

Colorado Committee for the Protection of Faculty Rights

Introduction

For many years Committee A of the national AAUP organization has acted to protect academic freedom and shared governance in colleges and universities by conducting investigations of administrations which have significantly violated provisions of the AAUP Policy Documents and Reports, a.k.a. the “Red Book.” Each year, this national Committee A has conducted several investigations where the violations are serious and can be documented. Reports of the investigations are published in *Academe* and the membership then votes at the annual meeting whether to impose censure or sanction on an offending school. This approach has a preventative function: almost all schools work to prevent censure or sanction by resolving problems before the formal membership vote. There also is a punitive function: censured or sanctioned schools are included on a nationally publicized list. Prospective faculty can consult this list before deciding to accept an employment offer, and presumably state legislatures will question funding public institutions that appear on the list. Once censured or sanctioned, however, most schools work to get themselves off the nationally publicized list.

The clear intent of the national Committee A approach is to protect the principles of academic freedom and shared governance. Typically, their focus is not on an individual faculty member who has been treated badly because of violations of Red Book policy; instead, their focus is on protecting the principles involved. This approach is appropriate and necessary for the protection of academic freedom and shared governance. However, there is an additional need to help individual professors in protecting their rights—indeed, many faculty look to the AAUP to promote fairness in the treatment of individual faculty members. Unfortunately, allegations of abuse have become so ubiquitous that, even were national Committee A inclined to focus more rigorously on acting as an academic freedom watchdog for individual faculty, the organization is not equipped to investigate more than a small fraction of valid complaints. This presents a problem for the AAUP that may be insurmountable. According to anecdotal evidence, the need for fair treatment is a primary reason most members have joined advocacy chapters at four-year institutions, and it is an important reason faculty at community colleges have joined. By extension, perceptions that the AAUP is not sufficiently responsive to complaints by individual faculty that their rights have been violated—when members learn that they have misunderstood, that the traditional role of AAUP is to protect the principle more than the individual—account for why many members leave the organization. If advocacy chapters are to survive and flourish, fair treatment for individual faculty must be protected in a more active fashion than the current structure/practice permits.

For these reasons, the Colorado Committee for the Protection of Faculty Rights (CCPFR) has been established by the Colorado Conference of the AAUP. The CCPFR’s primary focus is to promote fairness in the treatment of individual faculty members using standards for procedural justice contained in the Red Book. It will identify itself as affiliated with the Colorado Conference of the AAUP and will issue disclaimers in its reports and actions that it does not represent the national AAUP.

We believe that the CCPFR models a way that the AAUP can expand crucial services—in this case, its function as a watchdog for academic freedom—without significantly expanding costs. Goal of the Colorado Committee for the Protection of Faculty Rights
The goal of the CCPFR is to guard and promote the professional rights and obligations of faculty, and to protect the fair treatment of individual faculty members.

Strategy

In cases where it can be factually established that college or university administrators have treated an individual faculty member in a blatantly unfair manner by violating accepted standards of procedural justice with that treatment, CCPFR personnel may act as an intermediary in attempting to solve resulting disputes. The CCPFR will act only in cases which can be factually documented. A two-level process normally will be followed. First, CCPFR personnel will counsel a faculty member who initiates a complaint and will attempt to resolve disputes with an administration if it is appropriate. Second, if actions at the first level have failed, CCPFR may undertake a formal investigation. Formal investigations at the state level should occur only in egregious cases where the faculty member has suffered significant damages or dismissal as a result of the unfair treatment. A carefully documented report of the investigation will be prepared and checked to eliminate defamation problems. The report will be presented to the Executive Committee of the Colorado Conference for approval. If approved the report may be sent to the appropriate academic professional societies or organizations with the suggestion that prospective faculty members who interview with the offending institution be made aware of the report and its conclusions before accepting employment.

The standards for procedural justice against which college or university administrations will be judged are contained in AAUP policy documents such as those in the Red Book. Also, it is anticipated that each Colorado Chapter will designate a CCPFR representative.

Level One Procedures

Level One consists of all activities performed by the CCPFR and its representatives prior to

Level Two, wherein investigations are performed and reported.

When a faculty member comes to the local AAUP chapter with a complaint, it should be referred immediately to the chapter's CCPFR representative. If there is no chapter or representative, the complaint should be referred to the Conference's CCPFR Chairperson, who will refer it to a CCPFR representative.

It is anticipated that three types of matters will comprise the basis of most faculty complaints. A frequent complaint may concern denial of tenure or promotion. With this type of matter, the due process actually afforded the faculty member by the institution should be checked carefully with the standards mandated by the Red Book and those contained in the institution's faculty manual. A second type of complaint will concern denial of pay raises. Denial of a pay raise usually is coupled with a negative performance evaluation and is very subjective. Unless compelling factual evidence exists that the denial was based on bias or retaliation, this type of complaint is something to which the CCPFR probably should only listen, suggest how to document bias or discrimination, and provide names of attorneys. The third type of complaint is outright dismissal, and it probably will originate from contingent or "at will" faculty. This is very similar to denial of tenure, and the same checks of due process should be made. The CCPFR will also consider other workplace complaints involving bias, discrimination, harassment, and retaliation.

Appendix One contains a checklist of what the CCPFR representative who receives the complaint should do. In particular, the CCPFR representative should be aware that there are two sides to any dispute and that the faculty member may not always be right. No promises of CCPFR action should be made to the complaining faculty member. Careful records of all meetings and phone calls with the faculty member or on his/her behalf should be kept. If the CCPFR representative has doubts about AAUP policies that might have been violated or about proper procedures to render aid in a particular case, the state CCPFR Chairperson should be contacted. The primary functions of the CCPFR representative should be to:

listen to the faculty member identify what the faculty member wants and balance this with what may be possible help the faculty member document the factual case supply the faculty member with lists of resources that might be helpful such as names of attorneys help interpret institutional policies for resolution of disputes such as grievance procedures in a faculty manual accompany the faculty member, if requested, to meetings with administrative officials or arrange for a substitute, and with the complainant's permission, contact administrative officials in appropriate cases to further the faculty member's cause.

Level Two Procedures (for investigations)

For the Conference to build and maintain credibility in Colorado, investigations of an administration must be conducted with the highest standards of integrity and diligence. Therefore, investigations should occur only when there is evidence of a significant violation of due process or procedure that can be factually documented, where efforts to resolve the dispute at Level One are unsuccessful, where the faculty member's due process rights have been violated, and where the faculty member has suffered significant damage to career or position. Significant damage to career or position includes but is not limited to dismissal, revocation of tenure, denial of tenure, nonrenewal, or involuntary transfer. Factual documentations can include both written material and oral testimony if it can be corroborated. Purported patterns of abuse at an institution also should be taken into account. The due process standards against which the administration's actions are to be judged are those contained in the Red Book. Standards contained in faculty manuals also may be considered if they are not in conflict with those of the Red Book.

Normally, requests for an investigation will come from the chapter's CCPFR representative, or chairperson/president. If an institution has no AAUP chapter, the request can be made through the state CCPFR chairperson. Requests will be forwarded to the chairperson of the CCPFR and the Conference president. Approval to begin an investigation must be given separately by the Conference president, the chairperson of the CCPFR and, by majority vote, the Conference executive committee and the CCPFR. Most important, the individual faculty member whose treatment prompted the investigation must request an investigation in writing. Investigators for the CCPFR normally will travel to the institution being investigated to conduct their work, though in special circumstances the investigation may be conducted by telephone, mail, and electronic means. Interviews with the individual faculty will be held confidential (unless subpoenaed) in order to promote candor. Careful records of interviews will be kept in all cases and will be preserved for at least ten years. Likewise, written records and evidence supplied by the administration or complaining faculty number will be preserved for a similar term. A comprehensive report will be prepared upon completion of an investigation. A disclaimer must be displayed prominently that states the CCPFR is a state level Committee and not part of the national organization. This report will state the factual background of the case and the positions of the contending parties. Any violations of Red Book or other AAUP policies will be noted and explained. The seriousness of policy violations will be assessed. At this point, the report will be sent to an attorney to assure that it contains no defamation of any individual. Depending upon the circumstances of the individual case, the draft report may also be sent to the institution under investigation to allow them an opportunity to identify factual errors and, ideally, offer or agree to an equitable remedy.

Finally, a conclusion and recommendation will be attached to the report. The conclusion/recommendation can be (1) to clear an administration, (2) find the administration at fault without recommendation of further action, (3) find the administration at fault with recommendations to the administration to clarify procedures and/or reverse its decision with regard to the faculty member's employment status, or (4) find the administration at fault with a recommendation to release the report to appropriate professional academic groups. After the recommendation has

been released to these professional academic groups, the administration should be advised that the recommendation will be retracted if the administration provides a satisfactory remedy. The final report should be adopted by a majority of those investigating. After this, the report will be sent to the state CCPFR chairperson and CCPFR members, the Conference president, and the state executive committee for their approval. The report may be released publicly and posted on the Conference website only with the approval of the state executive committee. If the investigating committee finds an administration at fault and recommends the report be made available to appropriate professional academic societies such as the Modern Language Association, the American Historical Society, etc., a full copy of the report will be made available. A recommendation may be included that the professional society make the report available to prospective faculty members in their discipline who intend to interview at the offending institution.

If and when an institution settles the case satisfactorily after the report has been sent to a professional academic society, the society should be notified of this development at once. At this point, the professional academic society should be asked to withdraw the report from potential faculty who interview through their auspices.

Appendix I

Following are excerpts from a checklist originally prepared by Donald Wagner, former executive secretary of the Georgia AAUP Conference, subsequently updated and elaborated by John Slosar, former chapter president at Saint Louis University, and excerpted, edited, and adapted by Myron Hulen, former Colorado AAUP Conference president. It originally was titled "Committee A Matters," but the same guidelines should be used by the CCPFR.

Colorado Committee for the Protection of Faculty Rights: A Checklist

Your Role

Your role as a CCPFR representative is to allow the complainant to "ventilate" normal anger and frustration, to help him/her to identify, clarify and articulate the issues involved, and to identify appropriate remedies to the problem. Then, your role becomes that of an advisor and possible advocate to guide the complainant through the administrative processes available for resolution of the dispute.

Before the First Complaint

Know the Red Book – Know your faculty handbook – Make the Redbook your handbook. The most important CCPFR work you can do begins before you receive your first complaint. Your success in helping your colleagues is directly related to your success in making the Red Book part of your faculty handbook. If you can incorporate references to the Red Book, great! If not, incorporate as much of the language and as many of the policies and procedures as possible.

After a Complaint: CCPFR Checklist and Advice for Conference and Chapter Officers

1. Always be courteous, professional, and helpful to the extent you can. Listen and ask questions; don't argue. Find out exactly what the problem is and what remedy the faculty member seeks.
2. Take your time. Never allow yourself to be rushed. Make no commitments before checking with the Colorado CCPFR chairperson.
3. Do not assume that the faculty member is always right. For a level one investigation, remember that there are always at least two sides to every story, and the complaint may involve other faculty colleagues. Use judgment and discretion in contacting others to hear "the other side." Do not violate confidentiality when contacting others. Contact others only with the express permission of the complainant. For a level two investigation, you can assume that the administration's side of the story is documented in the complainant's personnel file.
4. Do not assume that the CCPFR can always help faculty members who believe that they have been mistreated. Our policies do not cover all conceivable circumstances.
5. For your protection, say at some point in the conversation, "I am not an attorney, and what advice I may give you is not legal advice."

6. Keep a record of your telephone conversations, and retain correspondence, e-mail messages, and other documents on each complaint.
 7. Advise any faculty member who calls you to develop and maintain a careful chronological account of what has happened to him or her. The account should include as much detail as possible, e.g., all relevant correspondence, telephone calls, meetings, witnesses, etc. Advise the person to document his or her complaint to the extent possible.
 8. Has the person exhausted potential avenues of redress at the campus? What remedies are available? Do they accord with what the AAUP recommends? Find out. Ask for copies of institutional regulations if you do not have them.
 9. If you are too busy to attend to the faculty member's concerns, are the least bit uncertain about the issues, or perceive a potential conflict of interest, suggest that the faculty member call the CCPFR chairperson.
 10. Maintain a list of attorneys in your state who are familiar with the higher education law. Be sure to indicate that you are providing them with referrals, not recommendations, since you may not be personally acquainted with all the lawyers whose names are in your field.
 11. Consulting with an attorney early could be very important in serious situations, especially when the faculty member's position may be at stake. Institutional policies may determine when an attorney should be brought formally into institutional proceedings. Be advised, however, that some institutions may immediately assume an adversarial posture when an attorney is brought in. At Level One, the participation/presence of an attorney could preclude an efficient resolution.
 12. After a complaint has been referred to the CCPFR, chapter officers can play an important role in providing information and facilitating discussions at the local level. As always, all parties should understand that the CCPFR does not speak for the national AAUP.
 13. In communicating directly with an administration, remember that most people do not differentiate between and among various parts of the AAUP. The chapter or conference should be careful to distinguish between its status as a local body of informed academic persons and the national office.
 14. Generally, very serious violations of academic freedom and shared governance should be referred to the national Committee A. If the complainant wishes to pursue a Committee A investigation, a CCPFR Level Two investigation should be undertaken only after national Committee A has declined requests to investigate.
- For more details about the CCPFR process--including how to request an investigation--please contact either of the Conference Co-Presidents or Ray Hogler, Chair of the CCPFR. For an archive of CCPFR reports go to the Reports page of this website.