

2017-2018 Annual Report
A-1 Committee of Counsel on Academic Freedom and Responsibility

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Faculty members are engaged in fostering critical thinking and in developing and disseminating new knowledge. Having academic freedom in teaching, research, and expression enables faculty members to critique accepted truths and search for new knowledge, even when the results disrupt the status quo. Academic freedom safeguards of tenure, due process, and faculty governance allow faculty members to serve the common good without being constrained by public opinion.

The Committee of Counsel on Academic Freedom and Responsibility (CCAFR) advises the President and Provost on procedures concerning due process for faculty members, including procedures in tenure, promotion, faculty annual evaluation, comprehensive post-tenure review, and mid-probationary review; such procedures also safeguard academic freedom in teaching, research, and expression. In addition, CCAFR investigates claims by faculty members who allege violations of due process or academic freedom, especially regarding tenure, promotion, annual faculty evaluation, comprehensive post-tenure review, or mid-probationary review. For the guidelines on filing a claim with CCAFR and for a short summary of the AAUP Statement of Principles on Academic Freedom and Tenure, please see the committee's Web site:

<https://facultycouncil.utexas.edu/a1-committee-counsel-academic-freedom-and-responsibility>

Over the last nine years, CCAFR has investigated claims of procedural and/or academic freedom violations in tenure, promotion, annual, and comprehensive post-tenure review evaluations from 36 faculty members. Many of the CCAFR recommendations come from these investigations. Claims of academic freedom violations, however, are not limited to tenure, promotion, faculty annual evaluations, post-tenure review, or mid-probationary review cases.

In 2017-2018, the work of CCAFR can be divided into separate subjects, each of which is described in a separate section in this document:

1. Monitoring outcomes of tenure and promotion cases,
2. Investigation of a claim of procedural violations in a tenure and promotion case,
3. Investigation of a claim of procedural violations in an annual faculty evaluation,
4. Recommended revisions to the University promotion and tenure guidelines,
5. Recommendations on the use of Academic Analytics in faculty evaluations, and
6. Other open issues regarding academic freedom and its safeguards.

1. Monitoring Outcomes of Tenure and Promotion Cases

Of the 127 faculty members of all ranks who were considered for promotion in the 2017-2018 academic year, 119 were promoted. Of these, 2 non-tenure-track faculty members and 1 Associate Professor did not receive promotion, and 5 Assistant Professors did not receive tenure and promotion. More than 85% of the Assistant Professors received tenure and promotion.

Of the Assistant Professors who applied for tenure and promotion, five received “terminal appointment pending” appeals and one received “promotion denied.” The one who received “promotion denied” had applied early, filed a CCAFR appeal mentioned in the next section, and was ineligible to file Final Arguments because the faculty member was not in the “up-or-out” year. Of the five who received “terminal appointment pending” appeals, three filed Final Arguments, and one of them resulted in a positive decision.

2. Subcommittee Report on a Claim of Procedural Violations in a Tenure/Promotion Case

Assistant Professors who receive a decision of “terminal appointment pending” (i.e., tenure denial pending further review) have four internal avenues of appeal. The first two occur in parallel: Final Arguments based on the substance of the case and CCAFR appeal based on procedures used in the case. Both were due on March 19th. The third avenue, which is reconsideration by the Budget Council or Executive Committee, would start with the next promotion cycle in April/May. The fourth avenue is Faculty Grievance, which is primarily based on claims of violations of the faculty member’s employment and civil rights in State and/or Federal Law or to grieve discipline imposed by the University’s administration. Other faculty members have access only to CCAFR appeal and Faculty Grievance.

Assistant Professor A received a decision of “do not promote” on Feb. 15, 2018. The Candidate received unanimous votes in favor of their tenure and promotion from the Department and College evaluation committees, and received positive recommendations from the Department Chair and Dean. The Dean presented the case to the five members of the President’s Tenure and Promotion Committee (as per usual) and the President ultimately decided on “do not promote.” As has been the custom, the President provided no rationale for his decision.

Assistant Professor A filed a CCAFR appeal on Mar. 11, 2018, alleging four procedural violations. The CCAFR subcommittee agreed that the College had misinformed the Candidate as to how years of employment had been counted towards the tenure probationary period. The misunderstanding led the Candidate to believe that the Candidate’s tenure and promotion case was one year early, when in fact it was two years early. The CCAFR subcommittee found that the Department Chair and the Dean spent a combined six paragraphs in their recommendation letters justifying why the tenure and promotion case was being considered early, which is required by the promotion guidelines. The remaining two claims of procedural errors allege that the President’s Promotion Committee did not consider the Candidate’s case; however, the Dean presented the case to the President’s Promotion Committee. The University’s Promotion Guidelines do not specify a minimum number of years to serve on the tenure probationary period to be considered for tenure and promotion. The CCAFR subcommittee did not believe that the one procedural error it had found had tainted the outcome of the case, and the President agreed.

During its investigation, the CCAFR subcommittee collected views by the upper administration towards early promotion expressed in public forums, in the hope that the views might be helpful to those who are considering early promotion to Associate Professor or Professor:

- Dean Iverson said that the earlier a promotion case is, the more incumbent it is for the academic unit to explain why. He also said that it important not to have an academic unit make a habit of putting people up early. [President’s Promotion Committee, Panel Discussion, April 9, 2018]

- Dean Smith said that when too many people go up early, it could become the ‘new normal’. [President’s Promotion Committee, Panel Discussion, April 9, 2018]
- Senior Vice Provost of Faculty Affairs Janet Dukerich said that over the years, UT Austin had become too accommodating of early promotions, according to Dean Diehl who was in attendance. Now, to be considered early, according to Prof. Dukerich, the applicant must have an unusually strong record. She said that the record would need to be two standard deviations above the usual successful case for the normal duration in rank from Assistant Professor to Associate Professor or from Associate Professor to Professor. [Provost Office ‘Road Show’, April 11, 2018]

Dean Brent L. Iverson and Dean Mark J. T. Smith are two of the five members of the President’s Promotion Committee. Senior Vice Provost Janet M. Dukerich coordinates faculty affairs across the university, including promotion processes and procedures.

3. Subcommittee Report on a Claim of Procedural Violations in an Annual Evaluation

Faculty Member B, who is a non-tenure track faculty member, filed a CCAFR appeal that alleged seven procedural irregularities and one academic freedom violation in their annual faculty evaluation. Faculty Member B received the outcome of the 2015-16 annual faculty evaluation on Aug. 1, 2017, wrote a rebuttal to the Department on Aug. 18, 2018, and filed a CCAFR appeal on Sept. 18, 2017.

The alleged procedural irregularities follow. The annual faculty evaluation committee evaluated only the faculty activity report, never met in person, applied inappropriate criteria, and did not perform a holistic evaluation. The Budget Council did not oversee the process nor did it define its expectations for the faculty member’s rank. The Department Chair did not provide adequate explanation of the rating. Faculty Member B also alleged an academic freedom violation in that student research is deemed to be required in undergraduate courses.

The CCAFR subcommittee concurred that the annual faculty evaluation committee should have evaluated the full range of documents specified in the *Guidelines for Annual Review of Faculty*, should not have applied inappropriate criteria, and should have performed a holistic evaluation. The CCAFR subcommittee did not concur with the other claims. Given the severity of the claims it found, the subcommittee recommended that the review be expunged from the record.

4. Recommended Revisions to the University Promotion and Tenure Guidelines

CCAFR provided the following recommendations to the Provost concerning the 2018-19 *General Guidelines for Promotion and Tenure of All Faculty Ranks Excluding the Medical School* (hereinafter “Promotion Guidelines”):

<https://utexas.app.box.com/s/8xkm6bnim7sycj0fxa061j4vurc83ksx>

A. Timeline (Section D)

In 2017-2018, the upper administration shifted the notification of outcomes of promotion cases from December 20th to February 16th, and shifted the deadline to file Final Arguments and/or CCAFR appeals from January 31st to March 19th. In the 2018-2019 Promotion Guidelines, the deadlines are February 15th and March 25th, respectively. The President will decide on Final Arguments by April 19th, and CCAFR appeals sometime after April 25th. Our concern is that the

Final Arguments and CCAFR appeal deadlines come so late that they can collide with the promotion reconsideration process for Assistant Professors in certain academic units.

B. College and Departmental Guidelines (Section A.1)

The Promotion Guidelines say that “Candidates should check with their department chairs or, in non-departmentalized colleges/schools, with their dean regarding the requirements and practices in their area.” We recommend adding wording such as “The Department Chair or, in non-departmental colleges/schools, the Dean, shall disseminate all faculty promotion guidelines specific to the college/school to each faculty member in the college/school on an annual basis.” For example, the McCombs School of Business (and some of its departments) has specific guidelines on research publication venues as well as their relative importance.

C. Selection of External Reviewers (Sections B.1.a and B.2.c)

In Section B.1.a on Selecting Referees, we recommend giving candidates three (3) business days to respond to the list of potential external reviewers sent by the chair or dean. Likewise, in Section B.2.c, after “Concerns about any reviewers on the list may be expressed to the department chair,” please add “within three (3) business days of receiving the list.”

D. Access of the Candidate to the Promotion Case (Sections B.1.b and B.2.c)

At the end Section B.1.b Review of Materials, we recommend adding the following text:

Please see Section B.2.d concerning the extent of the candidate’s access to the promotion case at any time.

E. Reconsideration (Section D.4)

We recommend expanding this section. In previous CCAFR investigations, the following questions concerning reconsideration by a Budget Council or Executive Committee were raised:

1. How are “new materials” evaluated?
2. How are materials from the former case evaluated?
3. How are external reviewers selected?
4. Who defines a scholar’s field(s) of study and how importance of scholarship is evaluated?
5. What is the role of external reviewers in internal evaluation of research and scholarship?
6. How do budget council evaluators conduct their review, and what standards are used?

5. CCAFR’s Recommendations on the Use of Academic Analytics in Faculty Evaluations

CCAFR presented a “Resolution on Academic Analytics” regarding its use in faculty evaluations to Faculty Council on 22 January 2018, and at the meeting, Faculty Council unanimously approved the resolution. The presentation slides are available as slides 24-39 at

<https://utexas.box.com/s/ss57agpudh02qnlzp8jwmtq2c1oupal>

and the transcript of the presentation and discussion are on pages 14-21 at

<https://utexas.box.com/s/gzm5hrwtijrt4n09tll9wecg5om2x3fp>

The resolution reads as follows:

The Faculty Council of The University of Texas at Austin strongly recommends that the University *not* adopt Academic Analytics, LLC as a faculty management tool.

Should the University, nonetheless, adopt Academic Analytics, the Faculty Council urges that

- 1) it make no use of data collected from Academic Analytics in allocating resources among individual faculty, department/programs, and colleges; nor in decisions affecting the composition of the faculty, graduate programs and fellowship allocation, and grant-writing;
- 2) it make no use of data generated by Academic Analytics in tenure and promotion decisions or other reviews, including hiring, Mid-Probationary, and Comprehensive Periodic Reviews; and that data collected from Academic Analytics not be used to determine salary raises for individual faculty members;
- 3) it make no use of any data generated by Academic Analytics to influence decisions concerning the graduate and undergraduate curricula;
- 4) it make all personal data available to faculty members no later than August 31, 2018, for their review, correction, and ratification, and that it be open for review thereafter.

Rationale:

We understand that the administration at The University of Texas at Austin has begun to consider Academic Analytics, LLC -- a data crawler and compiler -- as an analytic tool for the assessment of faculty productivity. The purpose of this resolution is to reiterate the directive from the UT System Faculty Advisory Committee resolution of March 2013, which called for “regular review and approval by campus faculty governance bodies” for any analytic tool for faculty assessment purposes [UTSysFAC 2013]. To date, UT faculty have played no role in deciding the appropriateness of using Academic Analytics to measure the productivity of individual faculty members or the performance of departments, programs, and colleges.

The methods and variables employed by Academic Analytics, LLC inadequately capture the extraordinary breadth, methodologies, and quality of scholarly inquiry on a university campus with a large number of colleges and departments.

Faculty have grave concerns about being denied access to the personal data collected by Academic Analytics, LLC, including the opportunity to verify the accuracy of the data.

Academic Analytics, LLC is based on a corporate model that is both poorly designed for the task of measuring the complexity of scholarly productivity on a university campus and intrudes negatively upon academic freedom, peer evaluation, and shared governance.

Academic Analytics, LLC fails to measure book chapters, book citations, book reviews, patents, federal funding as a co-investigator, funding from states, companies or foundations, art displays, or performances.

Academic Analytics, LLC fails to measure other important forms of academic activity by individual faculty and department/programs, including teaching, service, and community engagement/outreach.

The measures of books, articles published in peer-reviewed journals, conference papers, awards, grants, and citations are frequently inaccurate, and, in the case of citations, decontextualized, so that these data often misrepresent the achievements of both individual scholars and departments.

The parameters used by Academic Analytics, LLC to define “scholarly productivity” are likely to skew, redirect, narrow, and otherwise have an outsized influence on the type and quality of scholarship produced by UT Austin faculty. It is likely to encourage faculty to produce research only in forms that are quantifiable by Academic Analytics, LLC in order to obtain higher scores from the tool.

The data generated by Academic Analytics, LLC—however misleading and inaccurate— are likely to be used by administrators to pit faculty and departments against one another for limited resources, including salary increases.

References:

[AA 2016 Del] Lawrence Martin, Tricia Stapleton and Tynan Heller, “Academic Analytics: Strategic Analysis and Planning”, Presentation by Academic Analytics at University of Delaware, Sep. 29, 2016. <https://www1.udel.edu/vp-sec/MeetingMaterials/09-29-30-2016/AcademicAnalytics.pdf>

[AAUP 2016] “Statement on ‘Academic Analytics’ and Research Metrics”, American Association of University Professors, March 22, 2016, https://www.aaup.org/file/AcademicAnalytics_statement.pdf

[Rutgers 2016] “Resolution to be considered by the Faculty of the Graduate School”, Rutgers University, New Brunswick, May 10, 2016. *Resolution passed 114 to 2.* <http://rutgersaaup.org/sites/default/files/images/AA-resolution-for-GSNB-10-May-2016.pdf>

[UTSysFAC 2013] “**Resolution** Faculty Analytic Tools to Executive Vice Chancellor of Health Affairs and the Executive Vice Chancellor of Academic Affairs“, UT System Faculty Advisory Committee Minutes, March 1, 2013, page 5. *Motion Unanimously Approved.* <https://utsystem.edu/sites/default/files/offices/academic-affairs/FAC%20Resolutions%202013.docx>

“Be it resolved that the implementation of any analytic tool (e.g. Academic Analytics, SciVal, MyEdu) either by System as a whole or by individual campuses for faculty assessment purposes shall be subject to regular review and approval by campus faculty governance bodies and/or by the System Faculty Advisory Council. Further, each campus Chief Academic Officers (or a designee) shall ensure that there will be a regular mechanism for improving the usage of these tools when these bodies or when individual faculty members reveal omissions, absences, and flaws in the analytics and/or raise issues with their usage.”

6. Other Open Issues Regarding Academic Freedom and its Safeguards

CCAFR is concerned with many other issues affecting academic freedom in research, teaching and expression, as well as safeguards of tenure, due process and faculty governance, including but not limited to the following:

A. Mentoring

Effective mentoring of faculty members of all ranks remains a difficult, systemic challenge at all levels of a university organization. We recommend that each tenure-track, tenured, and non-tenure track faculty member who is eligible for promotion have a non-administrative faculty mentor in one’s department and a non-administrative faculty mentor outside one’s college/school. In addition, each faculty member should also consult with one’s Department Chair on procedures, policies, and general advice regarding mentoring.

B. Accounting for Leaves of Absence and Personal Leave in Promotion Cases

The University already allows for extensions to the tenure probationary clock for leaves of absence and certain personal circumstances in HOP 2-2020. We request that these policies be

made clear to faculty members, department chairs, and deans. We are thankful for the increased efforts by the Provost Office in this regard, including its “Road Shows” and panel discussions for both administrative and non-administrative faculty members. We also applaud the changes to the Sample Letter for external referees for tenure and promotion cases on the Provost Web site to provide wording to use when a faculty member has extended the tenure probationary period:

<https://provost.utexas.edu/faculty-affairs/promotion-and-tenure/2018-19>

Adjusting for leaves of absence and family and medical leave is other kinds of promotion cases is also an important issue. We applaud the changes to the Sample Letter for external referees in cases involving promotion to Professor that includes the following wording: “Please note that Professor LAST NAME had INSERT NUMBER year(s) in rank impacted by approved personal leave from the university.” The Sample Letter is also on the above Provost Web Site.

C. Evaluating Scholarship at the Department and College Level

On evaluating scholarship in annual faculty evaluations, comprehensive periodic review of tenured faculty, mid-probationary reviews, and promotion and tenure cases, we are aware of three chronic needs in many departments and colleges/schools

- a. To provide full disclosure of the relative weighting of teaching, scholarship and service;
- b. To provide full disclosure regarding the criteria for evaluation and relative weighting of types of scholarship, including peer-reviewed books, book reviews, book chapters, and articles, as well as performance/exhibition venues for audio/visual works; and
- c. To address the problem of the “double bind,” or “Catch-22,” that can happen when a candidate is recruited and hired to conduct research in a relatively new field, encouraged to publish results in peer-reviewed journals specialized for the new field, but then denied tenure and promotion because their specialized journals are not top-tier.

D. Mid-Probationary Review of Tenure-Track Faculty

The Mid-Probationary Review of Tenure-Track Faculty occurs during the fifth, sixth, or seventh semester on the tenure probationary clock and evaluates the faculty member’s trajectory towards tenure and promotion. An unsuccessful Mid-Probationary Review carries the possibility that an assistant professor’s appointment may not be renewed. The Mid-Probationary Review also plays a role in the tenure and promotion evaluation because it must now be included in the tenure and promotion dossier, and the assessment by the Department Chair and Dean must include a reflection on the Mid-Probationary Review results.

In 2016-2017, at the request of the Provost Office, CCAFR reviewed and proposed changes to the Mid-Probationary Period Review policies at the University level and in each college/school, as described in Section 3.2 of the 2016-2017 CCAFR Annual Report. Among its findings, CCAFR recommended a holistic evaluation of teaching, scholarship, and service; written feedback to the faculty member; and the right to appeal to CCAFR to investigate claims of procedural and/or academic freedom violations. The Provost Office adopted the proposed changes in the university guidelines:

<https://provost.utexas.edu/faculty-affairs/mid-probationary-review>

The Provost Office is currently working on communicating the changes proposed by CCAFR to the Mid-Probationary Review guidelines to the individual colleges and schools.

E. College Promotion and Tenure Committees

Some colleges and schools lack a transparent promotion process, including how college tenure and promotion committee members are chosen, how members of a candidate's department on the college T&P committee participate, and the Dean's role in college/school T&P committee meetings and other processes. We recommend that each college/school make this information available to its faculty each year.

F. Procedures Governing Disciplinary Action by the Administration

Both AAUP guidelines and UT's own procedures, specifically HOP 2-2310, acknowledge that the imposition of severe sanctions such as suspension for a stated period of time (with or without pay) requires faculty consultation and involvement early in the process. Regulations 5 and 7 of

“Recommended Institutional Regulations on Academic Freedom and Tenure”, AAUP, 2014, <https://www.aaup.org/report/recommended-institutional-regulations-academic-freedom-and-tenure>

maintain that such a severe sanction as suspension may be imposed before a hearing “only if immediate harm to the faculty member or others is threatened by continuance”, and, as HOP 2-2310 has it, only after the university “determine[s] that allegations are supported by credible evidence” [I.C.1.] Further, the HOP requires that, if the administration does decide that immediate suspension is necessary, the president will “provide the Committee of Counsel on Academic Freedom and Responsibility a written explanation for the action taken with a copy to the affected faculty member” [I.C.6.] These are vital due process protections to follow.

G. Implicit Sanctions Accompanying Disciplinary Action

For faculty members under disciplinary action, the upper administration has been imposing additional implicit sanctions until the disciplinary action is completed. In two on-going cases of disciplinary action against two tenured Associate Professors that will span at least from spring 2017 to fall 2018 inclusive, the upper administration has decided not to allow the faculty members be promoted or receive university awards, raises, retention offers, and appointments to administrative positions and other leadership roles. We would like to ask that the upper administration develop formal written policies concerning implicit disciplinary actions with appropriate input from CCAFR, the Faculty Grievance Committee and the Faculty Council.

H. Updating the Faculty Grievance Process

The University Faculty Grievance Process is described in the

Handbook of Operating Procedures (HOP) 2-2310 Faculty Grievance Procedure
<https://policies.utexas.edu/policies/faculty-grievance-procedure>

In fall, two faculty members were under a severe sanction (suspension with pay, removal from teaching and advising students, and being barred from campus) due to a complaint filed by two students. The faculty members separately filed an appeal with the Faculty Grievance Committee for a formal hearing. One faculty member received a formal hearing, but the other did not. The

AAUP “Recommended Institutional Regulations on Academic Freedom and Tenure” would require that a faculty member facing a severe sanction be granted a formal hearing.

CCAFR has been meeting with the Faculty Grievance Committee to discuss ways to improve the process of deciding when an appeal should receive a formal hearing and how a formal hearing would be conducted. Some ideas for additional consideration by the Faculty Grievance Committee include (1) the addition of a neutral moderator who has legal training and is acceptable to both sides to guide and monitor the proceedings and (2) the restriction that the university administration only have legal counsel present at a formal hearing if the faculty member has legal counsel present, which we believe is possible if the idea in (1) is adopted.