

COMMITTEE ON ACADEMIC FREEDOM AND RIGHTS (CAFR)
Operating Code (revised Spring, 2022)

At a minimum, the Chair of CAFR, in consultation with the rest of the committee, should review and revise this code before the start of each academic year. Revisions should reflect amendments to the *Faculty Handbook* as well as major procedural changes, whether predicated on those amendments or not. The committee should approve the code as early in the fall as possible.

FUNCTION

To serve as guardian of the academic freedom and rights of all members of the academic community; to receive inquiries and complaints concerning academic freedom and rights and to consider formal charges of violations of academic freedom and rights from any faculty member, student, administrator, trustee, or from ATC and PC; to advise and make appropriate recommendations.

A subcommittee of CAFR consisting of the three tenured faculty, the Tenure Review Subcommittee (TRS), reviews negative tenure recommendations at the request of the candidates. The TRS may consult with the ATC, members of the candidate's department, and/or the Dean of the Faculty/Vice President for Academic Affairs, if necessary. In the event that the TRS determines that a tenure case requires reconsideration, the TRS will convene the Tenure Appeal Committee to reconsider the case. The TRS is free to discuss with the administration or with the Chair of ATC issues raised by a candidate that — although not warranting an appeal — nonetheless might improve future tenure deliberations. If the complaint involves alleged harassment or discrimination in violation of the college's policies as outlined in Part Six of the *Faculty Handbook*, in addition to carrying out the TRS investigation, the TRS will notify the Dean of the Faculty/Vice President for Academic Affairs following the procedures set forth in Part Six, Article VII [Procedures for Resolving Complaints of Harassment or Discrimination against Faculty Members]. Members of the TRS may not participate in the tenure cases of candidates with primary affiliation in their own departments/programs and a substitution will be made by the remainder of the committee from the most recent former members of CAFR with tenure.

CAFR meets annually, and whenever necessary in the pursuit of its functions, with the Academic Affairs Committee of the Board of Trustees.

Revisions to Part One of the *Faculty Handbook*, Articles I–VIII, XIV, XII through XVIII are reviewed by CAFR for its recommendations prior to a faculty vote.

The Operating Code of CAFR is available from any member of the Committee.

MEMBERSHIP

Four members of the Faculty, none of whom is on ATC, PC, CAS, or FAB, at least one of whom is untenured at the time of election and at least three of whom are tenured, each to serve a three-year term and each from a different department; and no more than five students selected by SGA.

A member who has served a full three-year term is eligible for re-election after being out of office for two years. Members who complete an unexpired term or serve an interim term in place of a regularly elected member on leave are immediately eligible for re-election provided their service did not exceed one calendar year.

CHARGE

While CAFR's charge is outlined in multiple locations in the *Faculty Handbook*, the most general language is reproduced here (Part One, Article IV): The Committee on Academic Freedom and Rights (CAFR) and ATC have been recognized by the Board of Trustees, the President, and the Faculty as representing the Faculty of Skidmore College in discussions with the President, the Dean of the Faculty/Vice President for Academic Affairs, and the corresponding committee of the Trustees on matters of common concern and responsibility. On questions of academic freedom and tenure, CAFR and ATC represent the Faculty to the President, the Dean of the Faculty/Vice President for Academic Affairs, and the Trustees and make recommendations for their consideration. The confidential nature of these discussions is respected by all parties taking part.

GENERAL OPERATIONS

The committee's definition of academic freedom and rights includes, but is not limited to, the *1940 Statement of Principles* by the American Association of University Professors, the *Faculty Handbook*, the *Student Handbook*, the *Chairs and Program Directors Handbook*, departmental policies, the CAFR Operating Code, and the *College Catalog*. In the pursuit of its duties, the committee may seek information and expect the cooperation of students, faculty, and administration, and may have access to legal advice. A member shall recuse themselves if they are involved in the matter about which the complainant is bringing the case. Student members shall meet when questions, complaints, or charges are initiated by students and when a student is involved in the complaint; otherwise the committee will function with only the faculty members.

A. Composition

The Chair of CAFR must have tenure, as must two other committee members. The other remaining members must be untenured at the time of election.

B. Bias training

All potential members of a TRS (i.e., all tenured members of CAFR) must complete the same bias training that ATC completes at the start of the academic year. The Chair of CAFR should reach out to the Chair of ATC in order to coordinate this training.

C. Grade disputes

CAFR does not hear grade dispute cases from students, unless efforts have first been made to resolve matters within the appropriate department or program. If, after consultation with the instructor and the department or program chair, the student has evidence that the grade reflects a bias on the part of the instructor in violation of academic freedom and rights, the student may present that evidence to CAFR. CAFR does not have the authority to change a grade, but in cases of violation of academic freedom and rights with respect to grades, can make a recommendation that the grade be changed.

D. Confidentiality

The *Faculty Handbook* states (Part One, Article IV), “The confidential nature of these discussions is respected by all parties taking part.” CAFR interprets this to mean that all individuals involved in any aspect of the formal or informal CAFR process must respect confidentiality.

To the extent possible, CAFR and all participants in informal and formal inquiries will endeavor to maintain the confidentiality of all parties involved. This confidentiality applies to CAFR, to those seeking assistance, to those filing a complaint, to respondents, to advisor/friends described below, and to those serving as witnesses; confidentiality also applies to those creating or reviewing any documents related to the complaint. Information about the complaint is therefore provided only to those individuals within the college who are directly involved in the investigation and/or resolution of the complaint. This doctrine of confidentiality will be in effect during all steps of the informal and formal inquiry process outlined below.

All committee discussion and documents, therefore, remain confidential. It is the responsibility of the Chair of CAFR to inform all individuals involved in the investigation of their right to and responsibility for maintaining confidentiality. Complainants may waive their right to confidentiality in order to allow CAFR to communicate more directly with the administration and other entities; such waivers should be received in writing. In the event that deliberations on a case continue past one academic year, the committee (as constituted for each academic year) will continue hearing the case. Newly elected members will be informed about the case by the continuing members of the committee.

E. Records

As described below, the committee shall take care to keep accurate records of all proceedings, and the doctrine of confidentiality shall apply to all documents thereby received and generated. During inquiries and interviews conducted remotely (i.e., via Zoom or other meeting software), CAFR may request of the interviewee permission to take a transcript of the meeting, or even record it, for archival purposes. No meeting should be recorded without the express permission of the interviewee.

INFORMAL INQUIRIES

(This stage must precede any formal action.)

Any student, faculty member, or administrator may seek out and speak with any member of CAFR to gather information, discuss a complaint, or seek assistance and clarification. Any such inquiry shall be reported — at least in general terms — to the chair of CAFR. The committee member shall explain CAFR's function and procedures during this meeting. No official opinions or judgments on the substance of the inquiry will be offered at this juncture.

With the consent of the petitioner, the inquiry shall be reported to CAFR as a whole. Furthermore, with the consent of the petitioner, CAFR may attempt to approach other parties, collect additional information, and mediate any dispute. To avoid misunderstanding, it is advisable that at least two members of CAFR be involved in all discussions. Each petitioner may request, or the Chair of CAFR may offer, a contact person on the committee to whom the petitioner may coordinate their inquiries. With the consent of the petitioner, every effort shall be made to resolve the issue amicably in order to avoid formal charges. The doctrine of confidentiality (above) shall be observed throughout this stage.

FORMAL INQUIRIES

(This stage must be preceded by informal inquiries.)

- A. A quorum for formal proceedings shall be three faculty members. A quorum is necessary to formally discuss a case.
- B. A complainant may bring formal charges after they have pursued an informal inquiry through CAFR, and after they have determined that a formal inquiry could be warranted or beneficial.
- C. The complainant must submit their grievances in writing, indicating clearly and precisely which academic freedoms and rights have been violated, and against whom the charges are directed. This document should be submitted to CAFR along with any supporting materials.
- D. The committee must send copies of the charges to any person (or persons) against whom the formal charges have been lodged, and must notify them that they have a right to appear

before the committee to present their views. In addition, the committee shall send to the President copies of the charges.

E. CAFR may invite any parties deemed relevant to the case to come before the committee. Parties may come before the committee with a colleague, friend or other advisor who is not acting as an attorney. The committee shall conduct the proceedings.

F. If in the course of its investigation CAFR deems that a person or persons not named in the original appeal may have violated the complainant's academic freedom and rights, it is possible to lodge formal charges against that person or persons. In such instances, CAFR should consider the academic freedoms and rights of all parties in deciding how to proceed.

1. In some cases, it may be most appropriate to consult with the original complainant prior to initiating formal charges against an additional person or persons. This is especially reasonable in cases where initiating formal charges against a new respondent may make the complainant vulnerable

2. For example, if the complainant had suspected that an individual violated their rights and communicated this concern to CAFR at the Informal Inquiry stage, but had lacked sufficient evidence to lodge formal charges against them, consulting with the petitioner (without divulging the contents of the new evidence) is unlikely to compromise the new respondent's right to confidentiality nor the complainant's right to protection, and is an important step for ensuring that the complainant does not take on unacceptable levels of vulnerability. If the complainant declines to press formal charges, CAFR will not press formal charges. If the complainant decides to press formal charges, CAFR returns to step C (above).

3. In other cases, it might NOT be appropriate to consult with the original petitioner prior to initiating formal charges against a new respondent, since such a consultation could violate the new respondent's right to confidentiality. If CAFR chooses to pursue a formal case against the new respondent, CAFR shall immediately inform them in writing of the specific nature of CAFR's concern and of their right to appear before the committee to present their views.

4. For example, if CAFR's investigation reveals that a previously unnamed person might have violated someone's rights, sharing any part of this information with the complainant would be a violation of the new respondent's right to confidentiality. Or, if CAFR determines that an individual has violated the academic freedoms and/or rights of someone other than the original complainant, it would be inappropriate to share this information with the original complainant.

G. Prior to reporting its formal findings in writing, the CAFR chair, with or without other CAFR members, shall meet with the President. At the request of the President and with the consent of the committee, the Dean of Faculty/VPAA may be invited to attend. The CAFR chair shall discuss its preliminary findings with the President and any other parties present, who shall

supply the committee with any additional information they may possess relevant to the case. Based on the outcomes of this meeting, CAFR might return to step E (above) to continue collecting information.

H. The committee shall submit its findings and recommendations in writing to the President and to the parties immediately involved (i.e., the complainant and any persons against whom the formal charges were lodged). This document shall be marked as confidential.

I. The President shall communicate in writing to CAFR the actions taken or in progress, responding to the committee's findings and recommendations.

SPECIAL INSTANCES OF FORMAL CHARGES

(These guidelines supplement those above, and must be used when applicable)

A. Complaints lodged against the President

In cases where formal charges are lodged against the President, the committee shall report directly to the relevant committee(s) of the Board of Trustees. Testimony heard during the informal stage may be used as testimony during the formal stage with the approval of the members of the Trustees' committee(s). Those who testified during the informal stage will be requested to indicate, in writing, whether they wish to testify anew or let their earlier testimony stand.

B. Appeals of formal disciplinary sanctions

Imposition of formal sanctions including dismissal shall not be used to restrain faculty members in their exercise of academic freedom. A faculty member may appeal formal disciplinary sanctions to CAFR, if that faculty member believes that their academic freedom and rights have been violated. CAFR shall adhere to the following procedures in its consideration of such appeals:

1. A faculty member who has been formally sanctioned for disciplinary reasons including, but not limited to, alleged professional incompetence, neglect of duties, or professional or personal misconduct may seek out and speak with any member of CAFR, and has the same rights as other complainants.
2. A faculty member who wishes to initiate a formal appeal must do so by informing the Chair of CAFR in writing within 15 work days of receipt of the official letter regarding sanctions other than dismissal, and 20 work days regarding sanctions involving dismissal.
3. The ADOF will provide CAFR, upon request, with the statement of charges, any other information gathered during the preliminary inquiry, and a rationale for the sanction(s) imposed.

4. CAFR shall have 20 work days to convey its recommendation in writing to the President.

C. Complaints lodged against students

For any cases involving students, a quorum includes three faculty members and one student. For any cases where the faculty alleges that the student's behavior is disruptive, the CAS-CAFR policy (see CAS operating code) should be invoked. The criteria for disruption are:

1. The student routinely or periodically exhibits language or behavior that makes it difficult for instructional activities to continue.
2. The student on one or more occasions exhibits language or behavior of such a disturbing, disrespectful, or threatening nature as to make the student's return to class untenable.

D. Complaints involving denial of tenure

These complaints should be handled by the Tenure Review Subcommittee, as outlined below.

THE TENURE REVIEW SUBCOMMITTEE (TRS)

A. Informal Inquiries

(must occur prior to March 21)

Any faculty member who was denied tenure may seek out and speak with any member of CAFR to gather information, discuss a complaint, or seek assistance and clarification. Any such inquiry shall be reported — at least in general terms — to the chair of CAFR. The committee member shall explain CAFR's function and procedures during this meeting, and shall explain the TRS process. No official opinions or judgments on the substance of the inquiry will be offered at this juncture.

B. Formal Charges

(must be received by March 21)

A complainant may bring formal charges by submitting a letter to the Chair of CAFR by March 21, stating in a clear and concise manner exactly how the consideration of their tenure case is perceived as having been inadequate and/or how their academic freedoms and rights were violated. This letter should follow the guidelines outlined above for all Formal Inquiries.

Once the complainant brings formal charges, a TRS is convened. Members of the TRS shall be the only CAFR members who participate in the remainder of the process. The TRS is composed of three tenured members of CAFR, none of whom are in the candidate's department or who otherwise report a conflict of interest. The incoming and current Chairs of CAFR will serve on

the TRS, which should be chaired by the current CAFR chair. Should a sitting member of CAFR, who would otherwise be part of the TRS, have a conflict of interest, the Chair of CAFR will contact previous members of CAFR with tenure in reverse-chronological order, in order to find a suitable substitute. The complainant shall be informed that the TRS has been convened.

The investigative process shall follow the procedure outlined above for Formal Charges, with the following provisions: If the TRS identifies that inadequate and/or violation of academic freedoms and rights may have materially impacted the candidate's tenure case, the TRS may convene a TAC. To convene a TAC, the Chair of TRS shall contact the Chair of ATC in order to initiate the process. The Chair of CAFR and the incoming Chair of CAFR shall serve on the TAC.

Full procedures for the TRS and the TAC are given in Part One, Article VIII.E.6–7 of the *Faculty Handbook*.

CREATING POLICY

In cases where CAFR is made aware of situations where practice deviates from the language in our guiding documents (e.g., *Faculty Handbook*, *Chairs and Program Directors Handbook*) or identifies inconsistencies with these guiding documents, CAFR is empowered to make informal recommendations to the relevant committees, to the administration, to the President, and/or to the Board of Trustees. When deemed appropriate by CAFR, CAFR may introduce policy by itself.

When it does not compromise confidentiality, CAFR is empowered to introduce *Faculty Handbook* text for faculty vote, or to bring to the relevant committees/parties issues that might benefit from clarification in our guiding documents. In these conversations, the top priority is confidentiality, and when balancing concerns of confidentiality and the need to alter language, CAFR will protect confidentiality above all else. While these policy changes may be inspired by problems identified during specific cases, they will never be publicly tethered to any case.

RECORD KEEPING

CAFR maintains an internal document identifying inconsistencies in its guiding documents, important policy issues moving forward, and (anonymized brief summaries of the year's formal and informal cases. This document is made available to CAFR members each year, in order to help guide the committee's work, and differs from the outward-facing year-end report that is sent to all faculty. The document is confidential.

A. Inconsistencies in guiding documents

As noted above, CAFR's guiding documents are the *1940 Statement of Principles* by the American Association of University Professors, the *Faculty Handbook*, the *Student Handbook*,

the *Chairs and Program Directors Handbook*, departmental policies, the CAFR Operating Code, and the *College Catalog*. If CAFR identifies inconsistencies within or across these documents, these inconsistencies should be recorded, and CAFR should — if time permits — work to resolve these inconsistencies. If the documents that describe and define our academic freedoms and rights are inconsistent, then it is difficult to define what our rights are, let alone to protect them.

B. Important policy issues moving forward

CAFR's work often reveals not only inconsistencies within our guiding documents, but also concerns related to the protection of academic freedoms and rights. In some cases, this work may motivate CAFR to pursue policy change. Given the annual turnover of CAFR's membership, a policy change tracking document will allow for continuity in pursuing change across academic years.

C. Summaries of the year's cases

Each inquiry, whether formal or informal, should be summarized briefly and in an anonymized format. These summaries must not include names or specific departments, but may include divisional information. They should include information about the nature of the complaint, any investigation, mediation, or other process, and the outcome.