

To: Paul Mogren, President of the Academic Senate

From: David P. Goldenberg, Chair of the Academic Freedom and Faculty Rights Committee

Date: 29 June 2009

RE: Annual Report

This memo constitutes the annual report of the Academic Freedom and Faculty Rights (AFFR) Committee, as required by University Policies and Rules. During the 2008-2009 academic year, the AFFR Committee received three complaints from faculty members who alleged that their rights had been infringed, in two cases by a dean and in the third by a department chair. The Committee carefully reviewed these complaints and made recommendations for their resolution, as described in the sections below. Each of these cases raised issues that the Committee believes extend beyond the specific complaints, and we encourage the Academic Senate to consider these issues further. In addition to considering faculty complaints, the Committee also participated in discussions concerning two changes to the University Policies and Rules; one implementing criminal background checks for faculty and staff, and the other adding language to the faculty code regarding discrimination based on gender identity or expression.

Complaints Regarding Membership in an Interdisciplinary Center

The AFFR Committee received two closely-related complaints from faculty members whose membership in an interdisciplinary center had been revoked by the dean responsible for the center. In each case, the faculty member was a tenured member of a regular department, but with a 50% appointment in the department and 50% in the center. The effects of the dean's actions were to shift the appointments fully to the departments and to remove the faculty members from any administrative roles in the center. The actions were based on allegations that the faculty members had engaged in unprofessional activity and had contributed to a dysfunctional environment in the center.

In considering these cases, the AFFR Committee did not attempt to determine whether or not the allegations of unprofessional behavior were true, but rather focused on the question of whether or not the dean's actions were taken with an appropriate degree of due process. In considering this question, the Committee consulted with a representative from the University Office of the General Counsel. This attorney discussed the meaning of due process in a legal context and offered the opinion that removal from a center did not represent a punishment or result in a "loss of property rights" and, therefore, could be taken without demonstrating due process. In brief, the Office of the General Counsel's assessment was that the action was a change in administrative assignment and did not prevent the faculty members from exercising their rights.

While the Committee appreciates this argument from the General Counsel, we believe that it is based on a rather narrow legal perspective that does not adequately consider the nature of academic appointments and the role of academic structures in the professional life of a faculty member. In the specific cases considered by the Committee, the teaching and research activities of the faculty members are more closely tied to the center than to the departments in which they hold tenure, and the center thus represented their "academic home". Exclusion from the governance of that home is bound to be seen as a loss and punishment. On a more concrete level, the faculty of this particular

center play a significant role in the appointment and review of their colleagues, a key faculty right and responsibility. Although the dismissed faculty members can continue to contribute to these processes in their home departments, they were excluded from the hiring and review of faculty with related research and teaching interests but who have appointments in other departments, a right that they previously exercised as a member of the center. For these reasons, the Committee believes that the decision to remove a member from a center should be carefully considered, with the reasons well documented and the member given an opportunity to respond to any allegations.

After reviewing the available documents for these particular cases, the Committee concluded that the two faculty members had been removed from the center without adequate due process and without an opportunity to respond to the allegations. The Committee has recommended that the appointment of these faculty members to the center be reconsidered, a recommendation that has been accepted by Sr. Vice President for Academic Affairs David Pershing. Our understanding is that a reevaluation of the roles of these individuals in the center will begin shortly.

Aside from the specifics of these cases, the AFFR Committee wishes to express its general concern regarding the absence of clear guidelines for the appointment of faculty to University centers or institutes. So far as we are aware, there are no provisions within University Policies and Rules concerning appointments to such centers, and the bylaws for the center involved in these cases are notably vague on the procedures for appointing members and say nothing about their removal. With the growing role of interdisciplinary research and teaching at the University of Utah, it seems certain that the number of such centers will grow and will play an increasingly important role in the professional lives of faculty. Even when primary appointments and tenure guarantees lie in conventional departments, a growing number of faculty will depend on association with centers for their research and teaching activities. We urge the University Administration and the Academic Senate to consider establishing general guidelines for the processes by which membership in centers or institutes is granted (or revoked). In addition, we recommend that the bylaws of centers and institutes clearly address these issues, and the rights and responsibilities of their members, as appropriate for the specific organization.

A Complaint Regarding the Handling of Gift Funds

The other complaint submitted to the AFFR Committee this year was from a faculty member who alleged that her rights had been violated by her department chair and a department administrative assistant. The complaint identified a number of issues, but the one that the AFFR Committee felt to be most serious in the context of academic freedom and faculty rights involved the handling of a corporate gift intended to support research by the faculty member. Unfortunately, this gift was accepted by the college and department without adequate consideration of the infrastructure resources needed to support the research or how the department would be reimbursed for the associated costs. This situation led to a great deal of confusion and frustration and may have interfered with the faculty member's ability to carry out her academic work. In this sense, the AFFR Committee did view this case as one involving a potential issue of faculty rights.

After reviewing this case, the Committee concluded that the issues fell largely in the realm of personal conflict between the faculty member and department chair, and that the rights of the faculty member had not been significantly infringed. Although some of the actions of the chair (especially a transfer of funds) may not have been appropriate, they had been corrected, and improved arrangements for the administration of the funds have been implemented. None the less,

the personal conflicts leading to the complaint have not yet been resolved, and the Committee has recommended that the parties seek the services of a professional mediator.

The more general issue raised by this case concerns the proper handling of gift funds. In this case, the gift was intended to support a substantial research project, and it is to be expected that extra costs would be incurred by the University and department. An agreement concerning these costs should have been implemented at the time the gift was accepted. Unfortunately, there appears to be a good deal of general confusion regarding the roles of the Development Office, the Office of Sponsored Projects and the Technology Commercialization Office in the handling of such gifts. We urge the college and department involved to clarify the relevant policies so that future misunderstandings can be avoided.

Criminal Background Checks

In response to a law passed by the Utah State Legislature in 2007, and a rule adopted subsequently by the State Board of Regents, the University of Utah was required to formulate and implement a policy for conducting criminal background checks of staff and faculty. Upon learning of the plans for this policy, the Executive Committee of the Academic Senate recommended that the AFFR Committee participate in the discussions, and, in response to this suggestion, I served as a member of the ad hoc group that worked on the policy through the 2008-2009 academic year. The work of this group, and others, resulted in the approval by the Senate at its May 2009 meeting of new Rules (5-130 A & B) and Policies (5-130).

The many issues raised in the discussions of criminal background checks are documented in the various materials presented to the Senate and in the official summaries of the Senate meetings. It is appropriate, however, to note here some issues of particular concern to the AFFR Committee:

- Under some circumstances, criminal background checks could be used in a discriminatory manner to prevent the appointment of faculty with controversial histories or opinions.
- The adopted policies allow for background checks of existing staff and faculty when “reasonable cause” exists. There is the possibility that such a policy could be abused to punish or intimidate faculty with controversial opinions.
- The result of a criminal background check might interfere with the rights of a department to make a faculty appointment that it had evaluated and judged appropriate.

These issues were discussed extensively by the Academic Senate, and the final Policies and Rules appear to balance appropriately the requirements for academic freedom and campus safety. None the less, criminal background checks for faculty is a new and potentially threatening phenomenon for most departments and colleges, and the implementation of the new policies should be monitored closely in the coming years.

Discrimination Based on Gender Identity and Expression

The AFFR Committee was asked to comment on a proposed change to the faculty code, in which the phrase “gender identity/expression” was to be added to the list of classes protected against discrimination. The affected policy is 6-316, Section 4A-2, and reads (with the added phrase highlighted):

Faculty members must not discriminate against, harass, or impose prejudicial treatment upon other faculty members, staff members, students, or participants (as that term is defined in the sexual harassment policy, Policy 5-210) because of race, color, religion, national origin, gender, sexual orientation, **gender identity/expression**, country of citizenship, age, political beliefs, or status as a person with a disability, veteran, or because of any other criterion or characteristic that is an impermissible basis, under applicable constitutional or statutory provisions.

The AFFR Committee endorsed this change.