

Section I

Name of Committee: Committee on Academic Freedom and Tenure

Submitted by: Jill Theresa Messing, Chair, School of Social Work, Watts College of Public Service and Community Solutions, Downtown Campus

Date submitted: April 17, 2024

Roster:

Mary Burleson, West Campus, Social and Behavioral Sciences
Majia Nadesan, West Campus, School of Social and Behavioral Sciences
Pamela Swan, Downtown Campus, Health Solutions
Aaron Hess, Downtown Campus, Languages and Cultures
Alan Gomez, Tempe Campus, School of Social Transformation
Hilary Harp, Tempe Campus, School of Art
Stephen Bokenkamp, Tempe Campus, School of International Letters and Cultures
Barbara Kinach, Polytechnic Campus, Mary Lou Fulton Teachers College
Shawn Jordan, Polytechnic Campus, Engineering
Hilde Hoogenboom, Tempe Campus, School of International Letters and Cultures
Richard Newhauser, Tempe Campus, English
Joe Lockard, Tempe Campus, English

Overview Narrative:

During AY 2023-24 the chair of the Committee on Academic Freedom and Tenure (CAFT) also chaired the Grievance Clearinghouse Committee (GCC). There were five new cases presented and no cases were carried over from AY 2022-2023. Of the five cases presented, three were assigned to CAFT, one was assigned to the Governance Grievance Committee (GGC), and one is currently at the GCC.

Section II

Grievance Cases Dismissed by CAFT:

1. Grievant alleged that the Respondent in an earlier case before CAFT failed to make witnesses available, did not address all alleged policy violations, and did not provide a statement (although the Respondent was available for questioning by the Grievant). CAFT ruled that the grievance failed to state a grievable issue under "ACD 509-02: Grievance Policy for Faculty" and failed to seek any cognizable remedy. CAFT dismissed the case prior to hearing.

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Grievance Cases Heard by the Committee and Forwarded to the University President

1. Grievant alleged several policy and procedural violations material to the non-renewal of a multi-year contract. Neither party was represented by counsel. After a pre-hearing, the CAFT chair ruled that the following issues would be presented at hearing: (1) whether any infringement on academic freedom occurred in connection with the multi-year contract non-renewal; and (2) whether any policy or procedural violation, or unfair or unequal application of University policy resulted in the multi-year contract non-renewal. CAFT was also asked by the University to assess three specific communications and whether the multi-year non-renewal was reprisal for any of them. CAFT determined that an unfair or unequal application of University policy resulted in the non-renewal. Specifically, the faculty member's syllabi were subjected to a greater level of scrutiny than the syllabi of other faculty in the unit, resulting in the appearance of unfairness. With regard to the statements that the University requested CAFT assess, the committee was unable to connect the non-renewal to any of the three specific statements. The University President disagreed with CAFT's conclusion regarding the unfair or unequal application of university policy, stating that there was no process or procedure violation with regard to the non-renewal, and no relief was granted to the Grievant.
2. Grievant alleged several policy and procedural violations material to their denial of tenure and promotion to associate professor, primarily related to an alleged conflict of interest with one external reviewer and the handling of a tenure clock extension related to COVID. Neither party was represented by counsel. After a pre-hearing, the CAFT chair ruled that the following issues would be presented at hearing: (1) what policies, procedures, practices, or standards governed the review of Grievant's tenure file, and whether they were followed; (2) whether the alleged lack of any necessary policy created a material violation or fundamental unfairness; and (3) whether any alleged violation occurred and was material. With regard to the alleged conflict of interest, CAFT found that the allegedly conflicted letter was unfairly overemphasized at the university level review, and that this overemphasis resulted in the inclusion of false statements in the University Promotion and Tenure Committee summary. CAFT additionally found that this resulted in a material negative impact on the promotion and tenure case and violated the policy requiring fairness in the review process. Further, there is no university policy delineating how a conflict of interest should be handled where an external reviewer has already submitted a letter. The review process may have been unduly influenced by a conflicted external reviewer with malicious intent, placing the faculty member in an unfair position and tainting the review process with the appearance of impropriety. With regard to the tenure clock extension, assessments of impact and trajectory include an implicit calculation of time; the practice of

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not discussing the tenure clock extension subjected the candidate to additional requirements at the time of their tenure decision, violating ACD 506-03, and resulting in a material negative impact on the tenure decision. Given this, CAFT recommended that the grievance be sustained. The University President disagreed with CAFT's conclusions.

Specifically, while the President conceded that the University level summary "may have contained a disproportionate amount of content from" the allegedly conflicted external letter writer, this was neither a violation of fairness nor a violation of policy. He went on to state that the multiple, independent levels of review within the Tenure and Promotion process mitigate the impact of a single reviewer on the overall tenure and promotion case. Further, the President did not find that the Grievant was subjected to additional requirements due to the tenure clock extension; while he recognizes that "that failure to include tenure extensions might negatively affect calculated publication impact metrics," he does not believe that "exclusive or inappropriate emphasis" was placed on these metrics. No relief was granted to the Grievant.

Grievance Cases Pending as of April 17, 2024

A grievance submission currently at the Grievance Clearinghouse Committee (GCC) stage for which it appears no jurisdiction exists and no hearing is anticipated.

Section III

Items to carry-over into AY 2024-25

At this time, it is not expected that any cases will be carried over to the next AY.

Section IV

Recommendations to the Senate or Formal Comments

Academic freedom is crucial and is of utmost importance to the intellectual health of the university. Faculty members must attend carefully to the policies that govern their employment at all levels of the university structure.

The scope of CAFT is limited, and education about the role of the grievance committees at the Senate and/or faculty level may be useful moving forward. Neither the grievance committees nor the Senate office are able to provide advice or assistance to Grievants outside of the scope of the committee charge. Grievants may obtain legal counsel at their own expense to advise or represent them.

Grievance committees may hear cases where an allegedly material substantive policy or procedural violation may have occurred. For an alleged violation to be material, it must have had an impact on the outcome of the case. For example, grievance committees do not have jurisdiction to evaluate the *substance* of a faculty member's tenure and promotion materials. The relief available for a policy or procedure violation is for the matter to be sent back to the

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level at which the violation allegedly occurred. CAFT is unable, for example, to renew a contract or reverse a negative tenure or promotion decision. Rather, when a material policy or procedural violation occurs, the matter is often sent back to the decision-makers who rendered the original decision, so that they can revisit that decision while following applicable policies and procedures.

CAFT proceedings are meant to be collegial and cooperative. However, the nature of the proceedings, with the Grievant and Respondent arguing their “sides” of the issue may dissuade people from reaching an agreement when they may have otherwise been able to do so. There are multiple instances where Ombudsperson mediation is not allowed per ACD 509-01 (e.g., Tenure and Promotion cases). In these instances, there is no opportunity for the parties to consider one another’s perspectives prior to engaging in a defense of their position within the Grievance process.

It is incumbent upon an external letter writer to disclose conflicts of interest prior to writing a letter, and there are no policies or procedures governing the handling of a conflict of interest by an external letter writer once the letter is written. When a conflict is alleged after an external letter is written, people at all levels of review do not have specific guidance on how to identify or treat the potential conflict. Further, because of the nature of conflicts of interest, protecting the identity of the letter writer may necessitate not disclosing the nature of a conflict once discovered. Without clear policy or procedural guidance, there may be confusion across levels of review regarding how to treat an alleged conflict and how much weight an allegedly conflicted letter is due. This has the potential to impact the Tenure and Promotion process.

Despite the unprecedented number of tenure clock extensions given during COVID, there is limited guidance with regard to how the Tenure and Promotion process should manage these extensions. The only guidance provided within policy (ACD 506-03) states that “the faculty member shall not be subject to additional requirements at the time of the tenure decision.” This appears to be operationalized as, tenure clock extensions are not discussed. Yet, the probationary period is a generally standard time period and assessments of impact and trajectory include an implicit calculation of time. Thus, effectively ignoring the fact of an extension has the potential to negatively impact the candidate seeking tenure.

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During AY 2023-24 the Grievance Clearinghouse Committee (GCC) received five new cases; of those, one is pending at the GCC, three were assigned to CAFT, and one was assigned to the Governance Grievance Committee (GGC). Of the cases assigned to CAFT, one was dismissed and two were heard by CAFT and forwarded to the University President. Of the cases forwarded to the University President, CAFT recommended that the Grievant be granted relief in both cases. The University President disagreed with CAFT’s recommendations. CAFT recommends attention to policy and procedure governing conflicts of interest and tenure clock extensions in the Promotion and Tenure Process, education on the role of the grievance

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committees, and increasing the ability of Grievants and Respondents to come to amicable solutions together.

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