

Annual Committee Report **Academic Year 2017-2018**

Section I

Name of Committee: Committee on Academic Freedom & Tenure

Submitted by: David Martínez, Associate Professor of American Indian Studies

Date Submitted: May 16, 2018

Roster:

- Angela Chen, Downtown Phoenix campus, Nursing 2018
- Barbara Ainsworth, Downtown Phoenix campus, Nutrition and Health Promotion 2018
- Terri Kurz, Polytechnic campus, Mary Lou Fulton Teachers College 2018
- Hans Van Der Mars, Polytechnic campus, Mary Lou Fulton Teachers College 2020
- Richard Creath, Tempe campus, Life Sciences 2019
- David William Foster, Tempe campus, International Letters and Cultures 2019
- Karen Leong, Tempe campus, Social Transformation 2019
- Micha Espinosa, Tempe campus, Film, Dance and Theatre 2020
- David Martinez, Tempe campus, American Indian Studies 2020
- Carol Mueller, West campus, Social and Behavioral Sciences 2018
- Patricia Clark, West campus, Humanities, Arts and Cultural Studies 2020

Overview Narrative:

The Committee on Academic Freedom & Tenure (CAFT), chaired by David Martínez, Associate Professor of American Indian Studies, received a total of five separate requests for a grievance hearing, two of which were from the same grievant. Two cases pertained to the denial of tenure and promotion; one of case of employment demotion; and, two cases, which were from the same grievant, regarding a negative annual performance review. Three of the cases were closed without going to hearing, while the last two cases are ongoing and will be carried over into the fall 2018 semester.

Section II

Grievances reviewed and will not roll into the 2018-19 academic year.

1. Grievance #1
 - a. **Claim:** grievant was denied tenure and promotion. Claimed that the Standards of Academe for the grievant's college were not used by the University Promotion & Tenure Committee. Also, that the procedure process associated with grievant's file was followed the University Promotion and Tenure Committee.

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- b. **Outcome:** In response to the grievant's claims, the grievant was notified via letter, that the grievance did not specify any particular policy or procedural violation which was alleged to have had a material impact on the outcome of the tenure review. Rather, the grievance seemed to request a second opinion from CAFT about whether tenure should have been granted, which was a matter outside of CAFT's jurisdiction. The remedy sought, a re-review at "appropriate levels" was consequently too vague. Additional time was allowed to clarify the basis for the grievance and the remedies sought. The latter response was requested by CAFT, but nothing further was heard. The matter was therefore closed. No further action was taken, as no issue had been asserted that fell within committee jurisdiction, and no remedy was sought which was available via this process.
2. Grievance #2
- a. **Claim:** grievant was denied tenure and promotion. Grievant also retained legal counsel, from whom a letter was received, stating on behalf of their client had been denied based on the following violations: "(1) the denial of tenure was based on discriminatory or other unconstitutional grounds, (2) any faculty allegation that a decision affecting his or her employment relationship with the university, including the denial of tenure, was not determined in substantial compliance with regular university procedures, and (3) all complaints alleging unfair treatment because no policies or procedures exist, or existing policies or procedures have been misinterpreted, misapplied, or violated by a university administrator."
- b. **Outcome:** Upon learning that the grievant was no longer employed at ASU, and had accepted an appointment at another university, CAFT sent a response, noting that faculty grievance procedures were not generally available for use by non-faculty members. The provisions setting forth committee jurisdiction specify the process may be pursued by a "faculty member". "Faculty member" is defined as one with a faculty position. The grievant did not hold a faculty position at ASU, despite having been awarded a contract for 2017-2018. According to the grievant's letter to CAFT, instead of retaining the ASU faculty position, the grievant obtained employment elsewhere. Moreover, the grievant had not identified any available remedy within CAFT's jurisdiction. CAFT cannot hear matters that fall outside its jurisdiction. It cannot entertain requests for relief not allowed under the grievance process. Although it appeared the faculty grievance process was not the proper avenue for the grievant to have pursued a remedy, the grievant was not without a means to seek relief. The grievant was advised to consult with their counsel regarding other avenues of redress, if they so choose. Lastly, the grievant was told that if they felt that CAFT was in error regarding the lack of a current faculty position, or their failure to seek relief that CAFT can grant, they may clarify their position further, in writing.
3. Grievance #3
- a. **Claim:** grievant claimed he/she had been offered a full-time teaching position for a program in which he/she had accumulated a record of teaching part-time, only to have the offer of full-time employment rescinded. The grievant claimed further that the latter "demotion" back to part-time was due to an unfair assessment of teaching, which was due to student complaints about his/her demeanor in class.
- b. **Outcome:** Upon learning that the grievant was no longer employed at ASU, the matter was no longer pursued. Consequently, CAFT sent notification that the grievant had

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chosen not to pursue their grievance further, and therefore it was deemed withdrawn. As a result, no more action was taken on the grievance. Therefore, the matter was considered closed.

Section III

Grievances that were started but remain unfinished and will roll into the 2018-19 academic year

- Grievance description:** The grievant submitted a request for a Grievance hearing regarding the outcome of an annual performance review. The grievant stated generally, the 2017 annual faculty evaluation was arbitrary and differential in the application of university policy as applied personally to [the grievant]. It infringes upon the grievant's privileges, and the terms and conditions of employment. Procedural irregularities are noted...citing Arizona Board of Regents (ABOR) Policy and Procedure 6-211, Arizona State University ACD-506-10, [the Unit's] Bylaws, Faculty Evaluation Procedures, 2015."

Current status: In response, CAFT notified the grievant that on behalf of the Committee on Academic Freedom and Tenure (CAFT) the grievance process has been initiated. However, because the Committee on Academic Freedom and Tenure does not function during the summer periods between May 15 and August 16 annually, the grievance will roll over to AY18-19 and be handled immediately upon the start of the next contract year.
- Grievance description:** The grievant who submitted the above request for a grievance hearing subsequently submitted an additional grievance regarding a Personal Improvement Plan, stating generally that an overall unsatisfactory rating on an Annual Performance Evaluation will result in Post-Tenure Review and associated Performance Improvement Plan (PIP). The PIP in this case, based on 2017 Annual Performance Evaluation (currently under grievance assigned to the Committee on Academic Freedom and Tenure) is arbitrary and differential in the application of university policy as applied personally to [the grievant]. It infringes upon the grievant's privileges, and the terms and conditions of employment.

Current status: As of the end of the spring 2018 semester, CAFT notified the grievant that the grievance committees do not meet over the summer break. The appropriate grievance committee chair will be in touch with sometime after mid-August.

Section IV

Recommendations to the Senate or Final Comments

No recommendations at this time. I thought that all of the above cases were handled with professionalism and conscientiousness. I especially want to thank Pam Hoyle for being a superb assistant to my committee, making certain that my year as chair went smoothly and efficient. Also, Kate Baker was invaluable as a legal consultant on what were some complex and difficult cases. I could not have navigated all of the policy concerns without her. Lastly, I want to thank Dr. Yun Kang for doing a commendable job at chairing the Governance Committee and for being a great colleague on the Clearinghouse Committee.

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