

Legislative History of Policy 6-002 Revision 23 (formerly PPM 9-3), and Policy 6-313 Revision 9 (formerly PPM 8-7)

As approved by the Academic Senate May 1, 2006, and by the Board of Trustees May 8, 2006.

Prepared by Bob Flores for the Institutional Policy Committee.

Contents: This is essentially unchanged the set of materials included in the agenda packet for the May 1, 2006 meeting of the Academic Senate. The minutes of that Senate meeting, as later published in the August 2006 Senate agenda, included this passage.

Debate Calendar:

h. Revisions of PPM 8-7 & 9-3 Sec.11 & others – Academic Freedom and Tenure Committee (renamed Academic Freedom and Faculty Rights)

The committee, represented by chair Tony Ekdale, presented this proposal to change the PPM in various ways including changing the name of the committee from “Academic Freedom and Tenure” to “Academic Freedom and Faculty Rights.” The changes are needed primarily to carry through with the major project of establishing the Consolidated Hearing Committee system two years ago, which assigned to the CHC some of the responsibilities formerly held by AFT. There were concerns expressed at the April meeting relating to whether the revised system would continue to comply with standards of the American Association of University Professors; the committee believes our practices will still conform entirely to the AAUP statement of standards. Also, students can bring complaints to this committee, and one of the proposed changes will provide that in such a case there should be a student representative appointed to the committee for that case and that case only.

The Senate unanimously approved this proposal.

Note that the Policies affected by the approval of this proposal were, along with all other University Policies, renumbered in September 2008. Former Policy 8-7 was renumbered as Policy 6-313, and former Policy 9-3 was renumbered as Policy 6-002.

**Revisions of PPM 8-7 & 9-3 Sec.11 (& others)
Academic Freedom and Tenure Committee (renamed Academic Freedom and Faculty Rights)**

[Background:

For April 3: This is a proposal to change the name of the committee currently known as Academic Freedom and Tenure, to become Academic Freedom and Faculty Rights, and to change various PPM language referring to that committee and describing its functions. For the most part, the changes are seen as needed to complete the process that began with establishment of the Consolidated Hearing Committee and assignment of various “appeals” functions to the CHC—including certain appeals formerly heard by AFTC. The cover memo explains further. P&E approved these changes at its March 6 meeting.

Update for May 1: *Subsequent to the April meeting, one change of significance has been made in response to a suggestion from a senator. Further discussions were held about the provision to add student representation if the committee receives a complaint from a student. This discussion resulted in the revised paragraph, marked in bold in the “almost clean” version shown below. To provide better student representation for these situations, two students (one graduate and one undergraduate) will be added, and the ASUU president (or designee) will be consulted in selecting them.*

Also, instructions have been added (“the proposal”) for the specific modifications that will be made to existing regulations to conform to the renaming of the committee and the renumbering of the various sections of regulations.

Bob Flores- President of the Senate]

Memorandum

TO: Senior Vice Presidents David W. Pershing and A. Lorris Betz
FROM: Associate Vice Presidents Susan M. Olson and Richard J. Sperry
DATE: March 8, 2006
SUBJECT: Revisions to Academic Freedom and Tenure Committee

Attached for your consideration is a proposed revision to the section of the Policies and Procedures Manual describing the functioning of the Academic Freedom and Tenure Committee (AFTC). These revisions have been developed after a year’s discussions with the AFTC. I hope you will recommend these changes to President Young for conveyance to the Executive Committee of the Academic Senate at their March 20 meeting.

These revisions spring from the creation of the Consolidated Hearing Committee (CHC) in 2004. That committee assumed the function of providing formal hearings in academic freedom grievances, previously held by the AFTC. The creation of the CHC envisioned the AFTC acting as a body to attempt informal dispute resolution in an effort to avoid formal hearings, which it was already doing, and to provide expert consultation to the CHC when academic freedom issues arise in cases before the CHC that haven’t already been to AFTC, such as in tenure appeals or faculty conduct complaints. The revisions spell out procedures for performing these two functions.

The revisions do not propose a change to the scope of the committee’s jurisdiction. Nonetheless, we propose a change in the committee’s title from Academic Freedom and Tenure Committee to Academic

Freedom and Faculty Rights Committee (AFFR). The committee feels the new title better describes its distinct functions. University policy has long recognized in PPM 8-7, Sec. 1, that academic freedom is a right of faculty, students, and “administrative officers.” Academic staff have access under PPM 9-5.6, Sec. E.3. to the AFTC to challenge dismissals. The new title communicates that this committee is a forum for academic freedom complaints from any member of these groups. The revisions include provision for adding representation to the committee for a grievance brought by a student.

For faculty members only, the committee also hears a broader range of “academic grievances.” No change is being recommended to the existing definition of “academic grievances,” i.e., those “centering on both the rights and duties of faculty members engaged in the academic processes of teaching, research, thinking, and the communication of the products of these processes; the making of academic evaluations; and participation in departmental, collegial and university governance as provided by university policies and procedures.”

For both academic freedom and academic grievance cases, the AFFR will accept and review documentary evidence and sometimes meet with the parties involved in a complaint, but it will not hold formal hearings or recommend sanctions, as those responsibilities now rest with the CHC. The AFFR will attempt to resolve the matter of a complaint informally and will issue a written report to the parties involved. If the AFFR is unsuccessful in resolving the issue to the satisfaction of the parties involved, then the parties will be advised of their option to appeal to the CHC for a formal hearing at their own discretion. If (and only if) a hearing is to be held by the CHC, the written report of the AFFR will be given to the CHC for information purposes as a non-binding opinion of the AFFR.

In the final category of cases, if the CHC has a case for which it desires input from the AFFR (for example, a hearing that turns out to involve an academic freedom issue), then the CHC may refer the case to the AFFR for an opinion. When that happens, the AFFR will consider the information passed to it from the CHC and will render an opinion (perhaps including minority views from committee members, if any) back to the CHC. In such a circumstance, the AFFR normally will not interact directly with the parties in the case or gather new evidence in the case, but the AFFR may advise the CHC of specific things that the CHC should consider doing in order to gather further pertinent evidence that might be germane to the academic freedom issue.

These recommendations come with the endorsement of the current AFTC and the Academic Senate’s Personnel and Elections Committee, which holds responsibility for Senate committees.

Proposal

The proposal is:

(1) To delete from existing regulation 8-7 those sections addressing academic freedom and the Academic Freedom and Tenure Committee, currently numbered Section 1, Section 2, and the "appendix," and to move those contents into a new section within regulation 9-3 (expected to be numbered as 9-3 Section 11) and in that new location to revise the contents as shown in this proposed draft; and

(2) To authorize and direct the revisor to make the following non-substantive revisions to regulations to implement the above changes, and to place in the published regulations a notation indicating that such revisions were approved effective as of today's date--

(a) to re-number, as appropriate, the remaining contents of regulation 8-7 after Sections 1, 2 and the appendix are deleted (such that former Section 3 will become new Section 1, and so forth);

(b) to locate in existing regulations any and all references to the committee currently named Academic Freedom and Tenure Committee, and change those references to use the newly approved name—Academic Freedom and Faculty Rights Committee, and

(c) to locate in existing regulations any and all references to the previous contents of existing regulation 8-7 that are affected by today's action, and as appropriate revise those references to conform to the transfer of certain provisions into the newly created 9-3 Section 11 and the renumbering of the remaining contents of 8-7.

[Two forms of the draft are provided. The second is a fully "marked up" version which shows all changes that would be made if the proposal is approved, as compared with the existing PPM language in 8-7. We anticipate you will find that second version very difficult to read because the markups are so extensive. So, we are presenting you with this first "almost clean" version, much easier to read because it mostly shows only the final wording, with only a small portion of "markup" which emphasizes the one change that has been made for this latest draft as compared to the draft offered at the April meeting.]

[Version 1—'almost clean' draft of the final wording—showing markup only of the change made from the draft reviewed at the April Senate meeting, not showing the extensive changes between the currently existing regulation and this proposed replacement.]

New PPM 9-3 Section 11 Draft (4/21/2006)

Policy Name: ACADEMIC FREEDOM AND FACULTY RIGHTS COMMITTEE

SECTION I. ACADEMIC FREEDOM

Academic freedom in the pursuit and dissemination of knowledge through all media shall be maintained at the University of Utah. Such freedom shall be recognized as a right of all members of the University academic community, which is defined here to include the faculty, whether with or without tenure or continuing appointment, administrative officers, academic staff, and students of the University. The University of Utah endorses the 1961 statement of the American Association of University Professors concerning recruitment and resignations, the 1940 "Statement of Principles on Academic Freedom and Tenure" of the American Association of University Professors and the Association of American Colleges, and the 1965 "Statement on the Academic Freedom of Students" of the American Association of University Professors.

SECTION II. REFERENCES

PPM 2-32 Discrimination and Sexual Harassment Complaint Policy

PPM 8-5 Faculties, Committees and Councils

PPM 8-10 Code of Student Rights and Responsibilities

PPM 9-3 The Academic Senate

PPM 9-5.5 Appointments, Retention, Promotion and Tenure

SECTION III. ACADEMIC FREEDOM AND FACULTY RIGHTS COMMITTEE

1. COMMITTEE FORMATION

- a. The Academic Senate shall elect an Academic Freedom and Faculty Rights Committee (AFFR) of twelve members chosen from the voting members of the faculty other than the ex officio members of the Senate. The Senate President or the Senate President's designee shall be an ex officio nonvoting member of the committee.
- b. The committee members shall be elected for a term of three years on a rotating basis so that the Senate shall annually elect four committee members to fill vacancies caused by the expiration of terms of office.
- c. The chairperson of AFFR shall be selected in accordance with PPM 9-3 § 4.C(2). A vice chairperson shall be selected by the committee and will preside in the absence of the chairperson.
- d. It shall be the duty of the chairperson or, in his/her absence, of the vice chairperson, to call meetings of the committee at least once each semester and more frequently if need arises. Meetings also shall be called by the chairperson or, in his/her absence, by the vice chairperson, upon the written request of three members of the committee. At least five (5) days written notice of all meetings of the committee and of its agenda shall be given to its members.
- e. **If a party is a student, or if there are substantial issues that involve students, then, in consultation with the ASUU president or his/her designee, a student shall be asked by the AFFR chairperson shall ask one graduate student and one undergraduate student to serve on the committee for the purpose of dealing with that case. If possible, this these students shall be selected from the pool of potential student members that has previously been members. composed pursuant to PPM 2-32.**

2. COMMITTEE RESPONSIBILITIES

- a. It shall be the duty of the committee to make an annual report each spring semester to the Academic Senate. It also shall be a responsibility of the committee to keep fully informed on the most important controversies on academic freedom and tenure in higher education; to survey problems of academic freedom and tenure at the University of Utah; and to inform the Senate on these matters in its annual report. Pursuant to its duty to report, the committee may make a confidential report and request to the Academic Senate Executive Committee that a report of a serious concern about the systemic operation of a program, department or college; be made to the cognizant vice president.
- b. AFFR shall have the power to investigate, either on its own initiative or at the request of any member of the university academic community, into any matter which the committee reasonably believes may involve issues of academic freedom at the university.
- c. The Committee is empowered to investigate an academic grievance (other than matters

concerning retention, tenure or promotion) on a complaint by a faculty member after the faculty member has had the matter reviewed by the appropriate administrative authorities. This authority extends to the rights and duties of faculty members engaged in the academic processes of teaching, research, thinking, and the communication of the products of these processes; the making of academic evaluations; and participation in departmental, collegial and university governance as provided by university policies and procedures. See PPM 9-5.5 § 7.

d. If a faculty member facing termination for medical reasons or because of financial exigency or program discontinuance, believes that such termination involves a violation of his/her academic freedom, the faculty member may file a complaint with appropriate officials under PPM § 9-3 10.II.E or F.

e. The Academic Senate may refer any academic disputes between faculty members or other members of the university staff to the Committee for study and report.

f. In addition to its power to investigate and review as referred to above, the AFFR is responsible for overseeing the Code of Faculty Rights and Responsibilities, and with making recommendations to the Academic Senate on general matters of faculty rights and responsibilities and the protection of academic freedom. See PPM 9-3§ 4.A(2). To perform the latter task, the Committee is directed by university regulations to keep fully informed on issues and problems of academic freedom and tenure in higher education and to inform the Senate on these matters in its annual report.

3. GENERAL PROCEDURES

a. AFFR may receive a complaint directly from a member of the academic community and attempt to resolve the matter informally. If the AFFR is unable to resolve the matter to the satisfaction of the claimant, then the AFFR should explain further options for appeal to the claimant, including the possibility of filing a complaint with the Consolidated Hearing Committee (CHC). See PPM 9-3 § 10.II.D. Formal hearings required in matters involving rights and duties of faculty members are conducted by the CHC under PPM 9-3 § 10.

b. If a complaint is filed initially with CHC, it may refer the matter to AFFR for “consideration and report.” See PPM 9-3 § 10.III.F.1.a.ii. AFFR does not conduct formal hearings for the purpose of making binding determinations of fact, but it may attempt to engage in informal resolution of disputes, and it may ask for submissions from parties to a dispute when a matter has been referred to it by the Consolidated Hearing Committee (CHC).

c. No committee member shall be present during the committee’s consideration of any case from a department with which he/she is associated as a faculty member or for any case in which he/she has been involved except for prior involvement as an AFFR member. In addition, committee members shall decline to participate in the consideration of any case in which they have a personal bias or interest which would preclude their making a fair and objective decision.

d. The Office of General Counsel will provide the chairperson and the committee with advice through an attorney who does not represent any of the parties and who may attend any committee meetings for this purpose.

e. Committee meetings will normally be closed to the public to the extent permitted by law. All persons at a closed meeting shall be asked to refrain from public statements

about the matter and shall be informed of any legal requirements of confidentiality by the attorney providing legal counsel to the committee.

f. Definitions

- i. "Claimant" means the person(s) submitting a complaint to the committee.
- ii. "Complaint" means a signed, written statement on the AFFR complaint form (available from the Office of the Academic Senate) that asserts a violation of academic freedom or other substantial academic grievance. An oral or informal written inquiry to the committee or a committee member will not be considered a complaint for purposes of these rules.
- iii. "Respondent" means the person(s) against whom a complaint is made.

g. Submission of Complaints

- i. Any member of the university academic community may submit a complaint to the committee.
- ii. A complaint to the AFFR shall be filed with the Office of the Academic Senate. The complaint shall be signed, and it shall informally and concisely explain the grounds of the complaint and name the persons complained against. The committee may provide instructions and forms for filing complaints. These instructions and forms shall be available from the Office of the Academic Senate and may be published electronically. All parties shall comply with such instructions and use the proper forms. Complaints alleging illegal discrimination, including sexual harassment, shall be handled in accordance with PPM 2-32 and 9-3 § 10.I.B.2.
- iii. When a complaint has been filed with the Office of the Academic Senate and referred to the AFFR chairperson, the committee chairperson may consult with the Senate President or designee (as ex officio member of AFFR) to ascertain whether the dispute is subject to another committee's jurisdiction or procedures.
- iv. The committee normally will not consider a complaint if it determines that the claimant has not been directly or substantially affected by the matters of which he or she complains. Thus the committee generally will decline to consider complaints submitted on behalf of persons who have not joined in the complaint.
- v. In addition to the claimant(s) and the respondent(s), the committee may designate additional parties if the committee concludes that the additional parties have a substantial interest in the complaint that is not already being adequately represented.

4. PROCESSING OF COMPLAINTS

- a. The chairperson of the committee shall promptly notify each named respondent of the complaint. In notifying respondents, the chairperson shall include a copy of the complaint and a copy of these procedures. The chairperson also may notify other persons of the complaint if the chairperson believes they may wish to participate in the proceedings as respondents.
- b. A complaint may be dismissed by the committee at any time after it is submitted upon a determination by the committee of any of the following:
 - i. The complaint involves neither a substantial question of academic freedom nor

a substantial academic grievance.

ii. The matter complained of has been resolved to the satisfaction of the claimant either through informal resolution or a change in circumstances.

iii. The claimant is not directly or substantially affected by the matters of which he or she complains and it is not appropriate for the committee to proceed with investigation of the matter on its own initiative.

c. The parties shall be given prompt written notice of the dismissal of a complaint. Dismissal shall not preclude the claimant from resubmitting a complaint on the same or related matters in the future.

5. INFORMAL RESOLUTION

- a. The committee may request additional information from either the claimant or respondents or both. Preliminary requests and information submitted will be copied to all other parties unless extreme circumstances calling for confidentiality are documented by the committee in its own files.
- b. The committee may designate one or more members of the committee to attempt an informal resolution of the matter. The designated committee members may meet separately with the claimant, the respondent or other persons and may receive information in confidence.
- c. In attempting to promote informal resolution, the committee and its designees will act impartially, respect the principle of self-determination of the parties, and observe reasonable expectations of confidentiality. (See “Model Standards of Conduct For Mediators” promulgated by the American Arbitration Association, American Bar Association, and the Association for Conflict Resolution.)

6. COMMITTEE REPORT

- a. If a complaint is neither dismissed nor resolved informally, then the committee will make a written report to the parties, either with or without recommendations.
- b. The committee does not make findings of fact that would be binding on any party and does not hold hearings. It may, however, at its sole discretion, invite the parties to meet with the committee to provide further information.
- c. The committee’s report may
 - i. express the committee’s view(s) on whether a violation of academic freedom or university policies has occurred,
 - ii. express the committee’s view(s) on whether an academic grievance (as defined above) violates the rights or inappropriately impedes the duties of a faculty member,
 - iii. advise the parties that a grievance should be processed further at the departmental or other appropriate administrative level,
 - iv. advise the parties that a hearing by CHC would be needed in order to make factual conclusions on identified issues, or
 - v. advise the claimant of the option to appeal to the CHC in order to request a hearing.

- d. The committee report may not contain any information provided in confidence by a party during an informal resolution process, unless the party gives permission for its inclusion.
- e. In the event that a hearing is to be held by the CHC, the committee's written report will be forwarded to CHC. In addition, documents submitted to the AFFR during an informal resolution process will be forwarded to CHC, subject to the permission of the party who originally submitted the documents.

7. REFERRALS FROM THE CONSOLIDATED HEARING COMMITTEE

- a. If the Consolidated Hearing Committee (CHC) refers an appeal that alleges a violation of academic freedom to the AFFR for consideration and report under PPM 9-3 § 10.III.F.1.a.ii, then the AFFR will consider the allegations and make a written report to CHC that expresses the committee's view on whether a violation of academic freedom has occurred. The committee may or may not include recommendations in the report to the CHC.
- b. The AFFR will submit a report to the CHC based only on the materials forwarded to the AFFR by the CHC pursuant to the referral.
- c. If the committee believes that factual issues relevant to the academic freedom allegations should be determined by the CHC, the committee may, at its sole discretion, so advise the CHC in its report. The committee may, at its sole discretion, also advise the CHC of two or more alternative views held by the committee depending on the CHC's factual findings.

[Version 2—‘marked up’ draft— showing what changes are being made from the currently existing regulation as compared to the proposed replacement. For onscreen viewing, select View--Markup]

Policy 8-7 Rev 8

Date January 10, 2000

Subject: UNIVERSITY REGULATIONS – Chapter VII
ACADEMIC FREEDOM TERMINATIONS AND PROGRAM DISCONTINUANCE

SECTION I. ACADEMIC FREEDOM

(NEW PPM 9-3 Section 11. DRAFT 4/21/2006)

Policy Name: ACADEMIC FREEDOM AND FACULTY RIGHTS COMMITTEE

SECTION I. ACADEMIC FREEDOM

_____ Academic freedom in the pursuit and dissemination of knowledge through all media shall be maintained at the University of Utah. Such freedom shall be recognized as a right of all members of the University academic community, which is defined here to include the faculty, whether with or without tenure or continuing appointment, ~~of all~~ administrative officers, ~~and of all students.~~ academic staff, and students of the University. The University of Utah endorses the 1961 statement of the American Association of University Professors concerning ~~recruitment,~~ recruitment and resignations, the 1940 "Statement of Principles on Academic Freedom and Tenure" of the American Association of University Professors and the Association of American Colleges, and the 1965 "Statement on the Academic Freedom of Students" of the American Association of University Professors.

SECTION II. REFERENCES

PPM 2-32 Discrimination and Sexual Harassment Complaint Policy

PPM 8-5 Faculties, Committees and Councils

PPM 8-10 Code of Student Rights and Responsibilities

PPM 9-3 The Academic Senate

PPM 9-5.5 Appointments, Retention, Promotion and Tenure

SECTION 2.III. ACADEMIC FREEDOM AND ~~TENURE~~FACULTY RIGHTS COMMITTEE

5. _____ COMMITTEE FORMATION

The Academic Senate shall elect an Academic Freedom and ~~Tenure~~ Faculty Rights Committee (AFFR) of twelve members chosen from the voting members of the faculty other than the ex officio members of the ~~senate.~~ Senate. The Senate President or the Senate President's designee shall be an ~~The chairs of the Faculty Hearing Committee and of the University RPT Standards and Appeals Committee shall be~~ members, as well as the Senate President or the President's designee.

a. ex officio nonvoting member of the committee.

a.b. The committee members shall be elected for a term of three years on a rotating basis so that the ~~senate~~ Senate shall annually elect four committee members to fill vacancies caused by the expiration of terms of office.

~~The Academic Senate shall be supplied with the names of retiring and continuing committee members by the secretary of the senate ten days prior to the nominating of candidates for election as committee members. Voting shall be by secret ballot.~~

~~b.c.~~ The chairperson of ~~the Academic Freedom Committee~~AFFR shall be selected in accordance with ~~Policy and Procedures No. 9-3, section 4, C, paragraph 2. A vice chair person~~PPM 9-3 § 4.C(2). A vice chairperson shall be selected by the committee and will preside in the absence of the chairperson.

~~d.~~ It shall be the duty of the chairperson or, in his/her absence, of the vice chairperson, to call meetings of the committee at least once each semester and more frequently if need arises. Meetings also shall be called by the chairperson or, in his/her absence, by the vice chairperson, upon the written request of three members of the committee. At least five (5) days written notice of all meetings of the committee and of its agenda shall be given to its members.

~~e.e.~~**If a party is a student, or if there are substantial issues that involve students, then, in consultation with the ASUU president or his/her designee, a student shall be asked by the AFFR chairperson shall ask one graduate student and one undergraduate student to serve on the committee for the purpose of dealing with that case. If possible, this these students shall be selected from the pool of potential student members that has previously been members. composed pursuant to PPM 2-32.**

6. COMMITTEE RESPONSIBILITIES

~~It shall be the duty of the committee to make an annual report each spring semester to the Academic Senate. It shall be the duty of the agendasubcommittee to formulate the preliminary draft of thealso shall be a responsibility of the committee to keep fully informed on the most important controversies on academic freedom and tenure in higher education; to survey problems of academic freedom annual report to the Senate and to suggest current problems for committee study. It shall also be a responsibility of the committee to keep fully informed on the most important controversies on academic freedom and tenure in higher education; to survey problems of academic freedom and tenure, including resignations at the University of Utah; and to inform the Senate on these matters in its annual report. Pursuant to its duty to report, the committee may make a confidential report and request to the Academic Senate Executive Committee that a report of a serious concern about the systemic operation of a program, department or college, be made to the cognizant vice president.~~

~~The Academic Freedom and Tenure Committee shall have the power to investigate, either on its own initiative or at the request of any member of the university community, into any matter which the committee reasonably believes may involve violations of academic freedom at the university.~~

~~No committee member shall be present during the consideration of any case from a department with which he/she is associated as a faculty member or for any case in which he/she has been involved except for prior involvement as an AFT committee member. In addition, committee members shall decline to participate in the consideration of any case in which they have a personal bias or interest which would preclude their making a fair and objective decision.~~

...

Appendix to University Regulation Chapter VII (PPM 8-7)

RULES OF PROCEDURE OF THE ACADEMIC FREEDOM AND TENURE COMMITTEE

INTRODUCTION

The Academic Freedom and Tenure Committee is charged by University and Faculty regulations with responsibility to review and make recommendations on matters involving academic freedom. It may investigate, on its own initiative or at the request of any member of the university community, into any matter which the Committee reasonably believes may involve violations of academic freedom at the university. University Regulation 8-7.

In the retention, promotion and tenure decision processes, the Committee is empowered to review allegations by a faculty member not recommended for retention, promotion or tenure that his or her academic freedom was violated. Faculty Regulation 9-2.2.

The Committee is the hearing body in cases of dismissal for medical reasons, financial exigency and program discontinuance. University Regulation 8-7; Faculty Regulation 9-5.4. The Committee is empowered to review and report to the Senate on protested resignations and proposed dismissals and removals. Any faculty member may request such review. University Regulation 8-5. Faculty Regulation 9-5.4.

The Committee is empowered to investigate "grievances" of faculty members (other than matters concerning retention, tenure or promotion). The power to investigate grievances on a complaint by a faculty member arises after the faculty member has had the matter reviewed by the appropriate administrative authorities. Faculty Regulation 9-5.4. The regulation does not define grievances. The Committee interprets the term to mean an academic grievance centering on both the rights and duties of faculty members engaged in the academic processes of teaching, research, thinking, and the communication of the products of these processes; the making of academic evaluations; and participation in departmental, collegial and university governance as provided by university policies and procedures.

The Academic Senate may refer any difficulties between faculty members or other members of the university staff to the Committee for study and report. University Regulation 8-5.

In addition to its power to investigate and review as referred to above, the Academic Freedom and Tenure Committee is responsible for overseeing the Code of Faculty Responsibility, and with making recommendations to the Academic Senate on general matters of faculty rights and responsibilities and the protection of academic freedom. Faculty Regulation 9-3. University Regulation 8-5. To perform the latter task, the Committee is directed by university regulations to keep fully informed on issues and problems of academic freedom and tenure in higher education and to inform the Senate on these matters in its annual report.

Procedures

Dismissal proceedings will follow the procedures set forth in University Regulation 8-7. The procedures below will be followed in matters before the Committee on complaints alleging violations of academic freedom or other academic grievances. These procedures also apply to other essentially

~~adversarial proceedings.~~

~~In performing its duties to inform itself and make recommendations to the Senate on general issue of academic freedom and tenure not related to specific cases, the Committee may rely on other means to determine and evaluate data.~~

~~a. and tenure at the University of Utah; and to inform the Senate on these matters in its annual report. Pursuant to its duty to report, the committee may make a confidential report and request to the Academic Senate Executive Committee that a report of a serious concern about the systemic operation of a program, department or college; be made to the cognizant vice president.~~

~~b. AFFR shall have the power to investigate, either on its own initiative or at the request of any member of the university academic community, into any matter which the committee reasonably believes may involve issues of academic freedom at the university.~~

~~c. The Committee is empowered to investigate an academic grievance (other than matters concerning retention, tenure or promotion) on a complaint by a faculty member after the faculty member has had the matter reviewed by the appropriate administrative authorities. This authority extends to the rights and duties of faculty members engaged in the academic processes of teaching, research, thinking, and the communication of the products of these processes; the making of academic evaluations; and participation in departmental, collegial and university governance as provided by university policies and procedures. See PPM 9-5.5 § 7.~~

~~d. If a faculty member facing termination for medical reasons or because of financial exigency or program discontinuance, believes that such termination involves a violation of his/her academic freedom, the faculty member may file a complaint with appropriate officials under PPM § 9-3 10.II.E or F.~~

~~e. The Academic Senate may refer any academic disputes between faculty members or other members of the university staff to the Committee for study and report.~~

~~f. In addition to its power to investigate and review as referred to above, the AFFR is responsible for overseeing the Code of Faculty Rights and Responsibilities, and with making recommendations to the Academic Senate on general matters of faculty rights and responsibilities and the protection of academic freedom. See PPM 9-3§ 4.A(2). To perform the latter task, the Committee is directed by university regulations to keep fully informed on issues and problems of academic freedom and tenure in higher education and to inform the Senate on these matters in its annual report.~~

7. GENERAL PROCEDURES

~~a. AFFR may receive a complaint directly from a member of the academic community and attempt to resolve the matter informally. If the AFFR is unable to resolve the matter to the satisfaction of the claimant, then the AFFR should explain further options for appeal to the claimant, including the possibility of filing a complaint with the Consolidated Hearing Committee (CHC). See PPM 9-3 § 10.II.D. Formal hearings required in matters involving rights and duties of faculty members are conducted by the CHC under PPM 9-3 § 10.~~

~~b. If a complaint is filed initially with CHC, it may refer the matter to AFFR for "consideration and report." See PPM 9-3 § 10.III.F.1.a.ii. AFFR does not conduct formal hearings for the purpose of making binding determinations of fact, but it may attempt to engage in informal resolution of disputes, and it may ask for submissions~~

from parties to a dispute when a matter has been referred to it by the Consolidated Hearing Committee (CHC).

c. No committee member shall be present during the committee's consideration of any case from a department with which he/she is associated as a faculty member or for any case in which he/she has been involved except for prior involvement as an AFFR member. In addition, committee members shall decline to participate in the consideration of any case in which they have a personal bias or interest which would preclude their making a fair and objective decision.

d. The Office of General Counsel will provide the chairperson and the committee with advice through an attorney who does not represent any of the parties and who may attend any committee meetings for this purpose.

~~e.~~ Committee meetings will normally be closed to the public to the extent permitted by law. All persons at a closed meeting shall be asked to refrain from public statements about the matter and shall be informed of any legal requirements of confidentiality by the attorney providing legal counsel to the committee.

~~e.f.~~ A. Definitions

"~~Claimant~~" "Claimant" means the person(s) submitting a complaint to the Academic Freedom and Tenure Committee.

i. committee.

"~~Complaint~~" "Complaint" means a signed, written statement on the AFFR complaint form (available from the Office of the Academic Senate) that asserts a violation of academic freedom or other substantial academic grievance. An oral or informal written inquiry to the committee or a committee member will not be considered a complaint for purposes of these rules.

ii. rules.

"~~Disposition~~" means disposition after formal or informal hearing and does not include dismissal of a complaint prior to hearing.

~~i.iii.~~ "Respondent" "Respondent" means the person(s) against whom a complaint is made and other persons with an interest adverse to the claimant who, upon request to the committee, are permitted to participate as parties. made.

~~f.B.~~ Submission of Complaints

~~1. Any member of the university community may make an informal inquiry concerning committee powers and procedures to any member of the committee.~~

~~i.iv.~~ 2. Any member of the university Any member of the university academic community may submit a complaint to the committee.

~~3. A complaint to the AFFR shall be filed with the Office of the Academic Senate. The complaint shall be addressed to the chairperson of the committee; shall be in a signed writing and signed, and it shall informally and concisely explain the grounds of the complaint and name the persons complained against. The committee may provide instructions and forms for filing complaints. complaints, which These instructions and forms shall be available from the committee chair and published electronically in an appendix to the Policy and Procedures Manual. Office of the Academic Senate and may be published electronically. All parties shall comply with such instructions and use the proper forms. Complaints alleging illegal discrimination, including sexual harassment, shall be handled in accordance with Policy and Procedures No. 2-32.~~

v. PPM 2-32 and 9-3 § 10.I.B.2.

~~4(a). The committee will not usually hear a complaint if it determines that the claimant has not been directly or substantially affected by the matters of which he or she complains. Thus the committee will generally decline to hear complaints submitted on behalf of persons who have not joined in the complaint. After When a complaint has been filed with the Committee, the chair shall consult with the chairs of the RPT Standards and Appeals Committee and the Faculty Hearing Committee, both ex officio members of the Academic Freedom and Tenure Committee, Office of the Academic Senate and referred to the AFFR chairperson, the committee chairperson may consult with the Senate President or designee (as ex officio member of AFFR) to ascertain whether the dispute has been brought before either of those committees, in order to is subject to another committee's jurisdiction or promote efficient resolution of all disputes.~~

vi. procedures.

vii. The committee normally will not consider a complaint if it determines that the claimant has not been directly or substantially affected by the matters of which he or she complains. Thus the committee generally will decline to consider complaints submitted on behalf of persons who have not joined in the complaint.

viii. 4(b). Persons with an interest adverse to the claimant may request permission to participate as respondents. If In addition to the claimant(s) and the respondent(s), the committee may designate additional parties if the committee concludes that such interest is substantial, permission to participate will be granted unless the interest of the persons making the request is the additional parties have a substantial interest in the complaint that is not already being adequately represented and such participation would be represented.

~~interfere with prompt and orderly consideration of the complaint.~~

C. Preliminary Procedures

6.8. PROCESSING OF COMPLAINTS

~~a.5.~~ The chairperson of the committee shall promptly notify each named respondent of the complaint. In notifying respondents, the chairperson shall include a copy of the complaint and a copy of these procedures. The chairperson ~~may~~ also may notify other persons of the complaint if the chairperson believes they may wish to participate in the proceedings as respondents.

~~b.6.~~ A complaint may be dismissed by the committee at any time after it is submitted upon a determination by the committee of any of the following:

~~i.a.~~ The complaint involves neither a substantial question of academic freedom nor a substantial academic grievance.

~~ii.b.~~ The matter complained of has been resolved to the satisfaction of the ~~claimant.~~
claimant either through informal resolution or a change in circumstances.

~~iii.e.~~ The claimant is not directly or substantially affected by the matters of which he or she complains and it is not appropriate for the committee to proceed with investigation of the matter on its own initiative.

~~7.~~ The parties shall be given prompt written notice of the dismissal of a complaint. Dismissal shall not preclude the claimant from resubmitting a complaint on the same or related matters in the ~~future.~~
c.future.

~~8.~~ ~~The committee may postpone consideration of a complaint for a specified time or indefinitely if it determines any of the following:~~

~~a.~~ ~~Such postponement is in the interest of both the parties and the university and the parties consent thereto.~~

~~b.~~ ~~A decision on the same issues as those asserted in the complaint or on related issues is pending before another university committee or official, or other forum within or without the university, and decision by such other committee official or other forum will render the complaint moot or provide guidance to the committee in resolving the issues before it.~~

~~e.~~ ~~The claimant will not be adversely affected by delay in any significant way and there are strong reasons to conclude that present consideration of the complaint is premature.~~

~~9.~~ ~~The parties shall be given prompt written notice of the postponement of consideration of a complaint, such notice to state a time at which or after which the committee will consider the complaint. Notice of postponement shall state whether the committee will consider the complaint at the later time on its own motion or whether it will consider the complaint only if brought again to the committee on resubmission by the claimant.~~

~~D.~~ Hearings

~~10.~~ ~~The chairperson or the committee may designate one or more members of the committee to make preliminary inquiry into the complaint.~~

~~11.~~ ~~A preliminary inquiry may be conducted in an informal and expeditious manner of any person or persons whom the designated member, the chairperson, or the committee suggest.~~

~~12.~~ ~~If the committee decides to hear a complaint, it shall indicate whether the hearing shall be conducted in a formal or informal manner according to these procedures. The claimant and respondent shall be informed of that choice. The committee is free to reverse its choice at any time upon notice to~~

the claimant and respondent.

~~13. Neither formal nor informal hearings shall be open to the public or to the members of the academic community; however, on request of a claimant or respondent, the committee may permit not more than two observers nominated by the requesting party. An observer shall not be a participant in the hearing and shall not be recognized to speak at any hearing.~~

~~14. Any interference with the orderly or careful consideration by the committee at a hearing shall result in the immediate adjournment of the hearing by the chairperson. The chairperson then may meet with persons causing a disruption and, if necessary, condition their return to the hearing upon assurance of no further disruption.~~

~~15. The claimant and respondent have a right, unless waived, to appear at and participate in any hearing which investigates a complaint. No person other than committee members may appear at or participate in committee deliberations upon a complaint.~~

~~16. The committee will determine which persons it wishes to interview at any hearing, after consultation with the parties and with due regard for the need both to proceed expeditiously and to assure full and fair consideration of the claims of the parties. Whenever possible, advance notice of witnesses to be interviewed will be given to all parties.~~

~~17. All materials submitted for consideration by a party or otherwise considered by the committee shall be made available to all parties prior to the meeting at which they are considered by the committee. For good cause, however, the committee may allow a party to submit writings or documents not previously made available to the committee or other parties.~~

~~18. The claimant shall bear the burden of persuading the committee of the probable accuracy of the complaint.~~

~~19. The committee shall act by majority vote of a quorum of the committee. A quorum shall be at least 60% of the eligible members. For purposes of this computation, eligible members do not include members who are physically disabled from attending, are on formal leave, or who have recused themselves from hearing the particular matter. The secretary shall record the persons present at any committee hearing and the results of a vote upon any issue. The secretary shall identify the committee member casting a vote whenever so requested by the voting member. No proxy voting or absentee voting shall be permitted.~~

Informal Hearing

~~20. An informal hearing shall be conducted by discussion in any manner which appears to the committee to promote an orderly and clear understanding of the questions raised in the complaint.~~

~~21. The contents of an informal hearing shall be recorded by the secretary of the committee in summary fashion. A tape recorder may be used at the hearing to assist in preparing such summary.~~

Formal Hearing

~~22. A formal hearing shall be recorded by suitable audio-tape recording device, and the tapes shall remain in the possession of the chairperson of the committee at all times.~~

~~23. The tapes may be erased or destroyed a reasonable period of time after disposition of the complaint and any other action relating to the complaint within or without the university. The chairperson shall first give written notice to the claimant and respondent of intent to erase or destroy the tapes.~~

~~24. The claimant shall proceed first with the presentation of evidence which may include calling witnesses. When the claimant has concluded with the evidence he or she wishes to present, the respondent may present evidence which may include the calling of witnesses. Any witness called by a party shall be subject to questioning by the opposing party and by members of the committee as well as by the party calling the witnesses. The committee may also call witnesses or submit evidence on its own motion. Witnesses called by the committee may be questioned by the claimant and the respondent as well as by members of the committee.~~

~~25. Claimant and respondent shall each have the right to be represented and counseled by anyone of his or her choice, but at his or her own expense. Representation may be both legal and academic counsel. Prior to the initial meeting of any formal hearing, the chairperson shall inform the claimant and respondent of the right to representation.~~

~~E. Disposition~~

~~26. As soon as practicable after the conclusion of a hearing, the committee shall meet to reach a disposition of the complaint.~~

~~27. A disposition shall be in writing and shall provide a concise statement of the findings and conclusions which underlie the disposition.~~

~~28. Copies of the disposition shall be sent to the claimant and respondent, and, if applicable, their representatives. Copies of the disposition shall also be sent to the president of the university and the Academic Senate~~

~~29. The committee functions by making recommendations to the president and the Academic Senate. The committee has no power to impose sanctions, to direct actions to be taken by anyone or otherwise to enforce its recommendations.~~

~~Adopted by Academic Freedom and Tenure Committee, March 15, 1979.~~

~~Amended 5/10/83 by Academic Freedom and Tenure Committee~~

~~1. Approved by the Academic Senate 10/3/88 and by the Institutional Council 10/10/88.~~

~~2. Sections 5 through 9 were approved by the Academic Senate on 1/8/90 and the Institutional Council on 3/12/90.~~

~~3. Added by action of the Academic Senate on Oct. 3, 1988.~~

~~4. Language restored by action of the Academic Senate on Oct. 3, 1988.~~

~~5. Approved by the Academic Senate 10/3/88 and by the Institutional Council 10/10/88.~~

5. INFORMAL RESOLUTION

- d. The committee may request additional information from either the claimant or respondents or both. Preliminary requests and information submitted will be copied to all other parties unless extreme circumstances calling for confidentiality are documented by the committee in its own files.
- e. The committee may designate one or more members of the committee to attempt an informal resolution of the matter. The designated committee members may meet separately with the claimant, the respondent or other persons and may receive information in confidence.
- f. In attempting to promote informal resolution, the committee and its designees will act impartially, respect the principle of self-determination of the parties, and observe reasonable expectations of confidentiality. (See “Model Standards of Conduct For Mediators” promulgated by the American Arbitration Association, American Bar Association, and the Association for Conflict Resolution.)

6. COMMITTEE REPORT

- a. If a complaint is neither dismissed nor resolved informally, then the committee will make a written report to the parties, either with or without recommendations.
- b. The committee does not make findings of fact that would be binding on any party and does not hold hearings. It may, however, at its sole discretion, invite the parties to meet with the committee to provide further information.
- c. The committee’s report may
 - i. express the committee’s view(s) on whether a violation of academic freedom or university policies has occurred,
 - ii. express the committee’s view(s) on whether an academic grievance (as defined above) violates the rights or inappropriately impedes the duties of a faculty member,
 - vi. advise the parties that a grievance should be processed further at the departmental or other appropriate administrative level,
 - vii. advise the parties that a hearing by CHC would be needed in order to make factual conclusions on identified issues, or
 - viii. advise the claimant of the option to appeal to the CHC in order to request a hearing.
- d. The committee report may not contain any information provided in confidence by a party during an informal resolution process, unless the party gives permission for its inclusion.
- e. In the event that a hearing is to be held by the CHC, the committee’s written report will be forwarded to CHC. In addition, documents submitted to the AFFR during an informal resolution process will be forwarded to CHC, subject to the permission of the party who originally submitted the documents.

7. REFERRALS FROM THE CONSOLIDATED HEARING COMMITTEE

- a. If the Consolidated Hearing Committee (CHC) refers an appeal that alleges a violation of academic freedom to the AFFR for consideration and report under PPM

9-3 § 10.III.F.1.a.ii, then the AFFR will consider the allegations and make a written report to CHC that expresses the committee's view on whether a violation of academic freedom has occurred. The committee may or may not include recommendations in the report to the CHC.

b. The AFFR will submit a report to the CHC based only on the materials forwarded to the AFFR by the CHC pursuant to the referral.

c. If the committee believes that factual issues relevant to the academic freedom allegations should be determined by the CHC, the committee may, at its sole discretion, so advise the CHC in its report. The committee may, at its sole discretion, also advise the CHC of two or more alternative views held by the committee depending on the CHC's factual findings.