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COLORADO CONFERENCE OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

Statement on the Inclusion of Disciplinary Matters in Annual Evaluations of Probationary Faculty and the Availability of Due Process to Those Accused of Professional Misconduct

(Approved by the AAUP Colorado Conference Executive Committee, March 15, 2019)

Colorado Conference has long been concerned with unreasonable treatment of university faculty in the probationary period. Recently, it has come to our attention that there may be instances in which department Tenure and Promotion Committees are asked to evaluate their untenured, tenure-track faculty on disciplinary matters as well as professional performance in teaching, scholarship, and service. The Colorado Conference believes this practice cannot be justified when taking into account AAUP recommended best practices. The Conference believes probationary faculty, confronted with charges of professional misconduct, should be entitled to a hearing before their peers in

the manner of procedures available to tenured faculty.

At least three AAUP statements apply to this problem, including the AAUP's statement on the use of collegiality in faculty evaluation; the AAUP statement on procedural standards in the renewal or nonrenewal of faculty appointments; and the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*.

- 1) ***On Collegiality as a Criterion for Faculty Evaluation*** (Adopted by Committee A in 1999; amended in 2016). This statement advances several key ideas:
 - Professional categories of assessment are: teaching, research, and service.
 - Collegiality as an assessment criterion endangers academic freedom.
 - **“Professional misconduct or malfeasance should constitute an independently relevant matter for faculty evaluation.**
 - Collegiality should not be used as a separate category of evaluation.

2) *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty*

Appointments Evaluation (Adopted by Committee A in 1989). This statement contains the following ideas:

- Cites from the AAUP's 1940 *Statement of Principles on Academic Freedom and Tenure* "that during the probationary period a teacher should have the academic freedom all other members of the faculty have" and notes, citing the RIR that "all members of the faculty, whether tenured or not, are entitled to protection against illegal or unconstitutional discrimination by the institution, or discrimination on a basis not demonstrably related to the faculty member's professional performance . . ."
- Prescribes the following procedures for evaluation: 1) Criteria and notice of standards; 2) with a) Periodic review and b) Opportunity to submit material; 3) Notice of reasons; 4) Written reasons; 5) Petition for review; and 6) Petition for review alleging inadequate consideration.
- States that, **"An evaluation, whether interim or at the time of final determination of renewal or tenure, should be presented in such a manner as to assist nontenured faculty members as they strive to improve their performance."**
- States that, "The best safeguard against a proliferation of grievance petitions on a given campus is the observance of sound principles and procedures of academic freedom and tenure and of institutional government."
- States in its section on Review Procedures: Allegations of Violations of Academic Freedom or of Discrimination that, **"The possibility of a violation of academic freedom or improper discrimination is of vital concern to the institution as a whole, and where either is alleged it is of cardinal importance to the faculty and the administration to determine whether substantial grounds for the allegation exist. The institution should also be concerned to see that decisions respecting reappointment are based on adequate consideration, and provision should thus be made for a review of allegations by affected faculty members that the consideration has been inadequate."**
- Statement recommends a special committee be formed to hear an allegation of inadequate consideration in an assessment of probationary faculty.

3) *Recommended Institutional Regulations on Academic Freedom and Tenure*

(Adopted by Committee A in 1957, updated most recently in 2013).

- As seen above, the RIR states that, "all members of the faculty, whether tenured or not, are entitled to protection against illegal or unconstitutional discrimination by the institution, or discrimination on a basis not demonstrably related to the faculty member's professional performance . . ."
- Section 2, Probationary Appointments: Section G, states that "Insofar as the faculty member alleges that the decision against renewal was based on inadequate consideration, the committee that reviews the faculty member's allegation will determine whether the decision was the result of adequate consideration in terms of the relevant standards of the institution."
- Section 9, Academic Freedom and Protection Against Discrimination states: " a) All members of the faculty, tenured or not, are entitled to academic freedom . . ." b) All members of the faculty, whether tenured or not, are entitled to protection against illegal or unconstitutional discrimination by the institution, **or discrimination on a basis not demonstrably related to the faculty member's professional performance**, including but not limited to race, sex, religion, national origin, age, disability, marital status, or sexual orientation."
- Section 10, Complaints of Violation of Academic Freedom or Discrimination in Nonreappointment. "If a faculty member on probationary or other nontenured appointment alleges that a decision against reappointment was based significantly considerations that violate a) academic freedom or b) governing policies on . . . [nondiscrimination] the allegation will be given preliminary consideration by the [insert name of committee]—**NOTE: A FACULTY COMMITTEE, NOT THE DEPARTMENT HEAD OR CHAIR.**

AAUP Colorado Conference Recommendations:

- A. Faculty in their probationary period, if accused of professional misconduct, should have access to a hearing of faculty peers to ascertain the validity or invalidity of allegations made against them.
- B. Disciplinary matters bearing on faculty performance in assessments of the probationary faculty member's achievement in teaching, research, and service should not be considered by Tenure and Promotion Committees in the absence of a prior professional misconduct hearing. Judgments of professional misconduct bearing on contract renewal, tenure and promotion should be rendered separately and only after any allegations against the faculty member have been vetted by a hearing before a committee of faculty peers, a majority of whom are drawn from outside the department.

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<http://aaup.org>.