

**SANTA CLARA UNIVERSITY
FACULTY HANDBOOK
SECTION 3.10**

3.10 Composition, Jurisdiction, and Procedures of Grievance Committees and Faculty Judicial Board

3.10.1 College and School Grievance Committees

3.10.1.1 Faculty Grievances

Except as provided in 3.10.1.3, any member of the faculty has a right to submit a grievance to the appropriate grievance committee in any matter relating to his or her status or work in the University.

3.10.1.2 Composition

The Schools of Business, Engineering, and Law shall each have one Grievance Committee and the College of Arts and Sciences shall have two, one for the departments offering the degree of Bachelor of Arts and one for the departments (except the Department of Economics) offering the degree of Bachelor of Science.

Each committee shall consist of five tenured members of the faculty of its respective constituency who shall be elected by the entire faculty of that constituency. Chairs of departments are not eligible for membership. The term of office is three years. No member shall serve two consecutive terms, except that a member hearing a pending grievance shall continue to hear and participate in the resolution of that grievance. Elections to each committee shall be staggered so as to ensure continuity of the committee.

Although each committee shall consist of five members, a quorum of three shall be sufficient to hear and adjudicate a grievance. Members shall be excused from sitting on any case in which they are named in the petitioner's allegation, which requires review of a decision or an action for which they were responsible either exclusively or with others, or which entails any other conflict of interest. They may also be excused because of an absence or leave from the University. If more than two members must be excused from a case, the President of the Faculty Senate shall appoint for the duration of the case a sufficient number of members for a quorum. In so doing, the President of the Faculty Senate shall make a reasonable effort to appoint members acceptable to all parties in the grievance. Each committee shall elect its own chair. Where only four of the five elected members of a committee hear a grievance, a tie vote shall send the matter to the Faculty Judicial Board.

3.10.1.3 Jurisdiction

A Grievance Committee has jurisdiction to hear the grievance of any faculty member of the school or the departments of the college for which the Grievance Committee is established, except that a Grievance Committee does not have jurisdiction to hear a grievance of any of the following:

- a) Dismissal of a faculty member pursuant to 3.9;
- b) Sanctions other than dismissal imposed pursuant to 3.9;
- c) Cases involving alleged unlawful discrimination or sexual harassment by or against a faculty member pursuant to the Policy on Unlawful Harassment and Unlawful Discrimination, cases involving alleged misconduct in research by a faculty member pursuant to the Policy on Misconduct in Research, or any other matter for which different procedures are provided;
- d) Termination on account of financial exigency or changes in educational program pursuant to 3.5.5;
- e) A denial of promotion or tenure or a decision not to reappoint pursuant to 3.4. A faculty member seeking recourse from a denial of promotion or tenure because of the existence of significant and relevant new material or because of significant inconsistency in the application of standards or procedures between the faculty member and of her faculty members of the same year must do so through the procedure described in 3.4.8;
- f) Non-reappointment of a Senior Lecturer pursuant to 3.5.3.2.
- g) Any grievance asserted by a person who is no longer employed by the University.

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Approved by Board of Trustees, June 4, 2010

3.10.1.4 Procedures

A faculty member shall initiate a grievance by petitioning the appropriate Grievance Committee. The petition shall set forth clearly and in specific detail the nature of the grievance, shall state the name or the office of each person against whom the grievance is being lodged, and shall summarize supporting evidence and other pertinent information. Petitions shall be submitted directly to any member or members of the Grievance Committee, who shall then convene the committee. A petition must be submitted to a member of the appropriate Grievance Committee within 30 days of the petitioner's learning of the incident leading to the grievance, except in cases of chronic or long standing conditions, in which case a petition must be submitted in a timely fashion. In this latter instance, the Grievance Committee will be the sole judge of whether or not a

petition is timely. The Grievance Committee shall promptly deliver a copy of the petition to both the Provost and the party charged in the grievance.

The Grievance Committee shall establish whatever procedures it deems appropriate for the consideration of particular petitions.

All meetings of a Grievance Committee will be conducted in private unless all parties agree in writing that a meeting may be public. The nature of a matter before a Grievance Committee, the identity of the parties, evidence received by a Grievance Committee, deliberations of a Grievance Committee, and conclusions and recommendations of a Grievance Committee shall be kept in confidence by those in attendance at any meeting of the Grievance Committee except: (a) as is necessary for administrative or secretarial assistance, in which case the assistant(s) shall preserve confidentiality; (b) as is necessary to communicate to the parties, to the Faculty Judicial Board, the Provost, the President, the Board of Trustees, or legal counsel to the University; (c) as may be shared in a relationship for which the law provides an evidentiary privilege; (d) as is compelled by legal process. The Faculty Judicial Board, the Provost and the President or their delegates, and the Board of Trustees are also bound by the same duty of confidentiality except to the extent that disclosure is essential to the discharge of official University responsibilities. If disclosure is essential to the discharge of official University responsibilities, the person or persons authorizing or making such disclosure shall exercise appropriate discretion in sharing or publicizing information concerning any matter heard by the Grievance Committee.

A Grievance Committee shall first determine whether the allegations of a grievance merit investigation, deliberation, or action. If the committee concludes that the grievance does not merit investigation, deliberation, or action, it shall dismiss the petition and so notify the faculty member. Otherwise, if appropriate and possible, it shall attempt to mediate a settlement of the grievance. If settlement is not appropriate or possible, or if a settlement is not reached, the committee shall undertake such investigation and deliberation as it deems appropriate. If it thereafter determines that evidence does not support the allegations of the grievance, it shall dismiss the petition and so notify the faculty member, unless it determines and recommends additional consideration by the Faculty Judicial Board. If it determines that the evidence does support the allegations of the grievance and that the grievance merits action, it shall report its findings and its recommendations for action to the faculty member and to other appropriate parties, with a copy to the Provost or President, if appropriate. Its recommendations may include a recommendation that the grievance be considered by the Faculty Judicial Board.

In its investigation, deliberation, conclusions, and recommendations, a Grievance Committee shall at all times seek a just and equitable result.

3.10.2 Faculty Judicial Board

3.10.2.1 Composition

The faculty of the Schools of Business, Engineering, and Law shall each elect to the Faculty Judicial Board two representatives from among their tenured members. The faculty of the College of Arts and Sciences shall elect four representatives from among their tenured members, including two from the departments offering the Bachelor of Arts degree and two from the departments (except Economics) offering the Bachelor of Science degree. The term of office is three years. No member shall serve two consecutive terms, except that a member hearing a pending matter shall continue to hear and participate in the resolution of that grievance. Elections to each committee shall be staggered so as to ensure continuity of the committee.

3.10.2.2 Jurisdiction

The Faculty Judicial Board has jurisdiction:

1. Upon the request or a tie vote of a college or school Grievance Committee in any case involving a faculty grievance;
2. In cases where a faculty member alleges violation of academic freedom in a denial of tenure or promotion or where a probationary faculty member alleges that a decision not to reappoint is based substantially upon a violation of academic freedom;
3. In cases of sanctions for misconduct, as provided in 3.9;
4. In cases of dismissal for cause, as provided in 3.9.1;
5. In cases designated in the Policy on Unlawful Harassment and Unlawful Discrimination;
6. In cases in which a faculty member claims unlawful discrimination in the denial of promotion in rank or in the denial of tenure;
7. In cases of alleged misconduct in research, as provided in the Policy on Misconduct in Research.
8. In cases of termination based on financial exigency or change in educational program, as provided in 3.5.5;
9. In cases of non-reappointment of a Senior Lecturer, as provided in 3.5.3.2.
10. In such other extraordinary cases as the Provost may refer.

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3.10.2.3 Procedures

A faculty member shall invoke the jurisdiction of the Faculty Judicial Board by means of a petition that sets forth clearly and in specific detail the nature of the case, the name or the office of each person against whom any grievance is being lodged, and a summary of supporting evidence and other pertinent information. Such petitions shall be submitted directly to any member or members of the Faculty Judicial Board, who shall then promptly convene the Board. Such a petition must be submitted to a member of the Faculty Judicial Board within 30 days of the petitioner's learning of the relevant precipitating event except in cases of chronic or long standing conditions, in which case a petition must be submitted in a timely fashion. In this latter instance, the Faculty Judicial Board will be the sole judge of whether or not a petition is timely. The Faculty Judicial Board shall promptly deliver a copy of the petition to both the Provost and any named party.

Upon submission of a matter to the Faculty Judicial Board, the Board shall establish a hearing committee of five of its own members. No member of a hearing committee will have a conflict of interest in the matter to be heard.

The hearing committee shall hear the matter and proceed according to the following guidelines (numbered 1-13). The hearing committee shall establish any required procedures not specified by the guidelines listed here, after reasonable attempt to secure agreement to such procedures from all parties.

1. The following persons are parties to a matter before the hearing committee: (a) a faculty member whose grievance has been referred by a Grievance Committee and any person against whom such grievance has been filed; (b) a faculty member whose matter is before the hearing committee pursuant to the jurisdiction given the Faculty Judicial Board in 3.10.2.2; (c) any person who has made an allegation of sexual harassment or discrimination under consideration; (d) the University, represented by a person designated by the Provost; (e) such other persons as the hearing committee deems appropriate to designate.
2. Parties are entitled to attend any meeting of the hearing committee at which it receives evidence. Absent compelling reason for more expeditious action, the hearing committee shall serve notice of any meeting at which evidence will be received upon the parties at least ten days prior to such meeting, unless such persons otherwise agree. Any party may present evidence and argument to the hearing committee. In reaching its conclusions and recommendations, the hearing committee shall consider only such evidence as has been received at a meeting of the hearing committee, including any evidence gathered by a member of the hearing committee and reported at a meeting.
3. All meetings of the hearing committee in cases of allegations of sexual harassment will be conducted in private. All meetings of the hearing committee in any other matter will be conducted in private unless all parties agree in writing

that a meeting may be public. The nature of a matter before the hearing committee, the identity of the parties, evidence received by the hearing committee, deliberations of the hearing committee, and conclusions and recommendations of the hearing committee shall be kept in confidence by those in attendance at any meeting of the hearing committee except: (a) as is necessary for administrative or secretarial assistance, in which case the assistant(s) shall preserve confidentiality; (b) as is necessary to communicate to the parties, to the Faculty Judicial Board, the Provost, the President, the Board of Trustees, or legal counsel to the University; (c) as may be shared in a relationship for which the law provides an evidentiary privilege; (d) as is compelled by legal process. The Faculty Judicial Board, the Provost and the President or their delegates, and the Board of Trustees are also bound by the same duty of confidentiality except to the extent that disclosure is essential to the discharge of official University responsibilities. If disclosure is essential to the discharge of official University responsibilities, the person or persons authorizing or making such disclosure shall exercise appropriate discretion in sharing or publicizing information concerning any matter heard by the hearing committee.

4. During the proceedings, each party may be represented at his or her own expense by legal counsel of choice, and a member of the faculty, at his or her own expense, may also be accompanied and advised by an academic advisor of choice.
5. At the request of any of the parties or the hearing committee, a representative of a responsible educational association will be permitted to attend the proceedings as an observer, provided that in the case of private hearing this is agreeable to all parties. The hearing committee shall decide which association is appropriate. The hearing committee shall have the discretion to exclude an observer from deliberations of the committee.
6. The hearing committee shall arrange for recording at University expense of all meetings at which evidence is received. The chair of the hearing committee shall keep the recording until final disposition of the matter by the hearing committee at which time the chair of the hearing committee shall deliver the recording to the Provost or, if the Provost is a party to the case, to the President of the University. Upon request, the person in possession of the recording shall make a copy of the recording available to any party, or legal counsel to any party, at University expense. Any party to the case who wishes a transcription of the recording may provide for it at his or her own expense.
7. The hearing committee will not be bound by strict rules of legal evidence and may admit any evidence it believes is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.

8. The hearing committee will make every effort to proceed with reasonable speed but will grant adjournments to enable any of the parties to investigate evidence about which a valid claim of surprise is made.
9. Each party will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence, and the administration of the University will, insofar as it is possible for it to do so, secure the cooperation of such witnesses and make available necessary documents and other evidence within its control.
10. Each party will have the right to confront and cross-examine all witnesses who appear. Where a witness cannot or will not appear, but the committee determines that the interests of justice require evidence from the witness, the committee will identify the witness, attempt to obtain the evidence, disclose to the parties the evidence obtained, and, if possible, provide for interrogatories.
11. The findings of fact, the conclusions, and the recommendations of the hearing committee will be based solely on evidence received by the hearing committee and deliberations of the hearing committee. In its investigation, deliberation, conclusions, and recommendations, the hearing committee shall at all times seek a just and equitable result.
12. The burden of persuasion in matters before the hearing committee shall be satisfied only by a preponderance of the evidence. In cases governed by 3.9 (Misconduct and Diminished Fitness) the burden rests upon the University. In all other cases, the burden rests upon the party invoking the jurisdiction of the Faculty Judicial Board.
13. The hearing committee shall prepare a written report of its findings, conclusions, and recommendations. If the committee is not unanimous, it shall prepare a majority and minority report. The hearing committee shall submit its report(s) to and thereafter discuss the report(s) with the Faculty Judicial Board as a whole. The hearing committee will then make such revisions and modifications to its report(s) as it deems appropriate. The hearing committee will then present its final report(s) to the parties, the Provost, and the President of the University. In the case of both a majority and minority report, the majority report shall constitute the decision of the committee.

The nature and effect of decisions of the hearing committee shall be as follows:

1. In a case where a probationary faculty member alleges that a decision not to reappoint was based substantially upon a violation of academic freedom, and in a case where a faculty member alleges that denial of tenure or promotion was based substantially upon a violation of academic freedom, the case will be closed should the hearing committee decide that the allegation is not substantiated. Should the hearing committee decide that the allegation has been substantiated, the hearing committee will recommend ameliorative action. Upon receiving such a

recommendation, the Provost, in consultation with the hearing committee and with the President of the University, shall then specify the manner in which the matter shall be reconsidered and a final decision made. Following such decision, there shall be no further right of review.

2. Except as provided in item 6 below, in cases of dismissal and termination of tenure of a tenured faculty member for misconduct or cause (3.9), or pursuant to the Policy on Misconduct in Research, should the hearing committee decide that cause for dismissal and termination of tenure exists, the faculty member shall be dismissed and tenure terminated on the date given in the Provost's original written notification and the faculty member shall have no further right of review. Should the hearing committee decide that cause exists for some action other than dismissal and termination of tenure, the Provost shall implement the decision of the hearing committee except that for reasons deemed compelling by the Provost, the Provost, through the President, may seek review of the decision of the hearing committee by the Board of Trustees in which case the decision of the Board of Trustees shall be final. Should the hearing committee decide that cause for dismissal and termination of tenure does not exist and that there is no cause for any other action, the matter shall be closed and the determination of the hearing committee shall bind the University as to the cause or causes specified in the Provost's written notification, except that for reasons deemed compelling by the Provost, the Provost, through the President, may seek review of the decision of the hearing committee by the Board of Trustees in which case the decision of the Board of Trustees shall be final.
3. Except as provided in item 6 below, in cases of dismissal of a probationary faculty member for misconduct or cause (3.9), or pursuant to the Policy on Misconduct in Research, should the hearing committee decide that cause for dismissal exists, the committee shall affirm the dismissal and the faculty member shall have no further right of review. Should the hearing committee decide that cause exists for some action other than dismissal, the Provost shall implement the decision of the hearing committee (which may include a recommendation of reinstatement and back pay subsequent to the effective date of the dismissal) except that for reasons deemed compelling by the Provost, the Provost, through the President, may seek review of the decision of the hearing committee by the Board of Trustees in which case the decision of the Board of Trustees shall be final. Should the hearing committee decide that cause for dismissal does not exist and that there is no cause for any other action, the matter shall be closed and the decision of the hearing committee shall bind the University as to the cause or causes specified in the Provost's written notification, except that for reasons deemed compelling by the Provost, the Provost, through the President, may seek review of the decision of the hearing committee by the Board of Trustees in which case the decision of the Board of Trustees shall be final.

4. Except as provided in item 6 below, in cases of sanction, other than the sanction of dismissal, for misconduct covered by 3.9, or pursuant to the Policy on Misconduct in Research:
 - a. Where the Provost has decided to impose a sanction: Should the hearing committee decide that misconduct occurred and that a sanction imposed by the Provost for such misconduct is appropriate, the case shall be closed. Should the hearing committee decide that misconduct occurred but that a sanction other than that imposed by the Provost should be imposed, the Provost shall impose the sanction specified by the hearing committee, except that for reasons deemed compelling by the Provost, the Provost, through the President, may seek review of the decision of the hearing committee by the Board of Trustees in which case the decision of the Board of Trustees shall be final. Should the hearing committee decide that misconduct did not occur or that the misconduct warrants no sanction, the case will be closed, except that for reasons deemed compelling by the Provost, the Provost, through the President, may seek review of the decision of the hearing committee by the Board of Trustees in which case the decision of the Board of Trustees shall be final.
 - b. Where the Provost has referred the matter to the Faculty Judicial Board for initial decision: Should the hearing committee decide that misconduct occurred and recommends imposition of a specified sanction, the Provost shall impose that sanction, except that for reasons deemed compelling by the Provost, the Provost, through the President, may seek review of the decision of the hearing committee by the Board of Trustees in which case the decision of the Board of Trustees shall be final. Should the hearing committee decide that misconduct did not occur or that the misconduct warrants no sanction, the case will be closed, except that for reasons deemed compelling by the Provost, the Provost, through the President, may seek review of the decision of the hearing committee by the Board of Trustees in which case the decision of the Board of Trustees shall be final.
5. In any case where a faculty member seeks review of termination based on financial exigency or change in educational program, should the hearing committee decide that safeguards specified in 3.5.5 have been observed, the case shall be closed and the faculty member shall have no further right of review. Should the hearing committee decide that not all safeguards specified in 3.5.5 have been observed, the hearing committee will recommend ameliorative action. Upon receiving such a recommendation, the Provost, in consultation with the hearing committee and with the President of the University, shall then specify the manner in which the matter shall be reconsidered and a decision made. Following such decision, there shall be no further right of review.
6. In any case heard by the hearing committee pursuant to the Policy on Unlawful Harassment and Unlawful Discrimination, including any case involving dismissal

and termination of tenure of a tenured faculty member, dismissal of a probationary faculty member, or other sanction, the effect of the hearing committee's decision shall be as provided in the last paragraph of section III.F of the Policy on Unlawful Harassment and Unlawful Discrimination.

7. In any case other than those mentioned in 1–6, above, should the hearing committee decide that the case is not substantiated, the case will be closed. Should the hearing committee decide that the case is substantiated, the hearing committee will make a recommendation to the Provost, but the recommendation shall not be binding upon the Provost or the University. Should the Provost reject the recommendation of the hearing committee, the Provost shall transmit the reasons for rejection of the recommendation to the hearing committee and there shall be no further right of review.

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