed, protect a citizen from having to defend against charges when evidence, memories and witnesses may have long disappeared.

The date on which a criminal or civil statute of limitations begins to run usually is the date on which the crime or injury was committed, however, exceptions to this general rule exist. When the statute of limitations is “tolled” it has been legally suspended and the clock for the statutory period stops running for a certain period of time. In criminal cases, tolling most commonly occurs when the defendant becomes a fugitive from the jurisdiction where he or she committed the crime. In civil cases there are instances in which an injury is not discovered for months or years after it occurs. In such situations, statutes of limitations may be judged to begin either on the “date of discovery” of the harm, or the date on which the plaintiff “should have discovered” the harm, that is, the date when a judge considers it fair to say that the plaintiff “should have known” about the harm, whether or not the plaintiff actually knew about it. The authors of SBL 336.B.4 created a similar tolling doctrine for the statute of limitations for disciplinary cases with the idea that the three-year statutory period was in force unless a faculty member had so well hidden his or her violation that it could not be discovered.

The interpretation of this statute of limitations for faculty disciplinary cases, however, has been problematic on at least one campus. In response UCP&T has identified two problematic phrases within SBL 336.B.4 that are in need of further clarification: “Chancellor’s designee” and “should have known.” The committee agreed that the most effective method for clarifying the bylaw would be to revise it to:

1. Explicitly define the "Chancellor's designee" as the official specifically designated by the Chancellor, in accordance with senate bylaws and divisional disciplinary procedures, to handle disciplinary actions (usually the Executive Vice Chancellor).
2. Clarify that "should have known" is when someone in an administrative or supervisory role receives notice of an alleged violation.

UCP&T supports and requests the adoption of these amendments to SBL 336.B.4.